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 II

(Annexes 1–60)

1 March 2018

VOLUME II

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Annex 1

Sir Lowry Cole's Despatch from Mauritius, *List of Dependencies (British) of Mauritius (1826)*, FCO 31/3836 (19 Sept. 1826)

ANNEX B BIOT

LIST OF DEPENDENCIES(BRITISH) OF MAURITIUS (1826).

Source: Sir Lowry Cole's Despatch from Mauritius, dated 19/29/1826. Filed with Library(Misc 69 CO 167/85).

L'Isle Rodrigues.
L'Isle Brandon or Cargados Carayos.
Diego Garcia.
Les Six Isles.
Les Trois Frères.
Isles Salomon.(or French name Les Onze Isles).
Les Peros Banhos.
Isle Segour.
Isles George et Roguefrin.
Agaléga.
Coelivi.

Isles Seychelles. : L'Isle Mahé.
L'Isle St Anne.
L'Isle aux cerfs.
L'Isle Anonine.
L'Isle du Sud Est.
L'Isle Longue.
L'Isle Ronde.
L'Isle Moyenne.
L'Isle Therese.
L'Isle de la Conception.
L'Isle aux vaches marines.
L'Isle aux frégates.
L'Isle La Dique.
L'Isle Praslin.
Les Cousin et Cousine.
Les Trois Soeurs.
L'Isle Ronde.
L'Isle Aride.
L'Isle Felicité.
L'Isle Marianne.
L'Isle aux Roseifs.
Les deux Isles du Nord.
L'Isle Denis.
L'Isle Curieuse.
Les Mammelles.
L'Isle Silhouette.
L'Isle Plate.

Les Amirantes. : L'Isle Africain.
L'Isle Zemire.
L'Isle d'avios.

Annex 2

Anonymous, *An Account of the Island of Mauritius, and its Dependencies* (1842)

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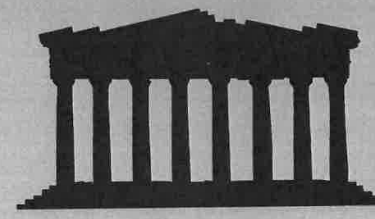
Genera Historical Collections

An Account of the Island of Mauritius, and its dependencies. By a late Official Resident.

Anonymous



Annex 2

An Account of the Island of Mauritius, and its dependencies. By a late Official Resident.

Anonymous

Annex 2

AN ACCOUNT

OF THE

ISLAND OF MAURITIUS,

AND ITS

Dependencies.

BY A LATE OFFICIAL RESIDENT.

LONDON:

PUBLISHED BY THE AUTHOR.

1842.

Annex 2

MY LORD,

Your Lordship having appointed me as a Special Magistrate for the Mauritius, I am indebted to that circumstance, for whatever knowledge or information I possess of the Colony; and to you, therefore, I respectfully beg leave to dedicate this account of the Island and its dependencies. It is a well known fact, that of all the British possessions, less is known of the Mauritius generally, than of any other of our Colonies; and when the vast National and Commercial consequence of the Island is considered, whether in reference to produce or her important position, in relation to our East India possessions and Trade, is a matter of surprize.

Should this brief account of the Island and its dependencies meet your Lordship's approval, and add towards the better knowledge of this interesting possession, my object will be attained.

I have the honour to be,

My Lord,

Your Lordship's most obedient,

And very humble servant,

THE AUTHOR.

To the Right Honourable the Lord Stanley,
Secretary for the Colonial Department.

CHAPTER VII.

Customs Duties.—Import Duties—Entrepot, do.—Export, do.—Port Charge.

CUSTOMS DUTIES.

IMPORT DUTIES.

Grain of all sorts, ploughs, and harrows, steam and water engines, and other articles of machinery, calculated to diminish manual labour, and being of British manufacture, free of duty.

Salted meat, fish, duly certified to have been cured at the Cape of Good Hope, New South Wales, or Van Dieman's Land, free of duty.

All goods, the produce of the dependencies of the Mauritius, or of the Island of Madagascar, with the exception of ebony, if imported in British bottoms, are admitted free of duty.

Annex 3

Governor of Mauritius and the Council of Government, *Ordinance No. 20 of 1852* (2 June 1852)

MAURITIUS AND DEPENDENCIES.

ORDINANCE

No. 20 of 1852.

Enacted by the Governor of Mauritius with the advice and consent of the Council of Government thereof.

TITLE. For empowering the Governor in certain cases to extend to the Seychelles Islands and other Dependencies of Mauritius the laws and regulations published in this Island.

PREAMBLE. WHEREAS some of the laws and regulations published in this Colony may be conveniently adapted to the local circumstances of the Seychelles and other Dependencies, and it is expedient that sufficient power should be given to the Governor for that special purpose.

His Excellency the Governor in Council has enacted, and does hereby enact as follows:

Art. 1.—The Governor is hereby empowered to extend to the Seychelles Islands and other Dependencies of Mauritius any laws or regulations published in this Colony, under such restrictions and modifications in the said laws and regulations as the Governor may deem fit, according to the local circumstances of the said Dependencies.

Art. 2.—The present Ordinance shall take effect from the fifth day of June 1852.

Passed in Council at Port Louis, Island of Mauritius, this second day of June 1852.

W. Nicolay

Secretary to the Council.

Annex 4

Governor of Mauritius and the Council of Government, *Ordinance No. 14 of 1853* (23 Mar. 1853)

MAURITIUS & DEPENDENCIES.

ORDINANCE

No. 14 OF 1853.

—*Enacted by the Governor of Mauritius with the advice and consent of the Council of Government thereof.*

TITLE. For amending and repealing Ordinance No. 20 of 1852.

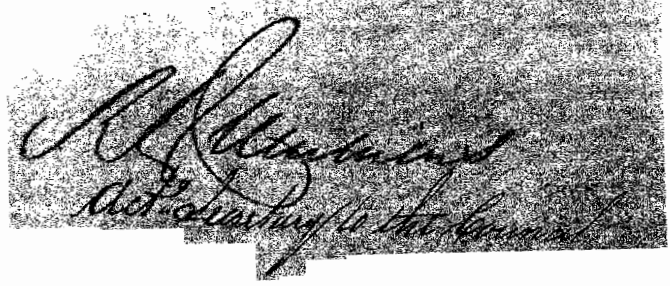
PREAMBLE. WHEREAS an Ordinance has been passed on the 2nd day of June 1852, No. 20, for empowering the Governor in certain cases to extend to the Seychelles Islands and other Dependencies of Mauritius, the laws and regulations published in this Island, and it is expedient that such power be vested in the Governor and His Executive Council.

His Excellency the Governor in Council has enacted and does hereby enact as follows:

Art. 1.—Ordinance No. 20 of 1852 is hereby and shall be repealed, and it is enacted that the Governor in his Executive Council is hereby empowered to extend to the Seychelles Islands and other Dependencies of Mauritius, any laws or regulations published in this Colony, under such modifications and restrictions in the said laws and regulations as the Governor may deem fit, according to the local circumstances of the said Dependencies.

Art. 2.—The present Ordinance shall take effect from the twenty sixth day of March 1853.

Passed in Council at Port Louis, Island of Mauritius, this twenty third day of March 1853.



Annex 5

Governor of Mauritius, its Dependencies, and the Council of Government, *Ordinance No. 5 of 1872* (10 Feb. 1872)

Ordinance No. 5 of 1872.

AN ORDINANCE

Enacted by The Governor of Mauritius and its Dependencies, with the advice and consent of the Council of Government thereof.

To make better provision for the Administration of Justice in certain Dependencies of Mauritius.

ARTHUR GORDON. (10*th February* 1872.)

WHEREAS it is expedient to make better provision for the Administration of Justice in certain Dependencies of Mauritius;

BE IT THEREFORE ENACTED by His Excellency The Governor, with the advice and consent of the Council of Government, as follows:

Modification of Proclamations.

1.—The Proclamation dated 24th October 1864 and the Proclamation No. 14 of 10th June 1868 are hereby modified so far as they are repugnant to or inconsistent with the provisions of this Ordinance.

Extension of Laws.

2.—Ordinance No. 34 of 1852, entitled "An Ordinance for amending and consolidating the Laws "relating to the establishment of District Courts within "the Colony,"—and Ordinance No. 35 of the same year, entitled:—"An Ordinance for amending the Ordinance "relating to the Jurisdiction of District Courts in Cri- "minal Matters," and Ordinance No. 11 of 1869 entitled "An Ordinance to extend the Jurisdictic of Dis trict "Courts in Criminal Matters," and Ordina: No. 27 of 1871 entitled "An Ordinance to bring with the Juris- "diction of the District Courts certain Misdemeanors, "Contraventions and Offences hitherto excluded from "such Jurisdiction," are hereby extended to the Islands

Annex 5

mentioned in Article 5 of this Ordinance, subject to the provisions hereinafter contained.

Jurisdiction of Magistrate in Port Louis

3.—The Junior District Magistrate of the District of Port Louis, in the Island of Mauritius, for the time being, is hereby constituted to be the District Magistrate for the said Islands, and he, the said Junior District Magistrate of Port Louis, and all the Officers of his Court, shall have the same powers, authority and jurisdiction respectively, to all intents and purposes, as if the said Islands formed part of the said District of Port Louis.

Procureur General's powers maintained.

4.—Nothing contained in this Ordinance shall be held to diminish, limit, or in any way affect the right and power of the Procureur General to reduce or refer back under the Ordinances No. 11 of 1869 or No. 27 of 1871, any Criminal charge concerning any offence committed in the said Islands.

Ordinance to apply to certain Islands.

5.—This Ordinance shall apply to the following Islands, namely:

Diego Garcia,
Six Islands,
Danger Island,
Eagle Islands,
Peros Banhos,
Coetivy,
Solomon Islands,
Agalega Islands,
St. Brandon Islands, also and otherwise called Cargados Carayos.

PASSED in Council, at Port Louis, Island of Mauritius, this Sixth day of February One thousand Eight hundred and Seventy-two.

THOS. ELLIOTT,

Ac' ng Secretary to the Council of Government.

Published by Order of His Excellency The Governor.

EDWARD NEWTON,

Colonial Secretary.

Annex 6

Governor of Mauritius, its Dependencies, and the Council of Government, *Ordinance No. 41 of 1875* (28 Dec. 1875)

Annex 6

ORDINANCE No. 41 of 1875.

AN ORDINANCE

Enacted by The Governor of Mauritius, and its Dependencies with the advice and consent of the Council of Government thereof.

To appoint a Police and Stipendiary Magistrate for the smaller Dependencies commonly called "Oil Islands" and those other Islands, Dependencies of Mauritius, in which there are or may be Fishing Stations, and to appoint permanent Officers of the Civil Status for those Islands.

31 Dec 75

WHEREAS it is expedient to appoint a Police and Stipendiary Magistrate for the smaller Dependencies commonly called "Oil Islands," and those other Islands, Dependencies of Mauritius, in which there are or may be Fishing Stations, and to appoint permanent Officers of the Civil Status for those Islands ;

WHEREAS it is expedient that such Police and Stipendiary Magistrate should have summary jurisdiction, and should from time to time visit the aforesaid Dependencies to administer justice therein ;

BE IT THEREFORE ENACTED by His Excellency the Governor, with the advice and consent of the Council of Government, as follows :

Police and Stipendiary Magistrate to be appointed.

1.—It shall be lawful for Her Majesty the Queen, Her Heirs and Successors, from time to time, to appoint a fit and proper person to be a Police and Stipendiary Magistrate for the smaller Dependencies of Mauritius enumerated in Schedule A.

Annex 6

Residence of Magistrate.

2.—Such Police and Stipendiary Magistrate shall not reside permanently in any one of the Dependencies subject to his jurisdiction, but shall, from time to time, visit

Magistrate to visit Dependencies.

such Dependency to administer Justice therein between private individuals and between Master and Servant, he shall also report to His Excellency

To report.

the Governor, the result of each visit paid as aforesaid, he shall make a return of all Judgments and Convictions by him given or awarded in each Dependency separately.

Salary.

3.—There shall be paid to such Magistrate a salary not exceeding Five hundred pounds per annum, and a further sum not exceeding One hundred pounds per annum for travelling expenses. He shall be entitled to no other allowance.

Free passage.

Such Magistrate shall further be entitled to obtain a free passage to and from any of the said Dependencies on board the ships or coasters belonging to, or chartered, or employed by the proprietors or lessees of such Dependencies.

Contribution to be made by proprietors of Oil Islands.

4.—The salary and travelling expenses of the said Magistrate shall be paid partly out of a sum of Four hundred pounds sterling which the proprietors or lessees of the Dependencies commonly called "Oil Islands," shall pay into the Treasury, on or before the 15th day of January in each year, and partly out of the General Revenues of this Colony.

Tax to be levied in default of contribution.

5.—In default of the said sum of Four hundred pounds sterling being paid as aforesaid by the proprietors or lessees aforesaid, on or before the 15th day of January as aforesaid, there shall be levied by the Collector of Customs on each Gallon of Oil imported into this Colony from the said Oil Islands, the sum of one half-penny.

Powers of Stipendiary Magistrate.

6.—The said Magistrate shall have the powers and authority vested in Stipendiary Magistrates in Mauritius by the Order in

Council of 7th September 1838 and Ordinance No. 15 of 1852, but under the modifications hereinafter enacted.

Duties & powers. 7.—He shall examine into the conduct and state of the Laborers or Servants employed for hire in the said Islands, and if the wages of the said Laborers and Servants have not been duly paid; or if medicines or proper house accommodation have not been duly provided for the said Laborers and Servants; or if they have been maltreated by their Master or Masters, or by any Agent of such Master or Masters, he shall have in each such case power to dissolve and annul the engagements of the said Servants or Laborers, and to send them by the first ship to Mauritius, and he shall have further power to adjudge that the costs and expenses of the return passage of such Servants or Laborers to Mauritius, shall be paid by their Master or Masters.

Engagements to be annulled.

Power to send back Servants to Mauritius. 8.—In every case in which the said Stipendiary Magistrate shall find that any Servant or Laborer in the said Islands, has been brought to the said Islands to work there for a limited space of time and after the expiration of his engagement has been detained upon the said Islands, or refused a passage back to Mauritius, then it shall be lawful for the said Stipendiary Magistrate to take the necessary measures to convey the said Servant or Laborer to Mauritius, and to adjudge that the expense and costs of the return-passage of such Servant or Laborer to Mauritius shall be borne by the Master and all expenses and costs adjudged by the said Magistrate under this Article and the preceding one to be paid by a Master shall be recoverable in Mauritius in virtue of such adjudication before the competent Court of Law in Mauritius.

Passage money of Servant to be paid by Master.

Further powers. 9.—In every case in which a complaint shall in the said Islands be brought before the said Magistrate by a Master or his Agent against a Servant, and the said Servant shall be found guilty under the provisions of the aforementioned Order in Council, or of the aforementioned Ordinance No.

Annex 6

15 of 1852, the said Stipendiary Magistrate shall have power to annul the engagement of the said Servant and to take the necessary measures to bring him back to Mauritius and whatever wages are owed to the said Servant shall be paid to the said Magistrate and go in deduction of the passage-money.

Complaint may be made in Mauritius.

10—After the arrival of a Master or Servant in Mauritius, complaint may be brought by any Master or Servant for any offence or breach of the law committed in the said Islands, and mentioned in the said Order in Council, or in the said Ordinance No. 15 of 1852, before the Stipendiary Magistrate of Port Louis, and the said Magistrate shall deal with the said offence according to the provision of the laws of Mauritius applicable to such offence, and in the same way as if the said offence had been committed in Port Louis, provided no judgment or order has been given in the matter by the Stipendiary Magistrate of the said Islands.

Judgments to be final.

11. — All judgments of the said Stipendiary Magistrate given in the said Islands shall be definitive and final to all intents and purposes.

Persons committed to Prison may be detained in Port-Louis Gaol.

12.—Every Warrant which shall be issued by the person so appointed as a Stipendiary Magistrate for the committal to Prison of any person, may be lawfully executed by the removal of the Offender to the Gaol of Port Louis, and by his detention therein in terms of the said Warrant.

Magistrate to have powers of District Magistrate.

13.—The said Magistrate shall also have the powersand authority vested in District Magistrates of Mauritius by the said Ordinances Nos. 34 and 35 of 1852 and all other laws regulating their jurisdiction and in force in Mauritius for the time being, but with the modification hereinafter mentioned.

Concurrent jurisdiction with Magistrate of Port Louis.

14.—The said person so appointed, on being duly sworn before any Judge of the Supreme Court in terms of Ordinance No. 12 of 1869, shall

during his tenure of office, have in and over the said Islands concurrent jurisdiction with the District Magistrate of Port Louis.

Persons committed to Prison may be detained in Port Louis Gaol.

15.— Every warrant which shall be issued by the Person so appointed as a Magistrate for the committal to Prison of any Person, may be lawfully executed by removal of the Offender to the Gaol of Port Louis, and by his detention therein in terms of the said warrant.

To compel attendance before Supreme Court of witnesses, &c.

16.—The Person so appointed as a Magistrate shall have further and additional power to make all orders, and to take all necessary measures to secure the attendance before the Supreme Court of Mauritius, of all the Witnesses required to be heard against or in favor of every Offender committed by him for trial as aforesaid.

District and Stipendiary Clerk unnecessary.

17.— It shall not be necessary for the said Magistrate in and for the discharge of his duties as a District and Stipendiary Magistrate to have a District and Stipendiary Clerk.

Magistrate to have powers of Clerk.

For the purposes of this Ordinance the said Magistrate is invested with the functions and is empowered to perform within the said Islands the duties of Clerk of a District Court as defined by Ordinances Nos. 34 and 35 of 1852.

Register of Orders, Judgments, &c.

18.—The said Magistrate shall keep a Register in which shall be entered a note of all orders, judgments and executions and of all other proceedings by him given or issued and the entry in such Register or a true copy thereof signed by the Magistrate shall at all times be admitted as evidence of such entries, and of the proceedings referred to being such entry or entries and of the regularity of such proceedings without further proof.

Extracts to be admitted as evidence.

District Clerk, Port Louis, to recover fines, &c.

19.— It shall be the duty of the District Clerk of Port Louis, whenever fines inflicted or monies ordered to be

Annex 6

paid by the Magistrate aforesaid have not been received or paid in the said Dependencies, to issue a warrant of execution under the seal of the District Court for the execution in this Colony of the order, judgment or conviction left unexecuted, and such warrant shall issue on the production to such District Clerk of a copy certified by the Magistrate to be a true copy of the original entry in the Register aforesaid of the order, judgment or conviction.

Judgment not to be quashed, challenged, &c.

And it shall not be lawful for any Court, Judge or Magistrate to quash, set aside, modify or challenge in any way whatsoever such order, judgment or conviction, except upon the Governor's fiat that a question of law is involved in the issue which deserves and requires to be considered by a higher tribunal, and in no case shall it be lawful to issue such fiat, until the amount of the fines or the sum or sums ordered to be paid have been deposited in the Registry of the Supreme Court.

Exception.

CHAPTER II

Civil Status.

Manager to be Officer of Civil Status.

20.—The Manager of each of the Islands or group of Islands in Schedule A mentioned, may be Officer of the Civil Status within the Island or group of Islands placed under his management.

Births, Deaths and Marriages to be notified to Registrar General.

If any Birth or Death occur or any Marriage be celebrated in any of the Islands or group of Islands in Schedule A mentioned, it shall be the duty of the Officer of the Civil Status of every such Dependency or of any part thereof where the Birth, or Death has occurred or the Marriage has been celebrated upon the first occasion when intercourse can take place between the said Dependencies and Mauritius, to notify the said Birth, Death or Marriage to the Registrar General with a full and circumstantial Memorandum of the said Birth, Death or Marriage signed and dated by him.

Notification to be submitted to Procureur General.

The said Notification and Memorandum shall be submitted by the Regis-

tor General to the Procureur General, and the Birth, Death or Marriage shall be registered in the Central Civil Status Office according to the directions of the Procureur General.

House of Acting Officer of Civil Status to be Civil Status Office.

21.—The House in which the Person appointed to act as Officer of the Civil Status resides, shall be to all intents and purposes the Civil Status Office.

Salary.

22.—He shall receive a salary of £25 per annum payable by the Colonial Treasury, and he shall be liable to the penalties enacted in part X

Subject to penalties.

of Ordinance 17 of 1871 (Articles 112 and following) against Offences committed by the Officers of the Civil Status.

Prosecution, where to take place.

Provided that the prosecution shall take place before one of the District Magistrates of Port Louis, and be carried on in manner and form provided for by Article 112 of Ordinance No. 17 of 1871.

Registers to be kept.

23.—The Officer of the Civil Status shall keep one Register for Births, another for Marriages and another for Deaths, and such Registers shall be examined and

To be examined by Magistrate.

signed by the Magistrate whenever he visits the Islands aforesaid.

Amendment of Acts of Civil Status.

24.—Whenever it shall be necessary to amend an Act of the Civil Status relative to the inhabitants of the said Islands, such amendment shall take place free of expense, on the Magistrate being satisfied that it ought to take place and a note of such amendment shall be entered in the Register and returned by the Officer of the Civil Status as soon as practicable to the Registrar General.

Further amendments.

Provided that the Registrar General shall have the right to apply to a Judge or Magistrate to have the said Act further amended or the amendment set aside, if such amendment has been effected by fraud or by means of illegal methods or for illegal purposes.

Annex 6

Marriage can be celebrated after one publication.

25.—A Marriage may be celebrated in any of the said Islands after one publication only.

Ordinance No. 17 of 1871 to have force in the Oil Islands.

26.—The provisions of Ordinance No. 17 of 1871 shall have force in the said Islands provided nevertheless, that it shall be lawful for the Governor in Executive Council, to frame Regulations for the forms of Contracts of Service, the management of camps, hospitals and shops, and also whenever the local circumstances of the Islands shall require it, to modify or restrict the provisions of this Ordinance, and all such Regulations shall be enforced by penalties not exceeding £5) sterling or imprisonment not exceeding three months. And such Regulations shall be laid on the table of the Council of Government, and if not disallowed within one month, shall be published in the Government Gazette, and shall then and thenceforth have force of law as if they formed part of this Ordinance.

PASSED in Council, at Port Louis, Island of Mauritius, this Twenty-eighth day of December One thousand Eight hundred and Seventy-five.

Acting Secretary to the Council of Government

SCHEDULE A

Dependencies to which this Ordinance applies.

Diego Garcia
Six Islands
Danger Island
Eagle Island
Peros Banhos
Coetivy
Solomon Islands
Agalega
St.-Brandon Islands, also and otherwise called Cargados Carayos.
Juan de Nova.
Trois Frères.
Providence.

Annex 7

Ivanoff Dupont, *Report of the Acting Magistrate for the Lesser Dependencies on the Islands of the Chagos Group for the Year 1882* (11 June 1883)

Annex 7

COLONY OF MAURITIUS

REPORT

OF

THE ACTING MAGISTRATE

FOR THE

LESSER DEPENDENCIES

ON THE

ISLANDS

OF THE

CHAGOS GROUP

FOR THE YEAR

1882.

Annex 7

Report on visit to the Islands of the Chagos Group.

No. 3.

Bambous, Black River,
11th June 1883.

The Honorable
The Colonial Secretary.

Sir,

I have the honour to transmit to you herewith, for submission to His Excellency the Governor, my report on the result of my recent visit to the Islands of the "Chagos" Archipelago.

I have the honor to be,

Sir,

Your most obedient servant,

IVANOFF DUPONT,

Acting Magistrate for the Lesser Dependencies.

Annex 7

Report of the Acting Magistrate for the Lesser Dependencies of Mauritius on the result of his recent visit to the Islands of the Chagos Group. viz :

Diego Garcia

Six Islands

Eagle Island

Peros Banhos

Salomon Islands.

1. I left Mauritius on the 18th April 1883 on board of the Steam Tug "Stella," and I arrived on the 27th at Diego Garcia, where we anchored at noon, at "Pointe de l'Est".

This Island, since my last visit in 1881, has become a coaling station for the Steamers of the Orient and Pacific Steam Navigation Companies, and others, and I have made a special report on the changes which have taken place by that fact.

2. Two sailing ships were then unloading coals :— the "Rothesay Bay" from Australia, for Lund & Co., and the "Religione e Liberta", from England, for the Orient Company.

The next morning at Roll Call I informed the labourers that I was ready to hear any complaint which they might have to make.

No complaints were made either by the Manager or by the labourers.

Annex 7

4. The total population of "Pointe de l'Est" on my arrival amounted to :

	Males	Females
Adults...	... 182	42
Children	... 18	12
	200	54
	Total... 254	

and was composed as follows :

	Adulths		Children	
	M.	F.	M.	F.
Natives of Mauritius	35	26	14	6
Indians	35	9	3	3
Malgaches...	40	5	...	2
Mozambiques	14	2	1	1
Europeans	18	...	...	...
Somaulis (from Port Said) ...	40	...	...	..
	182	42	18	12
	224		30	
	Total... 254			

Seventeen of the Europeans and the Somaulis are in the employ of the Orient Company, the first as workmen making iron lighters, and the last as labourers engaged at Port Said before the French Consul for one year.

The European workmen are expected to leave in the beginning of next year, after the completion of the iron lighters, and the Somaulis will be sent back to Port Said as soon as labourers will have been obtained from Mauritius.

One European, Mr. George Worsell, is Agent at Diego Garcia for Lund & Co.

The number of persons employed with the proprietors of the Island amounts to :

	Males	Females
Adults	123	39
Children	...	...
	123	39
	Total... 162	

of which are under written engagement :

	Males	Females
Adults	74	16
	Total... 90	

5. The Europeans and Somaulis in the employ of the Orient Company provisionally reside at Pointe de l'Est, no building having as yet been erected on the Islet, at the entrance of the Bay, which has been let by the Government to the Company.

6. I inspected the labourers' camp which I did not find in very good state of repair nor of cleanliness, and I called the attention of the Manager to this fact. Most of the huts belong to the labourers who have built them themselves.

7. The hospital was found by me in good order, and the supply of medicines sufficient.

The prisons are the same which I have reported on in February 1881.

I found from the prison register that 39 cases of imprisonment of labourers had taken place during the past 27 months, all of which for insolence, insubordination and disturbance.

No complaints were made by the labourers as regards those imprisonments.

9. I examined the Pay Book and found it properly kept.

The sum of Rs 28,230.76c has been paid to the labourers from the 1st of January 1881 to the 30th April 1883, showing monthly payments of Rs 1,008.24c ; and the sum deducted for sickness and absences amounted to Rs 4,016.35c, giving monthly deductions of Rs 143.44c.

The wages are paid monthly.

10. The shop showed a pretty good supply of goods. The sum of Rs 17,132, 58c was paid by the labourers for merchandize from the 1st January 1881 to the 31st of March 1883, showing monthly purchases for the sum of Rs 634.54c.

The sales are made for cash, and on an average of 25 o|o above Mauritius prices.

11. The stores contained only 28 bags of rice, sufficient for two weeks rations, and when the ship of the company left on the 27th January last, there were in store rations for four months only instead of for six months, as required by the regulations.

The ship "Eva Joshua" was expected daily after my departure : she had arrived at Peros Banhos on the 11th of May.

The rations issued to the labourers are more than those to which they are entitled.

The labourers rear fowls and ducks. They are not allowed to rear pigs for which they could not procure food on the island, and would therefore be induced to steal cocoa-nuts to feed them.

The boats and nets of the establishment continue to be placed at their disposal for fishing.

12. The task works are fair and reasonable, and the Sunday "Corvée" is according to the Regulations.

13. The Sanitary condition of the island is good. There exists no prevailing disease.

Annex 7

14. I examined the Registers of the Civil Status which show that from the first January 1881 to the 30th April 1883 the following number of Births and Deaths had take place.

BIRTHS.

Males	10
Females	7
Total	17

DEATHS.

	Males.	Females.
Adults	7	3
Children	1	7
	8	10
Total	18	

of which one female died at sea on board the ship "Pelham" from Mauritius on the 27th August 1881, and one male, the master of the ship "Eleanor", from England, who died of Dysentery at "Pointe de l'Est" on the 10th February 1882.

The causes of deaths were as follows :—

	Adults		Children	
	M.	F.	M.	F.
Erisypelas	...	1	...	...
Old Age...	1	1	...	...
Premature Birth	...	...	...	2
Cramp	...	...	...	1
Scrofula	1	...	...	...
Dysentery	1	...	...	...
Tambave (thrush)	...	...	1	4
Dropsy	1	...	...	...
Hernia	1	...	...	...
Consumption	...	1	...	...
Drowning (accidental)... ...	1	...	...	...
Fever	1	...	...	...
	7	3	1	7
	10		8	
Total	18			

I made an enquiry into the case of drowning, and it was proved to have been accidental. The enquiry has been referred by me to the Honorable the Procureur General.

No still-birth has taken place, and no marriage has been celebrated by the Officer of the Civil Status.

15. The production of Pointe de l'Est has been in

1881	41000 veltes
1882	31500 „
and is estimated for 1883, at ... ... by the Manager.	32000 „

16. The communications with Mauritius take place three times in the year.

17 Early in the morning of the 2nd of May I left for Pointe Marianne Establishment.

POINTE MARIANNE.

18. No complaints were made by the Manager against the labourers, nor by the labourers against the manager.

One labourer wanted to bring a charge of larceny against another, but as he had no evidence to support it I advised him to abstain, which he did.

19. The population of Pointe Marianne amounted to :

	M.	F.
Adults	81	21
Children	11	13
	92	34
	Total 126	

out of which are employed :

	M.	F.
Adults	80	17
Children	2	...
	82	17
	Total 99	

the number under written engagement amounted to :—

Males	27
Females	5
	Total 32

20. The population is composed as follows :—

	Adults		Children	
	M.	F.	M.	F.
Creoles	30	14	11	12
Malgaches	46	4	...	1
Mozambiques	4	3	...	...
Indians	1	...	...	...
	81	21	11	13
	102		24	
	Total.... 126.			

21. The camp was inspected by me and found to be in good order.

22. The hospitals were in good order and of the required dimensions.

The medicines in store were sufficient.

Annex 7

23. The prison which existed at the time of my last visit has been pulled down by the Manager, and, pending the erection of a new one, a room in a stone building, of proper dimensions, is used as a prison.

The punishment of imprisonment was inflicted on 30 labourers during the past 27 months, as follows.—27 were imprisoned for insolence, insubordination and disturbance and 3 for larceny. As regards these last I informed the Manager that they were illegal, and I desired him to confine himself to the cases for which the regulations authorize him to imprison, as otherwise he would be liable to the penalties provided for by the same regulations, should complaints be made against him.

He gave as an excuse that he thought that he was authorized to imprison also for larcenies, which, he stated, were of frequent occurrence.

No complaints were made by the labourers.

24. I examined the Pay Book and found that Rs 23,558.52 c. had been paid to the labourers from the 1st January 1881 to the 30th April 1883, showing monthly payments of Rs 841.27 c. and that the sum of Rs 4,520.14 c. had been deducted for sickness and absences, giving monthly deductions of Rs 161.43 c.

The wages are paid monthly.

25. The amount of the sales in the shop has been from the 1st May 1881, the accounts from 1st January to 30th April 1881 not being in the possession of the actual Manager, Rs 11,226.81 c. showing monthly sales of Rs 468.78 c.

The sales are made for cash, and, on an average, at about 40 o|o above the prices in Mauritius.

26. The stores contained only 24 bags of rice, sufficient for three weeks rations. The "Eva Joshua" was expected daily.

When the said ship left on the 27th January last there were in store 121 bags of rice, sufficient for four months rations only.

The labourers rear fowls and ducks, and easily procure fish by means of the boats and nets of the establishment.

27. The task works are fair and reasonable, and the Sunday Corvée is according to the regulations.

28. I examined the Registers of the Civil Status.

The following number of Acts have been registered from the 1st January 1881, to the 30th April 1883, viz :—

Births

Males	7
Females	5
Total	12

DEATHS

	M.	F.
Adults	... 4	1
Children	... 4	5
	8	6

Total 14

The causes of deaths were as follows :—

	Adults M.	Adults F.	Children M.	Children F.
Child Birth	...	1	...	...
Dropsy	1	...	...	...
Laryngitis	1	...	...	...
Consumption	...	...	1	...
Poisoning (accidental)	...	...	...	2
Hœmorrage	...	...	1	...
Fever	1	...	...	...
Dysentery	...	...	2	...
Sore throat	...	...	...	3
Cancer	1	...	...	...
	4	1	4	5
	5		9	

Total 14

I made an enquiry into the causes of deaths of the two children who died of poisoning, and found that they had been eating some of the fish called " Voultang ", which had been cooked by a woman who was ignorant of its poisonous nature.

The enquiry has been referred by me to the Honorable the Procureur General.

STILL BIRTHS

Males	0
Females	1
	Total 1

No marriage has been registered by the Officer of the Civil Status.

29. The production of the establishment for each of the past two years has reached 30,000 veltes, and is estimated at the same quantity for the year 1883.

30. I was informed by the Manager that no traffic of any kind exists with the vessels which come to Diego Garcia.

MINIMINI ESTABLISHMENT.

31. On the 4th May 1883 I visited Minimini Establishment.

32. No complaints were made by the Manager against the labourers, nor by the labourers against the Manager.

Annex 7

33. The population of the Establishment amounted to :—

	M.	F.
Adults	37	38
Children	17	11
	54	49

Total 103

out of which were employed :

	M.	F.
Adults	37	32
Children	1	...
	38	32

Total 70

Twenty four labourers were under written engagement :

Males	13
Females	11
	24

The population was composed as follows ;

	Adults		Children	
	M.	F.	M.	F.
Natives of Mauritius	15	32	17	11
Malagashes ...	20	5	...	...
Mozambiques ...	2	1	...	...
	37	38	17	11
	75		28	

Total 103

34. The camp of the labourers was found by me to be in good and proper order.

35. The hospital was properly kept, and the supply of medicine was sufficient.

36. The prison is the same which I have reported on after my last visit.

The register of imprisonment shew nine cases of imprisonment : 8 for insolence and insubordination, and 1 for repeated absence. This last case was illegal and I informed and cautioned the Manager accordingly.

37. I examined the Pay Book which shows that Rs12,261.45 were paid to the labourers from the 1st January 1881 to the 30th April 1883, giving monthly payments of Rs 473.62, and that the sum of Rs 1,838.14c has been deducted for absences and sickness, showing monthly deductions of Rs 65.65c.

The wages are paid monthly.

38. The stores contained 33 bags of rice, which were sufficient for six weeks rations. The "Eva Joshua" was expected daily.

When the ship left on the 27th January last there was in store a supply of rice for six months. The labourers have the same advantages as on the other establishments as regards fishing and rearing animals.

39. The goods in the shop are sold for cash, and at about 40 o|o above Mauritius prices.

The produce of the sales for the last 28 months has amounted to Rs. 8,194.87c, giving a monthly average of Rs 292.67c.

40. The task work is fair and reasonable and the Sunday Corvée according to regulations.

41. I examined the Registers of the Civil Status, and found that the following Acts had been registered since the 1st January 1881 :—

BIRTHS

Males	4
Females	5
	Total 9

DEATHS

	M.	F.
Adults	1	1
Children	1	3
	2	4
	Total 6	

The causes of deaths were as follows :

	Adults		Children	
	M.	F.	M.	F.
Cramp			1	1
Cold	1	...	...	...
Dropsy	...	1	...	...
Dysentry	...	...	...	2
	1	1	1	3
	2		4	
	Total 6			

No still-births have taken place and no marriages have been registered.

42. The production of the establishment has been 34,476 veltes for the past three years, giving a yearly average of 11,492 veltes.

43. No traffic of any kind, as I was informed, takes place with the vessels calling at Diégo Garcia.

44. I left Diégo Garcia on the 6th May 1883 at 5 o'clock p.m. for "Six Islands."

Annex 7

SIX ISLANDS.

45. On the 7th May at 10 o'clock a. m. we arrived at "Six Islands," but the "Stella" could not enter the bay as the depth of the water in the channel could not allow it. I waited until noon when a boat came and met us at about 1½ miles from the reefs, and I proceeded in it to the establishment, where I landed at 3.15 p.m.

46. When the labourers were informed by me that I was ready to hear any complaint they might have to make four of them stated that the manager had retained from each one month wages, far an alleged larceny of cocoa-nuts. The Manager having admitted the fact I ordered the money to be returned to the labourers, which was done in my presence.

The Manager could not prosecute the parties as he had no sufficient evidence to obtain their conviction.

47. The population of the Island amounted to :—

	M.	F.
Adults	30	19
Children	10	12
	40	31

Total 71

Out of which were employed :—

	M.	F.
Adults	30	14
Children	1	...
	31	14

Total 45

Of this number were under written engagement :—

Males	17
Females	7
Total	24

The population was composed as follows :—

	Adults		Children	
	M.	F.	M.	F.
European	1	...	...	...
Creoles	11	13	10	12
Malgaches	10	...	...	...
Mozambiques	7	5	...	...
Indians	1	1	...	...
	30	19	10	12
	49		22	

Total 71

48. I inspected the camp which I found in very good order.

49. The hospital for the men was in good order, and according to the regulations, but the hospital for the women was found by me to be too small, and I directed the manager to lengthen it by 14 feet.

50. The prison is composed only of one room, of sufficient dimensions. Two rooms in a stone building are being fitted up to be used as prisons.

Two labourers were imprisoned for disturbance since the last visit of the Magistrate in August 1881.

51. I examined the Pay Book.

From the 1st August 1881 to the 30th April 1883 the sum of Rs. 7692.47 c. has been paid to the laborers for wages, showing monthly payments of Rs. 366.31c,and the sum of R. 279.29 c. has been deducted for sickness and absences, giving monthly deductions of Rs. 13.30 c.

The wages are paid monthly.

52. The sales of goods to the labourers from the 1st August 1881 to the 30th April 1883 have produced the sum of Rs. 4269, 45c, giving a monthly average of Rs. 203.30 c.

The goods are sold for cash and at 40 o/o above Mauritius prices.

53. The stores contained 35 bags of rice, sufficient for the rations of two months and a half. A ship was expected at the Island in the course of the month of June.

The labourers receive more rations than they are entitled to. They rear fowls and are offered for fishing the same facilities which are given to the labourers in the other Islands.

54. The task work and Sunday Corvée are fair and reasonable.

55. The Registers of the Civil Status showed that the following Acts were received from the 1st August 1881 to the 30th April 1883, viz :—

BIRTHS

Males	4
Females	2
Total...	6

DEATHS

	M.	F.
Adults	...	1
Children	1	...
	1	1
Total...	2	

The adult female died of cancer, and the male child of cramp.

Annex 7

STILL BIRTHS

Male	1
Female	...
Total...	1

No marriages have been celebrated by the Officer of the Civil Status.

56. The production of the Island has been :—

In 1881	12,000 veltes
„ 1882	12,000 „
and is estimated for 1883	9,000 „

The Manager could not account for the reduction.

57. The communications with Mauritius have taken place only twice a year up to the present, but they are expected to be more frequent for the future.

58 On the 8th May at 11 o'clock a.m. I left the establishment to go and meet the "Stella." I joined her at a distance of about one mile from the reefs at sea, and at 12.30 p.m. we sailed off for "Eagle Island."

EAGLE ISLAND.

59. On the 8th May 1883 I arrived at Eagle Island, where the ship was anchored at 5 o'clock p.m.

60. The next day early in the morning I went on shore.

One complaint was brought by the Manager Mr. Decamps Larrouget against the labourer Chéri Abel for neglecting to perform his stipulated work. The charge was proved and the accused was sentenced by me to 14 days imprisonment.

No complaint was made by the labourers.

61. The population of the Island on my arrival amounted to :—

	M.	F.
Adults	36	17
Children.	6	3
	42	20
Total...	62	

Of which were employed :—

	M.	F.
Adults	36	14
Children.	1	...
	37	14
Total...	51	

All the labourers are under verbal engagement.

The population was composed as follows :—

	Adults		Children	
	M.	F.	M.	F.
Creoles	10	9	6	3
Malgaches	23	6	...	...
Mozambiques. ...	3	2	...	...
	36	17	6	3
	53		9	
Total...	62			

62. The camp was in good and proper order.

63. The hospital is being rebuilt. The supply of medicines was sufficient.

64. The prison is the same which I have reported on last year.

Four labourers have been imprisoned for insubordination and disturbance since my last visit in July 1882.

65. I examined the Pay Book. From the 1st July 1882 to the 30th April 1883 the sum of Rs 4,168.64c has been paid for wages, showing monthly payments of Rs 416.86c and the sum of Rs 240.78c has been deducted for sickness and absences, showing monthly deductions of Rs. 24.08c.

The wages are paid monthly.

66. The sales in the shop from the 1st July 1882 to the 30th April 1883 have amounted to the sum of Rs 2,881.83c giving a monthly average of Rs 288.18c.

The goods are sold for cash, and at an average of 50 o|o above Mauritius prices.

67. The stores contained 79 bags of rice, sufficient for nearly four months rations.

68. The task work and Sunday Corvée are fair and reasonable.

69. I examined the Registers of the Civil Status.

One birth has been registered, that of a boy. Another one has taken place, that of the son of the manager, which has been registered at Mauritius.

One death has been registered, that of a male child who died of tetanus.

No still-births and no marriages have been registered.

70. The production of the Island is estimated at 10,000 veltes for 1882-83.

71. The communications with Mauritius continue to take place three times during the year.

72. On the 10th of May at 6 o'clock a.m. I left on the Stella for "Peros Banhos".

Annex 7

PEROS BANHOS.

73. On the 10th of May at 2 o'clock p.m. the "Stella" anchored at Peros Banhos, and I at once went on shore.

74. No complaints were made by either the Manager or the labourers.

75. The population of the Island amounted to :

	M.	F.
Adults	81	35
Children	25	23
	106	58

Total 164

of which are employed :

	M.	F.
Adults	80	33
Children	6	...
	86	33

Total 119

out of this number were under written engagement :

Males	19
Females	9
	28

The population was composed of :

	Adults		Children	
	M.	F.	M.	F.
Creoles	36	32	25	23
Malgaches ...	40	2	...	...
Mozambiques ...	4	1	...	...
Indians	1	...	...	...
	81	35	25	23
	116		48	

Total 164

76. I inspected the camp which I found in good state of repair; the huts being according to the regulations.

77. The hospital was found by me to be in good order, and the supply of medicines sufficient.

78. The prison has been rebuilt since my last inspection. It consists of a stone building containing three rooms which measure only 7x6 feet. I desired the Manager to remove the partitions and to divide the building into two rooms only.

Eighteen cases of imprisonment have been registered since 1st of January 1881 :—

10 for disturbance.

3 for insubordination.

2 for insolence.

3 for repeated absences from work.

I warned the Manager as to the illegality of these three last cases. He gave for excuse that the parties were constantly absent from their work and behaved disorderly in the camp.

79. From the Pay Book it appeared that the sum of Rs.24,782.27c. has been paid for wages to the labourers from the 1st January 1881 to the 30th April 1883, showing monthly payments of Rs.885.08c. The amount deducted for sickness andabsences was Rs.1,946.81c.giving monthly deductions of Rs. 69.53c.

The wages were paid monthly.

80. The sales in the shop from the 1st January 1881 to the 30th April 1883 have produced the sum of Rs. 16,105.57c., giving monthly purchases of Rs. 575.20c.

The sales are made for cash, and at about 25 o|o above Mauritius prices.

81. The number of bags of rice in store added to the quantity brought by the Ship " Eva Joshua " whilst I was at the Island exceeded the amount required by the regulations.

82. The task works are fair and reasonable, and the Sunday Corvée according to the regulations.

83. The Registers of the Civil Status showed that the following Acts have been registered since the 1st January 1881 :

BIRTHS :

Males	11
Females	7

Total 18 all natural

DEATHS :

	M.	F.
Adults	6	1
Children	9	4
	15	5

Total 20

Annex 7

The causes of death have been as follows :—

	Adults		Children	
	M.	F.	M.	F.
Fever	...	...	2	...
Unknown	1	...	...	...
Debility	...	...	1	...
Old age	...	1	...	...
Cramp	...	...	4	4
Consumption	4	...	1	...
Dysentery	...	...	1	...
Poisoning (accidental) ...	1	...	...	...
	6	1	9	4
	7		13	
Total 20				

The cause of the death given as " unknown " was reported on by me in February 1881. The death was only registered after I had examined the Registers of the Civil Status.

I made into the cause of the death given as "poisoning " an enquiry which I have referred to the Honorable the Procureur General. The death was caused by an excessive dose of laudanum, taken by the deceased out of a small flask which had been imprudently left in his possession by the then assistant manager of the Island.

No still-births and no marriages have been registered by the Officer of the Civil Status.

84. The production of the Island has been

for 1881 ... ... 22,336 veltes
for 1882 ... ... 19,750 „
and is estimated for 1883 at ... ... 23.000 „

85. The communications with Mauritius take place three times during the year.

86. On the 12th of May at 7 o'clock a. m. I left " Peros Banhos " Islands.

SALOMON ISLANDS

87. I arrived at " Salomon " Islands on the 12th May 1883, at 4 o'clock p. m.

88. The same afternoon, when all the labourers were assembled, I enquired from them if they had any complaint to make. They all said that they had none.

No complaint was brought by the Manager.

Annex 7

89. The population of the Island amounted to :—

	M.	F.
Adults	44	16
Children	5	6
	49	22

Total 71

Of which were employed :—

	M.	F.
Adults	43	13
Children	...	...
	43	13

Total 56

None were under written engagement.

The population was composed as follows :—

	Adults.		Children.	
	M.	F.	M.	F.
Creoles	19	12	3	5
Malgaches	21	3	2	1
Mozambiques ...	2	1	0	0
Indians	2	0	0	0
	44	16	5	6
	60		11	

Total... ... 71

90. The camp on inspection was found to be in good state of repair.

91. The hospital was not in good order. The Manager, on my remark to him, said that it was never used. That he did not insist on the laborers coming to the hospital, for which they showed disinclination, and that he attended on them in their huts.

I desired him however to comply with the regulations.

92. The prison has been rebuilt, and is in compliance with the regulations.

Two labourers were imprisoned since my last visit in July 1882 : one for disturbance and one for insubordination.

93. The Pay Book, after examination, showed that Rs 4799. 04c. have been paid to the laborers since 1st July 1882, showing monthly payments of Rs 479.90c. and that Rs 306.76c. had been deducted for sickness and absences, giving monthly deductions of Rs 30.67c.

94. Goods for the sum of Rs 3767.84c. have been sold in the shop from 1st July 1882 to the 30th April 1883, or an average monthly sum of Rs 376.78c.

The goods are sold for cash, and at about 35 o|o above Mauritius prices.

Annex 7

95. The stores contained a stock of rice sufficient for 5 months' rations, and a further supply was expected in the course of the month.

96. The task work is fair and reasonable, and the Sunday Corvée is according to the regulations.

97. The Registers of the Civil Status showed that no births, no still-births, and no marriages had been registered for the past 10 months.

One death had happened, that of a male labourer who died of consumption.

98. The production of the Island is estimated by the Manager at 17,000 veltes for the present year.

99. The communications of the Island with Mauritius take place three times during the year.

100. On the 13th May, at noon, I left Salomon Islands for Diego Garcia where I arrived the next day; and on the 19th May, at 8 o'clock a.m. I left Diego Garcia for Mauritius where the "Stella" anchored on the 25th May at 11.30 in the night.

All of which is respectfully submitted for the information of His Excellency the Governor.

Bambous, Black River,
11th June 1883

IVANOFF DUPONT,
Acting Magistrate for the Lesser Dependencies of Mauritius.

Return of Cases heard by the Acting Magistrate for the Lesser Dependencies of Mauritius at "Eagle" Island.

No. of Cases.	Complainant.	Accused.	Offence.	Decision.
3	R. Decamps Larrouget.	Chéri Abel.	Neglecting to perform stipulated work.	Proved. Accused sentenced to 14 days imprisonment and to pay costs (Art. 10 Ord. 15 of 1852, and Order in Council of 1838.)

IVANOFF DUPONT,
Actg. Magistrate for the Lesser Dependencies.

Annex 8

Letters Patent, Section 52 (16 Sept. 1885)

Letters Patent 16th September 1885

VICTORIA, by the grace of God, &c.

Recites of Letters Patent of 22nd March 1879.

WHEREAS the Council of Government of Our Colony of Mauritius is now constituted and possesses powers of legislation under and according to the provisions of certain Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date the 22nd day of March 1879.*

* [see p. 12.]

AND WHEREAS We are minded to alter the constitution of the said Council of Government;

NOW KNOW YE that We do by these Our Letters Patent declare Our will and pleasure as follows:—

Annex 8

Governor may prorogue or dissolve Council.

49.—The Governor may at any time, by proclamation, prorogue or dissolve the Council.

Duration of Council.

50.—The Governor shall dissolve the Council at the expiration of five years from the date of the return of the first writs at the last preceding general election, if it shall not have been sooner dissolved.

Times of first and subsequent general elections.

51.—The first general election of Members of the Council shall be held at such time, not more than three months after the Proclamation of these presents in the Colony, as the Governor shall by proclamation appoint, and a general election shall be held within two months after every dissolution of the Council, at such time as the Governor shall in like manner appoint.

Interpretation.

52.—In these presents—

"The Colony" means the Island of Mauritius and its Dependencies.

"The Council" means the Council of Government as hereby constituted.

"The Governor" means the person for the time being lawfully administering the Government of the Colony.

"The Public Seal" means the Public Seal of the Colony.

"The Gazette" means the Mauritius Government Gazette.

"Minister of Religion" means any clergyman, minister, priest, or other person who exercises spiritual functions or performs the offices of religion for or in respect to any Christian or other church, community, or body within the Colony.

Revocation of so much of the said Letters Patent of the 22nd day of March 1879 as relates to the constitution and functions of the Council.

53.—From and after the date of the return of the first writs for the election of members of the Council hereby constituted, so much of Our said Letters Patent of the 22nd day of March 1879 as relates to the constitution and functions of the Council (namely, the seventh and eighth articles thereof) shall cease to be in force, but without prejudice to anything lawfully done thereunder.

Reserves power to revoke, alter, or amend Letters Patent, and to make laws.

54.—We do hereby reserve to Ourselves, Our heirs and successors, full power and authority to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem fit: and nothing herein contained shall affect Our or their undoubted right, by and with the advice and consent of Parliament, or with the advice of Our or their Privy Council, to make

Annex 9

Officer Administering the Government of Mauritius and its Dependencies, and the Council of Government, *Ordinance No. 4 of 1904* (18 Apr. 1904)

No. 4 of 1904.

AN ORDINANCE

Enacted by the Officer Administering the Government of Mauritius and its Dependencies, with the advice and consent of the Council of Government thereof.

To provide for the Government of and the Administration of Justice in the Lesser Dependencies.

I reserve this Ordinance for the signification of His Majesty's pleasure thereon.

Officer Administering
the Government.

18th *April*, 1904.

BE IT ENACTED by the Officer Administering the Government, with the advice and consent of the Council of Government, as follows :—

Short Title

1. This Ordinance may be cited as "The Lesser Dependencies Ordinance".

Definitions.

2. In this Ordinance :

"Owner" includes lessee.

"Islands" means the Lesser Dependencies mentioned in Schedule A, or any one of them.

"The Magistrate", or "a Magistrate", means any one of the District and Stipendiary Magistrates for the Lesser Dependencies appointed under this Ordinance, and includes an Additional Magistrate appointed under Article 3 (3).

"Servant" "Master" and "Employer" have the meanings attached to them by the Labour Law, 1878.

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Appointment of Magistrate.

3. (1) It shall be lawful for the Governor, subject to the approval of the Secretary of State, to appoint two fit and proper persons to be District and Stipendiary Magistrates for the Lesser Dependencies, mentioned in Schedule A.

(2) Each of the said Magistrates shall act independently of the other, and shall have the rights, duties, powers and jurisdiction defined by this Ordinance.

(3) It shall further be lawful for the Governor when necessity arises to issue a commission to any other fit or proper person to act as Additional Magistrate for the Lesser Dependencies, and such Magistrate shall, in virtue of such commission and during its continuance, have all the powers of a Magistrate for the Lesser Dependencies.

Visits of Magistrate to Islands.

4 (1) The Magistrates shall visit the Islands at such times as they shall be directed by the Procureur General, and shall administer justice therein between the Crown, private individuals, and masters and servants as defined by the Labour Law, 1878.

Provided that so far as may be possible each Island shall be visited at least once in every twelve months: and if any Island has not been visited for a period of twelve months it shall be visited on the first opportunity in the ensuing twelve months.

(2) The Magistrates shall further have power to visit and inspect all the establishments on the Islands, and all camps and houses (other than private dwelling houses) thereon, to inspect the books of the establishment and of the shops, and to test the weights and measures used in such shops.

(3) They shall respectively report to the Governor the result of each visit and of the inspections made, and generally on all matters connected with the well-being of the Islands and the welfare of the inhabitants. There

shall also be included in such report a return of all decisions given, and action taken, in all matters brought before them or which have come under their notice.

Salary of Magistrate.

5. The salary of each of the Magistrates shall be 6,000 Rupees which shall be paid by the Treasury. The said salary shall cover all expenses and allowances hitherto allowed, to which the Magistrates shall henceforth have no further claim.

Provided that any Magistrate appointed under Article 3 (3) shall be entitled to an allowance for expenses of 5 Rupees a day during his absence from Mauritius, which allowance shall be paid by the Treasury.

Contribution to cost of administration by owners.

6. (1) The owners of the Islands shall contribute to the cost of administration of the Islands the sum of 12,000 Rupees in two half-yearly instalments, payable in the manner hereinafter provided, on or before the 31st. January and 31st. July in every year.

(2) The said contribution shall be apportioned between the owners of the Islands, according to the number of labourers employed by each of them, and the sum due by each owner shall be paid into the Treasury on or before the dates above-mentioned. For the purpose of such apportionment, each of the owners shall furnish the Receiver General with a statement of the said number of men so employed on the 30th. June and 31st. December in each year. The statement may be controlled by the Magistrate, and any owner making a false statement shall be liable to a fine not exceeding 1,000 Rupees.

(3) For the recovery of the said amount due from each owner the Government shall have a privilege, and the extent and conditions of such privilege shall be governed by Ordinance No. 18 of 1843, and shall be assimilated to the land tax mentioned in Article 31 of that Ordinance.

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(4). When it is necessary for the purpose of any criminal trial or other proceeding in Mauritius that any persons should come to Mauritius as witnesses, or be brought to Mauritius as prisoners, the passage of such persons shall be provided free of cost on the vessels belonging to or chartered or employed by the owner of the Island on which the acts occurred out of which such trial or proceeding arises, and in their ordinary voyages. The cost of feeding to be refunded to the owners.

Free passage of Magistrate.

7. (1) Any Magistrate who is about to visit one of the Islands shall be provided by the owners with free passage and maintenance to and from such Island on board any vessel belonging to, or chartered or employed by, the owner of such Island, and to maintenance while on such Island.

(2) Vessels going to and from the Islands shall carry mails free on behalf of the Post Office.

Jurisdiction of Magistrates.

8. (1) The Magistrate shall be vested with the power and authority of District and Stipendiary Magistrates respectively in Mauritius, subject only to the modifications hereinafter enacted.

(2) A Court shall be held in such convenient room or place in the Island, and on such days and at such hours as the Magistrate shall determine.

(3) The Magistrate shall have power, in any case or matter, to appoint and swear in such person as he deems fit to act as interpreter.

Engagement of servants.

9. (1) All servants, other than artisans, proceeding to the Islands for employment shall previously enter into a written contract of service passed as follows :—

(*i*) If in Mauritius, then before a Magistrate, or before the Stipendiary Magistrate of Port-Louis.

(*ii*) If in the Islands, then before a Magistrate.

Provided that in either case the Magistrate shall be satisfied that such servant is free to enter into such contract.

(*iii*) If in Seychelles, then before any officer of Seychelles authorised by the laws of Seychelles to pass such contracts.

Provided that the conditions and forms of such contracts, and the powers of the officer aforesaid in respect to passing them, are in all respects identical with the conditions and forms of the contracts, and the powers of the Magistrate passing such contracts, as determined by this Ordinance.

(2). Provided further that when any person on the Islands desires to enter into a written contract of service such contract may be passed in the Island before the Magistrate, and shall be in the same form and subject to the same conditions as the contract herein provided.

Contracts of service.

10. (1). Written contracts of service shall be in the form of Schedule B, (which may be amended by the Regulations), and shall not exceed three years; in the case of contracts entered into by members of the same family, they shall all expire at the same time: the word "family" in this Article shall include husbands, wives and children. Certified copies of all contracts shall be sent to the Manager.

(2) In all contracts the nature of the work for which the servant is engaged shall be specified, but where the nature of the work is general and not capable of express specification the Magistrate may, in passing the contract, describe such work as "general".

(3) In case any Island be sold, alienated or transferred to another person, or succeeded to by another person, before the termination of the contracts of service entered into with the servants engaged on the Island, such servants shall serve such other person according to the terms of the contract, and such new employer or master shall be held bound towards the said servants in all the stipulations

Annex 9

and obligations incumbent upon the employer or master so replaced by him.

(4) The Magistrate before whom such contracts are passed in Mauritius or in the Islands shall have the powers vested in Stipendiary Magistrates by Articles 100 and 101 of the Labour Law, 1878.

(5) The provisions of Article 102 of the Labour Law, 1878, shall apply to fictitious contracts.

Contracts to continue till renewal decided by Magistrate.

11. (1) Written contracts of service for whatever period they may be entered into shall continue in force from the day of their termination until the question of their renewal has been submitted to the Magistrate.

(2) At the expiry of any written contract of service as provided in the preceding paragraph it shall be optional for the servant and owner to renew the engagement either by written or verbal contract: provided that in the case of verbal contracts notice of such contract shall be given to the Magistrate by the Manager, and that the Magistrate is satisfied that the contract has been entered into.

Free passage of wives and children.

12. Servants under written contract who proceed to the Islands shall have a right for themselves and their wives, and minor children who shall proceed in the same ship, to free passage and subsistence to and from Mauritius or Seychelles, as the case may be.

Contracts with minors.

13. Contracts with minors shall be subject to the conditions prescribed in Article 99 of the Labour Law, 1878, except the fifth paragraph.

A sufficiency of rations to be kept on the Island.

14. Every contract of engagement as aforesaid shall stipulate that there shall be a sufficient supply of rations on the Island on which the labourers are to be employed to meet every contingency, which supply shall always be equal to the average consumption on the Island during four months.

No contract of service shall be passed for the employment of labourers in the Islands, unless the Magistrate is satisfied that arrangements have been made to secure the provisions of the preceding clause being strictly carried out ; and any failure to comply with the terms of any contract as regards this provision shall render the owner liable to a fine not exceeding 1,000 Rupees.

Servant not proceeding to Island after written contract.

15. (1) Any servant who, after entering into a written contract of service, or any artisan who after entering into any contract of service, shall, without sufficient excuse, decline or neglect to proceed in the vessel provided to take him to the Island in which he has contracted to work shall be liable to be arrested.

(2) For this purpose a warrant shall be issued by the Magistrate or the Stipendiary Magistrate of Port Louis on the application of the master or his agent.

(3) The punishment shall be imprisonment not exceeding three months to be awarded by the Magistrate, or in his absence by the Stipendiary Magistrate of Port Louis who may further give judgment in respect of any advances made or alleged to have been made to such servant or artisan.

(4) Such sentence shall operate as a discharge from the contract whether written or verbal.

Undue detention on Islands.

16. The undue detention on the Island of any servant beyond the termination of his contract, or not providing means of return to any servant entitled thereto, by the ship next proceeding to Mauritius or Seychelles, as the case may be, shall be punishable by a fine not exceeding 500 Rupees, without prejudice to any action in damages in respect of such detention.

In case of undue detention, it shall be lawful for the Supreme Court, on motion by the " Ministère Public " to order the owners to take such measures for terminating such detention within

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such time as to the Court may seem fit and proper.

Obligations and penalties of Labour Law imposed.

17. Where not otherwise provided, masters and servants under this Ordinance shall be subject to all the duties and obligations imposed upon masters and servants respectively by the Labour Law, 1878, and, for any breach thereof, the Magistrate shall impose the penalties therein prescribed.

Power to annul engagement and send servant home.

18. If in virtue of the Labor Law the Magistrate shall annul the contract, he shall send the servant back by the first ship, to Seychelles if the servant has been engaged in Seychelles, to Mauritius if the servant has been engaged in Mauritus, on the Islands, or elsewhere. The cost of such return passage shall, unless the Magistrate otherwise order, be paid by the employer.

Judgment of Magistrate to be final.

19. All judgments of the Magistrate given in the said Islands shall be definitive and final to all intents and purposes except as herein provided ; and no proceeding shall be commenced having for object to quash, set aside, modify, or challenge in any way whatsoever such order, judgment or conviction, except upon an *ex parte* order of a Judge in Chambers that a question of law is involved in the issue, which deserves and requires to be considered by a higher tribunal, and in no case shall such order be issued until the amount of the fines, or the sum or sums ordered to be paid, have been deposited in the Registry of the Supreme Court.

Imprisonment on the Islands or in Mauritius.

20. Any warrant issued by the Magistrate for the imprisonment of any person may be executed in the prison in the Island, or by the removal of the said person from the Island on board ship to the civil prisons in Mauritius, and by his detention therein as the Magistrate shall direct.

Jurisdiction may be exercised in Mauritius.

21. If in any case arising in the Islands, it is necessary to exercise jurisdiction in Mauritius, for the

purpose of either (*a*) determining any civil dispute between parties : or (*b*) determining any dispute between master and servants : or (*c*) holding any preliminary enquiry : or (*d*) trying any person charged with an offence, the Magistrate may exercise such jurisdiction, or if neither of the Magistrates is in Mauritius, or if there be no such Magistrate, or if the Magistrate who may be in Mauritius is incapacitated from acting, then such jurisdiction shall be exercised by one of the District Magistrates of Port Louis, in civil and criminal actions, and by the Stipendiary Magistrate of Port Louis, in stipendiary matters.

The Magistrate, when exercising any jurisdiction under this or any other Article, in Port Louis, shall hold his Court in the Stipendiary Court of Port Louis or in such other place as the Governor may appoint, and he shall have for the purpose of exercising this jurisdiction all the powers of a District or Stipendiary Magistrate acting as such in Mauritius, as the case may be.

Attendance of witnesses in Mauritius.

22. The Magistrate shall have power to make all orders, and to take all necessary measures to secure the attendance before the Supreme Court of Mauritius of all the witnesses on any Island who are required to be heard against or in favour of any offender committed by him for trial.

Magistrate may take evidence *de bene esse*.

23. (1) The Magistrate shall have power to summon before him, and to take the evidence on oath of, any person in the Islands whenever such evidence is required in any case pending before any Court in Mauritius or Seychelles, and such evidence taken *ex proprio motu* in cases of which he may take cognisance, or, in other cases, on the request of any Judge or Magistrate before whom such case is pending, shall be held to be evidence taken *de bene esse*.

(2) The Magistrate shall have the same power, acting *ex proprio motu*, with regard to evidence required in any case within his jurisdiction, and

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he shall have power whenever he deems it expedient to try such cases partly in Mauritius and partly in the Islands.

Magistrate to perform duties of clerk.

24. (1) The Magistrate is empowered to perform within the said Islands the duties performed by a District or a Stipendiary Clerk in Mauritius.

(2) When the Magistrate exercises any jurisdiction under this Ordinance in Mauritius, it shall be lawful for the Governor to depute any district or stipendiary clerk to act as such in the Court in which the Magistrate holds his sitting.

Register of judgments &c.

25. The Magistrate shall keep a register in which shall be entered a note of all orders, judgments and executions and of all other proceedings by him given, issued or taken; and the entry in such register, or a true copy thereof signed by the Magistrate, shall at all times be admitted as evidence of such entries and of the proceedings referred to in such entry and of the regularity of such proceedings without further proof.

Execution of judgments.

26. It shall be the duty of the District Clerk of Port Louis, whenever fines inflicted or monies ordered to be paid by the Magistrate aforesaid have not been received or paid in the said Dependencies, to issue a warrant of execution under the seal of the District Court, for the execution in this Colony or in the Dependencies of the order, judgment, or conviction left unexecuted, and such warrant shall issue on production to such District Clerk of a copy certified by the Magistrate to be a true copy of the original entry in the register aforesaid of the order, judgment or conviction.

Lodging to be furnished.

27. In all the Islands the proprietors shall be bound to furnish their labourers with good and sufficient lodging, having sufficient air-space to afford four hundred cubic feet of air for each adult and child above ten years of age, and two hundred and fifty cubic feet for each child under ten years of age, with

a floor space of at least 10 feet by 5 for each adult and child above ten years of age, and half that amount for each child under ten years of age.

The Manager shall be bound to see that the camp is kept clean and in good order.

Register of camps to be kept.

A register shall be kept of the houses and huts in the camp by the Manager showing their dimensions and number of persons inhabiting them.

List of task-work to be posted up.

28. A list of the task-work shall be drawn up by the Manager and posted up in the place where the rations are issued on the Islands, and a copy kept at the office of the owners or owners' agents in Mauritius, who shall produce the same before the Stipendiary Magistrate before whom the labourers are engaged. In this list the nature and duration of the *corvée* required from the labourers shall be specified.

"Corvée" and "field labour".

"Corvée" and "field labour" shall be subject to the provisions of Articles 111 and 112 of the Labour Law, 1878.

Hospital to be provided.

29. (1) A hospital shall be constructed on each Establishment which shall be in charge of the manager who shall employ a competent warder paid by the owners.

The hospital shall contain at all times accommodation and beds or other sleeping places for at least the following proportion of servants; namely, 4 o/o on the number of servants engaged at the time: provided that in no case shall the hospital contain beds or sleeping places for fewer than four servants.

The hospital shall be constructed so as to contain one thousand cubic feet per bed, and to afford a floor space of 12 feet by 6 feet for each bed.

(2) Separate accommodation in the hospital shall be provided for women on the Island; one quarter of the number of beds as above provided being set apart for that purpose.

Annex 9

Power of imprisonment by Manager.

30. (1) In order to secure order and the proper and peaceful behaviour of the labourers in camps, it shall be lawful for the Manager of any of the Islands to imprison for a period not exceeding six days labourers who are guilty of insolence and insubordination. He shall also have the power to detain those who are disturbing or threatening to disturb the public peace, until the danger of disturbance is over.

(2) For the purposes mentioned in the preceding paragraph, a proper prison shall be provided on such Establishment of such dimensions as to afford four hundred cubic feet of air-space and 10 feet by 5 of floor-space for each person confined therein. In this prison there shall be a separate room for the women.

Power of fining by Manager.

31. In cases of petty praedial larcenies the Manager shall have power to inflict a fine not exceeding 10 Rupees.

Record of each imprisonment to be kept.

32. The Manager shall be bound to record in a book each case of fine or imprisonment with the causes and circumstances thereof, which shall be submitted to the Magistrate on his next visit. The Magistrate shall have power to remit or approve such fines, and to approve the imprisonment. If he is of opinion that the imprisonment was not justified, he shall have power to award compensation to the labourers.

Nothing herein contained shall in any way interfere with the power of the Procureur General to prosecute criminally in case of need.

Penalty for breach of Regulations.

33. Any breach of this Ordinance not otherwise provided for shall be punished by a fine not exceeding 100 Rupees, and the Magistrate may also pronounce the cancellation of the engagement of the labourer to the prejudice of whom such breach has been committed.

Manager to be agent of owners.

34. In all matters in connection with the engagement, and in all judicial proceedings arising thereunder, the

Manager shall be held to be the agent of the owners, and such owners may sue and be sued through such agent.

Civil Status registers.

35. Subject to the provisions of Article 7 of Ordinance No. 26 of 1890, the Civil Status Officers in each Island shall keep all Civil Status Registers in duplicate, in such manner as may be provided by the Registrar General. One of the duplicates shall be forwarded to the Registrar General after examination by the Magistrate as hereinafter provided.

(2) The Magistrate shall, on each visit to any Island, examine, inspect and verify the said Registers, making a note of such examination in the margin of each act, and report thereon to the Registrar General. He shall further have power, *ex proprio motu*, to order the rectification, amendment or annulment of any act, reporting his action in any case to the Ministère Public, who shall have power to refer the matter for subsequent order to the Supreme Court.

(3) The Magistrate shall on his next visit to every Island examine the entries in the existing Registers made since the coming into force of the Civil Status Ordinance 1890, reporting thereon to the Registrar General, after taking such action as he is empowered to take by paragraph (2) of this Article as the circumstances of each case may require.

Legal assistance to servants by Protector.

36. The powers vested in the Protector of Immigrants with regard to servants and immigrants in Mauritius by Articles 22, 23 and 24 of the Labor Law, 1878, shall be exercised by the "Ministère Public" with regard to all servants in the Islands.

Power of Governor.

37. The powers given to the Governor in Executive Council under Article 284 of the Labor Law 1878, shall apply *mutatis mutandis* to the Islands.

Medical inspection.

38. The Governor shall have power to order the inspection by a duly qualified medical

Annex 9

man of any one or more of the Lesser Dependencies, and such medical inspector shall be entitled to a free passage to the Island to be inspected and his subsistence while on duty there.

Duty of Collector to withhold clearance, when.

39. It shall be the duty of the Collector of Customs before giving clearance to any vessel bound for the Islands, in addition to any duties in respect of clearance imposed by the Merchant Shipping Act, 1894, to ascertain whether the labourers on board other than artisans are all under written contract : and to refuse clearance until the fact is established to his satisfaction.

Power to make Regulations.

40. The Governor in Executive Council shall have power to make Regulations, which shall be laid on the Table of the Council, with respect to—

i. the employment of labourers on the Islands or in any one of them, their rates of pay, rations, tasks, hours of labour, hospital treatment, supply of medicines, passages to and from the Islands ;

ii. the general conduct of the shops on the Islands, and the weights and measures to be used therein ;

iii. the prevention and removal of nuisances and all matters relating to the public health, and such measures as may be necessary to facilitate the sanitary administration of the Islands: and to impose penalties for any breach thereof not exceeding 1,000 Rupees.

Extension of District Court Ordinances.

41. The District Court Ordinances, namely; Ordinances Nos. 21, 22 and 23 of 1888, and all Ordinances amending the same, are extended to the Islands, in so far as they may be applicable, or have not been modified by the provisions of this Ordinance, and the Governor in Executive Council shall have power to make Regulations which shall be laid on the table of the Council, analogous to the Rules of Court, for the purpose of regulating the procedure under the said Ordinances.

Repeal. 42. The following enactments are repealed:

Ordinance No. 5 of 1872.
„ No. 41 of 1875.
„ No. 62 of 1898-99.
„ No. 3 of 1901.

Government Notice No. 124 of 1877, and so much of Ordinance No. 11 of 1870 as remains unrepealed.

Passed in Council at Port Louis, Island of Mauritius, this twenty-ninth day of March, One thousand nine hundred and four.

Clerk of the Council of Government.

Came into force on 7th July 1904
(See Proclamation 30 of same date)

Annex 10

Maurice Rousset, Acting Magistrate for Mauritius and the Lesser Dependencies, *Report of Mr. Magistrate M. Rousset on the Chagos Group* (19 June 1939)

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MAURITIUS

No. 9

13 FEB 1940
C. O. REGY

Government House,
Port Louis,
4th January, 1940.

Sir,

I have the honour to transmit to you the accompanying copy of a report from Mr. Maurice Rousset, Acting Magistrate for Mauritius and the Lesser Dependencies, on a visit which he made to Diego Garcia, Peros Banhos and Salomon Islands in May 1939. These Islands were last visited in October, 1938 and the Magistrate's report on that visit was forwarded with my despatch No. 47 of the 3rd February, 1939.

2. The local Agents of the groups of Islands visited have been furnished with copies of the various portions of the Report which require attention.

3. A copy of paragraph 3 of the Magistrate's General Remarks regarding Health and Sanitation was communicated to the Director of the Medical and Health Department who reports that it will not be possible to arrange for the Dispenser-Stewards of the Islands to undergo a course of practical instruction in the duties of Sanitary Inspectors. The name of a suitable text book, a study of which it is considered will enable them to dispose of all normal sanitary problems, will be communicated/

The Right Honourable
MALCOLM MACDONALD, P.C.,
Secretary of State for the Colonies.

Annex 10

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be communicated to the Companies and it is hoped to encourage the development of sanitary knowledge in the islands.

4. The Comptroller of Customs and Harbour Master comments in the following terms on the observations made by the Magistrate in paragraph 7 of the General Remarks in regard to the S.S. "Zambezia":-

"(i) Since the visit of the Magistrate to Diego in May 1939, the S.S. "Zambezia" has made more than a dozen voyages and is still afloat.

(ii) The leak mentioned was due to a slack rivet which was made good on the return trip of the steamer from Diego Garcia".

Mr. Doyle adds that in accordance with Board of Trade rules the hull of every vessel is surveyed annually in dry dock.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

Governor.

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ENCLOSURE TO MAURITIUS DESPATCH No. 9 OF 4.1.40

Report of Mr. Magistrate M.Rousset on the Chagos Group.

Departure. 1.- In compliance with instructions received from the Hon.Procureur General, I left Mauritius on 22.5.39 on board S.S. "Zambezia", 879 tons register. A.Nicolin , master, M.Ross, Mate.

Arrival. 2.- I arrived at Pointe de l'Est, Diego Island, on 29/5, in the early morning.

Last visit. 3.- Diego Island had been last visited by Mr. Magistrate M.Lavoipierre in October, 1938.

Manager. 4.- Mr. Lois Dumee. Assistant Mr. Charoux.

Population. 5.- On my arrival the population consisted of 157 men, 177 women, 82 boys and 74 girls.

Civil status. 6.- The Civil Status registers examined by me showed that from October 1938 to June 1939, 10 births have been registered.

Deaths. 7.- 12 deaths have been registered during the same period.

Still births. 8.- Two still births were registered.

Marriages 9.- Five marriages have been celebrated since last visit.

Causes of death. 10.- Causes of death were registered to be: Pneumonia (2); Dysentry (1); Septicaemia (2) · Intestinal Haemorrhage (1) ; Infantile debility (1).

Remarks. 11.- As a whole I found that the Civil Status registers were kept in a fairly good way. I had to correct or rectify only two acts.

12.-

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Live stock. 12.- As far as could be ascertained at the time of my visit the animals numbered 60 asses, 40 horses, 68 pigs and poultry.

On all the Islands I visited fresh meat is sold to the population at least once a week at about 0.25cs per lb.

Prison. 13.- I visited the prison building which I found clean. Invariably all the buildings on these islands are given a fresh coat of paint in expectation of the Magistrate's arrival.

An enquiry revealed that in all cases prisoners confined in the cells have received treatment as provided by law. I examined the prison register and approved of various sentences of imprisonment inflicted by the Manager. 3 cases of disturbance (quarrel in camp) and one case of insubordination were dealt with and the delinquents were sentenced to undergo short terms of imprisonment ranging from one to six days' imprisonment. I have been satisfied that in no case the Manager abused his powers.

Administration of justice. 14.- I received only one complaint. On the morning of our departure a labourer complained to me that his shed had been broken open and various articles (rice, utensils etc) had been stolen. In spite of close searches made under my own supervision and guidance no satisfactory evidence could be gathered.

The victim of this larceny had come from a camp situate at about 5 miles from the main establishment for purposes of loading the ship. I urged on the

Manager /

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manager the necessity of having a watchman to keep constant watch of uninhabited huts during absence of their occupants at work else such occurrences would be bound to recur. A labourer was suspected of being the author of the larceny; it appeared that he had been dismissed from service some time ago for gross misconduct and had managed to return on the island by some means or other. As the presence of this man on the island was a source of trouble to the manager and to his fellow labourers he was ordered to return to Mauritius.

Hospital

15.- The hospital was clean and well kept and was under the care of a new warder. I visited the hospital daily and paid close attention to the work done by the dispenser whom I found efficient and industrious. It was a moving sight to see ~~two~~ centenariens coming every afternoon to rest in the hospital bed when they are given tea; one of them was suffering from "cataract"; in spite of all persuasive argument and sollicitations the old man refused obstinately to come to Mauritius when I tried to convince him that he could successfully be operated upon. He refused, saying that he preferred to die on his island and be buried together with his wife.

Register.

16.- The hospital register was kept up to date and showed that from October 1938 to June 1939, 88 patients were admitted for treatment, the commonest diseases being influenza, ankylostamiasis (amongst adults) dysentry.

17.-

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+ Another 637 bags

Pharmacy 17.- At the time of my visit the value of medicine and drugs in stock was reckoned to be about Rs.400 worth. Another Rs.135 worth were just landed. The surgical and other instruments were in a good state of preservation.

Shop. 18. The shop was abundantly stocked. The value of goods in stock at the date of my arrival amounted to Rs.14,802,90cs to which must be added another Rs. 6,895,06cs worth of other goods just landed. I checked the invoices, the weights and measures which I found correct. I also examined the price list and caused an error to be corrected in the case of retail price of Gold Flake cigarette tins.

Rice. 19.- The stock of rice on my arrival was 536 bags, + were received by S.S.Zambezia. The rice was of good quality. The average monthly consumption was given to be 100 bags.

Wages. 20.- The total amount of wages received by the labourers from October 1938 to May 1939 has been Rs.20,500,79 cs.

Extras 21.- The extra sums paid during the same period amounted to Rs.2,579,72cs.

Destruction of rats. 22.- Extras paid for the destruction of rats have been Rs.554.37cs. About 32,000 of these rodents are killed yearly.

Capture of turtles. 23.- The sums paid for the capture of turtles amounted to Rs.126.

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Savings Bank. 24.- The sum of money deposited in the hands of the manager amounted to Rs.2,152,25cs.

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POINTE MARIANNE

25-Diego Island comprises two establishments for purposes of facilitating and dividing the work, the one at Pointe de l'Est being the main establishment, the other being at Pointe Marianne, situate on the other side of the bay, at a distance of about two miles. On my arrival the manager of this establishment received order to go to Peros group and was replaced by Mr. A.Talbot.

About 15 or 20 men are employed and reside on this establishment.

26.- I found the camp in a state of abandonment and the house threatening ruin and an imminent fall. Most of them were supported by poles. I urged on the new manager that such a state of matters should not be allowed to obtain and that the houses should be attended to immediately. I also impressed on the manager the necessity of sending the dispenser of Diego establishment at least once a week to Pointe Marianne where labourers would consult him.

PART II

Peros Banhos Group.

Arrival. 27.- I left Diego Island on the 2nd of June last and reached Peros on the next day.

The headquarters of this group are on Ile de Coin which is at a distance of about 130 miles from Diego Garcia.

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Manager. 28.- Mr.W.Thatcher, Assistant H.Rambert.

Population 29.- On my arrival the population numbered:-

Males ... 100 Adults ... 73 boys

Females... 89 Adults ... 78 girls

3 men, 3 women and 3 children arrived by S.S.Zambezia.

Civil Status -29.- The Civil Status registers examined by me showed that from October 1938 to June 1939 -

Births 13, 1 still birth and 4 deaths were registered.

Cause of death 30- The causes of death were reported to be Bronchitis, nutritis and tetanus.

Marriages. 31.- No marriage was celebrated since last visit.

Hospital 32.- I examined the hospital building which I found very clean. Some bed sheets were old and torn; the dispenser Mr. R.Zelia told me he had ordered a new set.

The surgical instruments were clean and neat. The register was kept up to date and showed that from October 1938 to date of my visit. 23 persons were admitted for treatment. The diseases treated including cases of lying-in were abdominal pains, wounds of minor character, abscesses, dyspepsia, hepatitis, fractures, influenza, lumbago, nutritis and rhumatism. The midwife attached to the hospital was suffering from tuberculosis and had to go back to Mauritius, in the meantime the dispenser's wife is performing her duties with even more competency.

Pharmacy. 33.- The pharmacy was well stocked at the date of my arrival, the value of drugs etc in stock was about Rs.500. Another Rs.84 worth of medicine arrived by S.S.Zambezia.

34.

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Prison 34.- The prison building was clean. Since last visit in October 1938, only one labourer was sentenced to undergo 55 hours imprisonment for plundering coco nuts. I duly signed the prison register and approved of the sentenc inflicted.

Administration of Justice. 35.- I received no complaint during my stay.

Shop 36.- The shop was fairly well stocked. At my arrival the value of goods in stock was Rs.8,571,62cs. About Rs.3,482,90 worth of goods were just landed. I duly checked the invoices and price list and tested the weights and measures which were found correct.

Rice 36.- The stock of rice was 273 bags to which was to be added 185 bags just landed. The average monthly consumption was given to be about 48 bags.

Sales: 37.- Rs.9,653,85cs value of goods have been sold from October 1938 to April 1939.

Camp 38.- I visited the camp which I found in a fairly good state of repair.

Live stock 39.- As far as could be ascertained the animals on the island were 50 asses, 130 pigs and poultry.

Wages. 40.- The net total amount of wages paid to the labourers from October 1938 to May 1939 have been Rs.11,078, 15cs. The pay book was checked at random with the attendance book and found correct.

Extras 40.- The extras paid for the same period were Rs.1253,25 cs

Capture of turtles 41.- Since last visit 84 turtles were captured and labourers received a total of Rs.420, making Rs.5 per turtle captured.

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Savings Bank

42.- The sums deposited in the hands of the Manager amounted to Rs.946,56cs.

Exports

43.- The following have been the exports of the island from October 1938 - 328 vclts of oil, 568 tons of coprah and 74 kgs of tortoise shell.

Remarks

44.- The population of this island struck me as being the most docile and disciplined of the whole lot. The manager is a young and efficient man who is most liked by his subordinates.

* *

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PART III

Salomon Islands.

Departure

45.- We left Peros Island on the 3rd of June and arrived at Salomon group on the next day. The distance between the two groups is about 30 miles. Our stay on this island was much prolonged on account of a flat calm which delayed the loading and unloading operations.

R. Caboche ——— Assistant. M. Chareau.

Manager.

Population

46.- On my arrival the population numbered:-

Males ..... 80 Adults ... 47 boys

Females .... 66 Adults ... 46 girls

Civil Status

47.- The Civil Status registers examined by me showed that during the period starting from October 1938 to June 1939 -

Births ...6 } were registered
Deaths ...4 }

4 marriages

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A few errors or omissions in certain entries were set right.

Wages. 48.- The total amount of wages paid to the labourers, after lawful deductions made amounted to Rs.8,789,25cs. The pay book was checked and found correct.

Extras 49.- The amount paid for extras since last visit was Rs.589,52cs and a further sum of Rs.55 for capture of turtles.

Savings Bank 50.- At the time of my visit the sums deposited in the hands of the manager amounted to Rs.1,780,28cs.

Shop. 51.- The value of the articles in stock at the time of my visit was Rs. 2295,36cs. Another 4,199,45cs worth of goods was just landed. The weights and measures were tested and found correct.

Rice 52.- The stock of rice was 187 bags. 128 bags were just landed. The monthly consumption is about 55 bags.

Hospital. 53.- The hospital was clean. The surgical instruments were in good condition. The dental instruments being rusty. I recommended their renewal. I examined and signed the register which showed that since last visit 11 patients were admitted for treatment. Out of this number 6 women were admitted to be delivered of child; the 5 others were suffering from bronchitis, wounds of minor character and intestinal obstruction.

The midwife was dismissed towards the end of last year and pending the arrival of a duly registered midwife from Mauritius she is replaced by a female labourer.

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I have been told that great difficulty is experienced in finding competent midwives to work on the island on account of the unattractive pay they receive, Rs.12 per mensem, I believe.

When I last visited this island in 1936, I had been most ~~unfortunately~~ unfavourably impressed by the look and unhealthy appearance of the children. I record my appreciation of the good work performed by the dispenser, Mr. Madeleine, who has succeeded in eliminating ankylostomiasis by generous distribution of "chenopod" and "ricin" oil. Only a few adults are now suffering from this disease which has worked so much havoc in the past amongst the inhabitant.

Cause of death. 54.- The cause of death was reported to be Bronchitis, Intestinal obstruction.

Pharmacy. 55.- The value of medicine, drugs etc in stock at time of my visit was about Rs.300. Another Rs.154.55 worth was just landed.

Live stock. 56.- As far as could be ascertained the animals on the island were:

60 pigs, 7 horses, 24 asses, poultry, 10 sheep, 1 cow, 2 bulls and 2 heifers.

Camp. 57.- I visited the camp which I found very clean and well kept.

The camp has been rebuilt entirely on modern lines and the wooden houses look pretty and comfortable.

Administration of Justice. 58.- I dealt with two cases during my stay . One was a case of attempt at wounds and blows on the person

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of a commandeur(one local sirdar). Being given the trifling nature of this offence and the particular circumstances of this case I sentenced the accused to pay a fine of Rs.5, with costs. The evidence adduced disclosed that on the occasion of the new year the male population indulged in prolonged libations in the course of which a quarrel broke out between victim and the accused.

The second case was one of wounds and blows inflicted by a labourer on his paramour. He pleaded guilty and was fined Rs.10, with costs. These amounts have been handed to the Assistant District Clerk IInd Division to be paid to the Treasury.

Prison. 59.- The prison building was clean. The prison register showed that since last visit no sentence had been inflicted by the manager.

Exports 60.- Since last visit 587 tons of coprah have been exported.

* *

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PART IV

Six Islands.

61.- Only recently there used to be a permanent establishment on this small group.

As it proved too costly the Company has decided to close it down, as a separate establishment. It now depends on Solomon group for purposes of control and administration. At the time of my visit there were 8 men working on these islands: I met them on their return to Salomon Islands; all were content and happy.

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A nice little vessel plies every month between the islands and bring the labourers back to their headquarters where they receive their pay and rations.

* *

*

PART V

General Remarks.

This time, a good weather permitting I availed myself of every opportunity afforded to me to collect as much material on matters connected with the well being of the islands and the welfare of the inhabitant.

Much praise is due to Reverend Father R.Dussercle for his good and generous work for the moral and spiritual welfare of the labourers on the islands.

From the day of the arrival of the ship up to very day on which she leaves this kind-hearted and very zealous missionary is to be seen constantly and freely mixing with the labourers of the island with a view to making them profit by benefit of christian teaching.

It is in no small measure due to his excellent work on the islands that discipline and well behaviour of the labourers is so good.

Work 1.- Boys and girls start to work at the age of 16. Until they are physically strong enough to perform the work of adults, they are given same work as female labourers. The men, women and children camp on islands ~~adjourned~~ declivious to the main island where they are provided with decent sheds, rations and water. The

female/

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female labourers and the younger population is employed on clearing work; the task set ~~of~~ is 10 "gaulettes" (of 10 feet each) per day. The task of the men consists in collecting and husking from about 500 to 800 coco nuts per day. A good worker can collect and husk about 1000 nuts per day and thus earn extra wages.

The men earn R.8 per mensem for their task; the boys and women get Rs.6. A bonus of R.1 per mensem is given to those who work full time. Those other labourers who stay permanently on the main establishment also collect and husk nuts and are otherwise employed in the manufacture of coprah.

Those rendered unfit for labour by age or illness are given a pension of Rs.3.- per mensem and also receive rations.

Oarsmen

2.- There are two teams of oarsmen on each island (main). They ply every day between the main establishment and the adjoining islands to carry nuts nets acrosss the lagoon. Their tasks consists in carrying 2000 nuts per day; an average of 5000 is easily carried. The boats used by them are locally made by competent marine carpenters and are of remarkable build. Except for a certain season of the year the sea is generally smooth.

From what I saw an average worker may easily earn Rs.20 per mensem. When the earnings of the wife and children are added to that of the head of the family the amount is more than sufficient to keep the whole family comfortably.

Health and sanitation.

3.- On the whole the population on the island is now very healthy. The men are of a fine and strong build

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especially at Peros and Solomon islands where most of them have been born. An ill-defined disease had prevailed until recently and was commonly termed " guim-guimbe"; the people suffering from it felt weak in the limbs and were slack at work. About two years ago Dr.Barbeau visited the islands at the fequest of the agent in Mauritius and he came to the conclusion that this disease was the "dingue" fever, well known in Mauritius. He prescribed tonics and the consequential result is that now this disease has disappeared. I was also pleased to find that ankylostamiasis had almost been eliminated. This gratifying state of affairs can only be maintained by constant supervision on the part of the dispenser who should take preventive measures and to exert sanitary control.

This is said to be dengue fever

The state of things would be made better if the dispenser stewards were subjected to a special training and underwent a course of practical instruction in the duties of sanitary inspector; they would then be in a position to give reliable advice on sanitary subject and disseminate the knowledge of elementary hygiene practice. Almost all confinements were conducted in the hospitals. The dietary in hospitals consists of chicken, bread, tea, milk and sago.

Water.

4.- The water collected from wells in the camp is of good quality; up to the present day there has been no outbreak of disease attributable to water-born infection. I think it would be unnecessary to impose on the company to provide each hut with its own water

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saving cistern; the population would not use them.

Agriculture.

5.- Vegetables obtainable all the year round are "langue de vache", pumpkins and bredes. There are also plenty of bananas and lemons. Each hut is provided with a small garden but unfortunately the labourers, all of negro stock are reluctant to till the soil. This voyage a mission of scientists composed of Messrs Guerandel and P.O.Wiehe and F.E.Lionnet visited the island at the request of Mr. B.Lionnet the agent in Mauritius. I have no doubt that their report, especially on the more practical subject, will result in most beneficial effect. For instance use of guano available on the island would bring the soil into a state of greater fertility and gardens would maintain a steady supply of vegetables.

Milk supply.

6.- As a result of recommendations made in 1936 relative to experiment in the raising of dairy cattle there exist at present on Solomon Island one bull, one cow and two heifers. The cow, at the time of my visit, was giving about 8 bottles of milk daily. I congratulated the Government Veterinary Surgeon, Dr.F.E.Lionnet for the care and pains taken by him in order to supply the island with fresh milk. During last visit he supplied to the manager all possible information concerning the feeding of the animals. I had long talks with this officer on the subject of rearing cattle on the islands and he told me that after careful investigation he thought that the conditions prevailing on them would render them suitable sites for breeding centres. I have always though

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that the question of fresh milk supply should be one of the aims of a competent manager. I was pleased to see that the milk supply at Solomon Island was sufficient enough to allow of milk being sold at a very reasonable price to the inhabitants.

Arrival.

7.- I left Diego Island on the 14th of June and arrived at Port Louis on the 20th instant.

Soon after we had left Diego harbour a leak was detected. It seems as if that before the boat is allowed to proceed out to sea a sufficient examination of its hull is not made with the result that on any one of these trips a disaster may occur.

Before concluding my report I beg to report my appreciation of the courtesy extended to me by the manager, the agent in Mauritius, Mr. Richard Lionnet as well as by the captain, officers and other members of the crew.

19th June, 1939.

(sd) Maurice Rousset
Ag. District Magistrate
Lesser Dependencies.

Annex 11

The Atlantic Charter (14 Aug. 1941)

Atlantic Charter

AUGUST 14, 1941

The President of the United States of America and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them;

Fourth, they will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measure which will lighten for peace-loving peoples the crushing burden of armaments.

Franklin D. Roosevelt

Winston S. Churchill

Annex 12

Governor of Mauritius and the Council of Government, *Courts Ordinance No. 5, 1945* (3 Mar. 1945)

The Courts Ordinance, 1945.

Ordinance No. 5 of 1945

in force as from 7/3/45

I assent,

DONALD M. KENNEDY,
Governor.

28th February, 1945.

Vic. Ord. C. 61 of 1945 2 (1) 30/4/47

An Ordinance to consolidate and amend the law relating to the Organisation and Jurisdiction of Courts of Law in Mauritius

[3rd March, 1945].

BE IT ENACTED by the Governor, with the advice and consent of the Council of Government, as follows—

PART I—PRELIMINARY

1. This Ordinance may be cited as the Courts Ordinance, 1945. Short title.

2. In this Ordinance unless the context otherwise requires— Definitions.

"Bench" means a Bench of three Magistrates.

"Chief Justice" means the Chief Justice of the Supreme Court of Mauritius.

"Curator" or "Curator-Accountant" means the Accountant in Bankruptcy and Curator of Vacant Estates.

"Judge" means any one of the Judges of the Supreme Court and includes the Chief Justice.

"Law Officer of the Crown" means the Procureur General or any of his Substitutes.

"Lesser Dependencies" means the islands of Diégo Garcia, Agaléga, Péros Banhos, Saint Brandon group, Salomon Islands, Six Islands, Trois Frères (including Danger Island and Eagle Island).

"Magistrate" means a District Magistrate appointed under the provisions of this Ordinance.

"Master" means the Master and Registrar of the Supreme Court.

"Registrar" means the Master and Registrar of the Supreme Court.

Annex 12

Seal.

82. Every District Court shall have a seal and all summonses and other process issuing out of the said Court which may be required to be under seal, shall be sealed with such seal.

Governor may appoint Magistrates in Mauritius and the Dependencies thereof.

83. It shall be lawful for the Governor to appoint as many fit and proper persons as may be needed to be Magistrates for Mauritius and the Dependencies, and every person so appointed shall by virtue of such appointment have and may exercise jurisdiction as a District Magistrate in each and every district of the Colony and as Magistrate of the Dependencies, subject to the provisions of section 87 :

Provided that he shall exercise such jurisdiction only in such district or districts or in such Dependencies as may be assigned to him by the Governor.

Qualifications of Magistrates.

84. No person shall be eligible for appointment to the office of District Magistrate unless he be a barrister or advocate admitted to practice in one of the Superior Courts of the United Kingdom and of at least five years standing at the Bar.

Disqualification of Magistrates.

85. No Magistrate so long as he holds office as such, shall do any other work or hold any other office, whether for or without remuneration, without the instructions or permission of the Governor.

Assignment of Districts etc., to Magistrates.

86.—(1) The Governor may, on the recommendation of the Chief Justice, assign a district or districts to any Magistrate for Mauritius and the Dependencies, or may direct such Magistrate to act in any other district instead of, or in addition to any district or districts already assigned to him, or may direct such Magistrate to hear and determine any case civil or criminal or make enquiry into any crime out of any district or districts already assigned to him, ~~or to take, follow up and determine any case, cause, enquiry or proceeding begun before another Magistrate~~ or otherwise to act in lieu and place of another Magistrate.

~~(2)~~ The Governor may assign the Island of Rodrigues or the Lesser Dependencies to any Magistrate for Mauritius and the Dependencies.

~~(3)~~ Any Magistrate assigned the Lesser Dependencies shall have and exercise the same rights, duties, powers, and jurisdiction as any other District Magistrate and shall, in addition thereto, perform such administrative or other duties as may be allotted to him by the Governor.

~~(4)~~ Any such instructions from the Governor shall be communicated by the Chief Justice in writing and shall further (except an order to hear and determine a case, to make an enquiry, or to continue a case begun by another Magistrate) be notified in the *Government Gazette.*"

Divisions of District Courts.

87. Whenever two or more Magistrates have been appointed to any District, it shall be lawful for the Governor by Proclamation to declare that the Court for the District shall sit in two or more Divisions, as the case may be, and the names by which such Divisional Courts shall be designated.

Division of Port Louis District Court.

88. In Port Louis the District Court shall sit in two Divisions, to deal with civil and criminal matters, designated as the "First Division" and the "Second Division" of such Court respectively.

Flat Island and Gabriel Island.

89. Flat Island and Gabriel Island, for the purposes of this part of this Ordinance, shall not be considered dependencies of Mauritius but shall be deemed part of the District of Rivière du Rempart as if the said Islands formed part of the shore of Mauritius within the said district.

Language and interpretation.

90.—(1) The language of all District Courts shall be English, but any person may address the Court in French. Whenever any person giving evidence satisfies the Court that he does not possess a competent knowledge of the English or French language, he may give his evidence in the language with which he is best acquainted.

(2) Whenever any person appearing before the Court gives his evidence in a language other than English or French, the proceedings, if the Magistrate so directs, shall be translated in Court into that language.

Recording of evidence before District Magistrate's Court.

91. In every case or matter heard before the Court of a District Magistrate, the Magistrate shall take down in writing the oral evidence given before the Court.

Appointment of clerks and interpreters.

92.—(1) As many proper persons as are needed may be appointed by the Governor to be clerks and interpreters for the District Courts. Such officers shall be deemed appointed for the whole Colony and may be removed from one District Court and ordered by the Chief Justice to act in any other District Court or Courts.

(2) The senior or principal clerk attached to a District Court shall be called the District Clerk of such Court, but every Clerk or Assistant Clerk shall have the same powers as the District Clerk and may perform any act which the law may require the District Clerk to perform :

Provided that the Magistrate, with the approval of the Chief Justice, may issue directions as to the distribution of business among such officers.

(3) All such officers shall on their first appointment take the oath of allegiance and the official oath, but not the judicial oath.

Interpreters may be called upon to act as clerks.

93. All interpreters attached to District Courts shall be deemed to be and on an order of the Magistrate may act as clerks attached to the District Courts of which they are interpreters.

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The Mauritius (Legislative Council) Order in Council, 1947 (19 Dec. 1947)

MAURITIUS

THE MAURITIUS (LEGISLATIVE COUNCIL) ORDER IN COUNCIL, 1947

AT THE COURT AT BUCKINGHAM PALACE

The 19th day of December, 1947

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS by the Mauritius Letters Patent, 1947, (hereinafter called " the Letters Patent of 1947 ") it is provided that the Council of Government constituted by the Letters Patent mentioned in the First Schedule to the Letters Patent of 1947 shall cease to exist, and that, in place thereof, there shall be such Legislative Council in and for the Colony of Mauritius as may be constituted by any Order of His Majesty in Council, with such functions as may be prescribed by any such Order:

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AND WHEREAS it is expedient to make provision accordingly for the constitution and functions of a Legislative Council for the Colony of Mauritius:

NOW, THEREFORE, His Majesty, in the exercise of the powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows—

PART I

Preliminary

Interpretation.

1.—(1) In this Order and the Schedules, unless the context otherwise requires—

" the appointed day " means the day appointed under Article 2 of the Letters Patent of 1947 ;

" the Colony " means the Island of Mauritius (including the small islands adjacent thereto) and the Dependencies of Mauritius ;

" the Council " means the Legislative Council of the Colony constituted by this Order ;

" election " means the election of Elected Members and " elector " and " electoral register " have corresponding meanings ;

" the Council of Government " means the Council of Government constituted by the existing Letters Patent ;

" the existing Letters Patent " means the Letters Patent mentioned in the First Schedule to the Letters Patent of 1947 ;

" the Executive Council " means the Executive Council constituted by the Letters Patent of 1947, or any Letters Patent thereafter amending, or substituted for, those Letters Patent ;

" the *Gazette* " means the *Government Gazette* of the Colony of Mauritius ;

" the Governor " means the Governor and Commander-in-Chief of the Colony and includes the officer for the time beng administering the Government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy ;

" the Governor in Council " means the Governor acting with the advice of the Executive Council, but not necessarily in accordance with that advice nor necessarily in such Council assembled ;

" Member " means a Member of the Council and " Nominated Member," " Elected Member " and " Temporary Member " mean, respectively, a Nominated, an Elected Member and a Temporary Member of the Council ;

" public office " means, subject to the provisions of sub-section (5) of this section, any office of emolument under the Crown in the Colony or under a Municipal Corporation within the Colony ;

" the Public Seal " means the Public Seal of the Colony ;

" session " means the meetings of the Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without being prorogued ;

" sitting " means a period during which the Council is sitting continuously without adjournment, and includes any period during which the Council is in Committee ;

" Vice-President " means the Vice-President of the Council.

(2) The rules set out in the First Schedule to this Order shall apply for the interpretation of the expressions " ordinarily resident " and "ordinarily resided " in sections 16 and 17 of this Order.

(3) Where in this Order reference is made to any public officer by the term designating his office, such reference shall be construed as a reference to the officer for the time being lawfully discharging the functions of that office.

(4) All references in this Order to His Majesty's dominions shall be construed as including references to all territories under His Majesty's protection or in which His Majesty has for the time being jurisdiction.

(5)—*(a)* For the purposes of this Order a person shall not be deemed to hold an office of emolument under the Crown or under a Municipal Corporation by reason only that he—

(i) is in receipt of a pension or other like allowance in respect of service under the Crown or under a Municipal Corporation ; or

(ii) is a Member of the Council ; or

(iii) is the Mayor of, or a Member of the Council of, a Municipal Corporation, or the Standing Counsel or the Attorney of a Municipal Corporation.

(b) If it shall be declared by any law for the time being in force in the Colony that an office shall be deemed not to be an office of emolument under the Crown or under a Municipal Corporation for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted therein.

(6) Save as is in this Order otherwise provided, or required by the context, the Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament. 52 and 53 Vict. C. 63.

2. This Order may be cited as the Mauritius (Legislative Council) Order in Council, 1947. It shall be published in the *Gazette* and, save as otherwise expressly provided in this Order, shall come into operation on the appointed day. Short title and commencement.

PART II

Constitution of the Legislative Council

3. There shall be a Legislative Council in and for the Colony constituted in accordance with the provisions of this Order. Establishment of Legislative Council.

4. The Council shall consist of the Governor as President, three *ex officio* Members, twelve Nominated Members and nineteen Elected Members. Constition of Legislative Council.

5. The *ex officio* Members shall be the Colonial Secretary, the Procureur and Advocate General and the Financial Secretary. Ex-officio members.

6. The Nominated Members shall be appointed by the Governor by Instrument under the Public Seal in pursuance of His Majesty's instructions through a Secretary of State. Nominated members.

7. The Elected Members shall be persons elected in accordance with the provisions of this Order. Elected members.

8. Subject to the provisions of section 9 of this Order, any person, who is qualified to be registered as an elector under the provisions of this Order and who is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council, shall be qualified to be appointed as a Nominated Member or elected as an Elected Member and no other person shall be qualified to be so appointed or elected or, having been so appointed or elected, shall sit or vote in the Council. Qualifications for Nominated and Elected Membership.

9. No person shall be qualified to be appointed as a Nominated Member or elected as an Elected Member or, having been so appointed or elected, shall sit or vote in the Council who— Disqualifications for Nominated and Elected Membership.

(a) is the holder of any public office ; or

(b)—(i) in the case of a Nominated Member, is a party to, or a member of a firm or a director or manager of a company which is a party to, any subsisting contract with the Government of the Colony for on account of the public service and has not disclosed to the Governor the nature of such contract and his interest therein ; or

(ii) in the case of an Elected Member, is a party to, or a member of a firm or a director or manager of a company which is a party to, any subsisting contract with the Government of the Colony for or on account of the public service and has not published within one month before the day of election, in the *Gazette* and in a newspaper circulating in the electoral district for which he is a candidate, a notice setting out the nature of such contract and his interest therein ; or

(c) is an undischarged bankrupt, having been declared a bankrupt under any law in force in any part of His Majesty's dominions, or has obtained the advantage of *cessio bonorum* in the Colony ; or

(d) is disqualified from practising as a legal or medical practitioner in any part of His Majesty's dominions by the order of any competent authority ; or

(e) in the case of an Elected Member, is disqualified for election by any law for the time being in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election ; or

(ii) any responsibility for the compilation or revision of any electoral register ; or

(f) is disqualified for membership of the Council by any law for the time being in force in the Colony relating to offences connected with elections.

10.—(1) Subject to the provisions of this Order, every Nominated Member shall hold his seat in the Council during His Majesty's pleasure. Tenure of Office.

(2) Every Nominated or Elected Member shall in any case cease to be a Member at the next dissolution of the Council after his appointment or election, or previously thereto if his seat shall become vacant under the provisions of this Order.

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(3) The seat of a Member (other than an *ex-officio* Member) shall become vacant—

(a) upon his death ; or

(b) if, being a Nominated Member, he shall without the leave of the Governor previously obtained, or, being an Elected Member, he shall without leave of the Council previously obtained, be absent from the sittings of the Council for a continuous period of three months during any session thereof ; or

(c) if he shall cease to be qualified to be registered as an elector under the provisions of this Order ; or

(d) if he shall do, concur in, or adopt, any act done with the intention that he shall become the subject or citizen of any foreign State or Power ; or

(e) if he shall be sentenced by a competent court, in any part of His Majesty's dominions, to death or to imprisonment (by whatever name called) for a period exceeding twelve months ; or

(f) if, without the approval of the Governor, he shall become a party to, or any firm of which he is a member or any company of which he is a director or manager shall become a party to, any contract with the Government of the Colony for or on account of the public service ; or if, without such approval as aforesaid, he shall become a member of a firm, or a director or manager of a company, which is a party to any subsisting contract as aforesaid ; or

(g) if he shall be declared bankrupt under any law in force in any part of His Majesty's dominions, or shall obtain the advantage of *cessio bonorum* in the Colony ; or

(h) if, being a Nominated Member, he shall become an Elected Member ; or

(i) if, being a Nominated Member, he shall be appointed permanently to any public office ; or

(j) if, being an Elected Member he shall be appointed to, or to act in, any public office ; or

(k) if he shall become subject to any of the disqualifications mentioned in paragraphs *(d)*, *(e)* and *(f)* of Section 9 of this Order.

(4) If a Nominated Member shall be appointed temporarily to, or to act in, any public office, he shall not sit or vote in the Council so long as he continues to hold, or to act in, that office.

(5) Any person vacating a seat as a Member may, if qualified, be again appointed or elected as a Member from time to time.

(6) The Governor may, by Instrument under the Public Seal, declare any Nominated Member to be incapable of discharging his functions as a Member, and thereupon such Member shall not sit or vote in the Council until he is declared, in manner aforesaid, to be again capable of discharging his said functions.

Decision of questions as to Membership.

11. Subject to the provisions of this Order—

(a) all questions which may arise as to the right of any person to be or remain a Nominated Member shall be referred to, and determined by, the Governor in Council.

(b) all questions which may arise as to the right of any person to be or remain an Elected Member shall be determined by the Supreme Court of the Colony in accordance with the provisions of any law for the time being in force in the Colony.

Temporary Appointment.

12.—(1) Whenever there shall be a vacancy in the number of persons sitting in the Council as *ex-officio* or Nominated Members by reason of the fact that—

(a) one person is lawfully discharging the functions of more than one of the three offices referred to in section 5 of this Order ; or

(b) a Nominated Member is lawfully discharging the functions of any of the three offices referred to in section 5 of this Order ; or

(c) no person is lawfully discharging the functions of any one of those offices ; or

(d) the seat of a Nominated Member is vacant for any cause other than the dissolution of the Council ; or

(e) a Nominated Member is unable to sit or vote in the Council in consequence of a declaration by the Governor, as provided in this Order, that he is incapable of discharging his functions as a Member ; or

(f) an *ex-officio* or Nominated Member is absent from the Colony ; or

(g) a Nominated Member is unable to sit or vote in the Council in consequence of his having been appointed temporarily to, or to act in, any public office ;

the Governor may, by Instrument under the Public Seal, appoint a person to be a Temporary Member for the period of such vacancy.

(2) If the vacancy is in the number of persons sitting in the Council as *ex-officio* Members, the person appointed shall be a person holding office of emolument under the Crown in the Colony and if the vacancy is in the number of persons sitting in the Council as Nominated Members, the person appointed shall be a person qualified for appointment as a Nominated Member.

(3) If a person is appointed under this section to be a Temporary Member to fill a vacancy in the number of persons sitting in the Council as *ex-officio* Members then, so long as his appointment shall subsist, the provisions of this Order shall, subject to the provisions of this section, apply in relation to him as if he were an *ex-officio* Member:

Provided that the provisions of paragraph (a) of section 11 of this Order shall apply in relation to any such person as if he were a Nominated Member.

(4) If a person is appointed under this section to be a Temporary Member to fill a vacancy in the number of persons sitting in the Council as Nominated Members, then, so long as his appointment shall subsist, he shall be to all intents and purposes a Nominated Member and, subject to the provisions of this section, the provisions of section 10 of this Order shall have affect accordingly.

(5) The Governor shall forthwith report every temporary appointment made under this section to His Majesty through a Secretary of State and such appointment may (without prejudice to anything done by virtue thereof) be revoked by the Governor by Instrument under the Public Seal.

(6) A temporary appointment made under this section shall cease to have effect on notification by the Governor to the person appointed of revocation by the Governor, or on supersession of the appointment by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

Extraordinary Members.

13.—(1) The Governor may summon to any meeting of the Council the person for the time being performing the functions of Head of any department of the Colony or any Officer for the time being holding the appointment of, or acting as, Officer Commanding His Majesty's Naval Military or Air Forces, respectively, in the Colony notwithstanding that such person may not be a Member of the Council, when, in the opinion of the Governor, the business before the Council renders the presence of such person desirable.

(2) Any person so summoned shall be entitled to take part in the proceedings of the Council relating to the matter in respect of which he was summoned as if he were a Member of the Council, except that he shall not have the right to vote in the Council.

Electoral Districts.

14.—(1) For the purpose of the election of Members the Colony shall be divided into five electoral districts as follows—

(a) the Electoral District of Plaines Wilhems and Black River, which shall return six Members ;

(b) the Electoral District of Moka and Flacq, which shall return three Members ;

(c) the Electoral District of Port Louis, which shall return four Members ;

(d) the Electoral District of Grand Port and Savanne, which shall return three Members ; and

(e) the Electoral District of Pamplemousses and Rivière du Rempart, which shall return three Members.

(2) The boundaries of each electoral district shall be such as may be prescribed by, or in pursuance of, any law for the time being in force in the Colony.

Right to vote.

15.—(1) Every person who is registered as an elector in any electoral district shall, while so registered, be entitled to vote at any election for that district and no person shall vote at any election for any electoral district who is not registered as an elector in that district:

Provided that nothing in this subsection shall entitle any person to vote at any election if he is prohibited from so voting, by any law for the time being in force in the Colony, by reason of his being a returning officer.

(2) No person shall be registered as an elector in any electoral district who is not qualified to be so registered under the provisions of this Order.

Qualifications of electors.

16.—(1) Subject to the provisions of section 17 of this Order, any person shall be qualified to be registered as an elector in any year in any electoral district if on the first day of July in that year he—

(a) is ordinarily resident in that district and can speak and can read and write simple sentences in, and can sign his name in, any of the languages mentioned in the Second Schedule to this Order to the satisfaction of the officer charged with the duty of registering electors in that district, except so far as that officer is satisfied that he is unable so to do through blindness or other physical cause ; or

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(b) is ordinarily resident in that district and has served at any time for a period of at least twelve months in the armed forces of the Crown and is either still so serving or has obtained, on discharge from the said forces, a certificate showing his conduct during such service to have been satisfactory ; or

(c) occupies (as owner or tenant), and has for the immediate preceding six months so occupied, business premises in that district:

Provided that:

(i) no person shall be registered as an elector in any one electoral district in respect of more than one of the qualifications specified in paragraphs *(a)*, *(b)* and *(c)*, respectively, of this subsection ;

(ii) no person shall be registered as an elector in more than two electoral districts in all ;

(iii) no person shall be registered as an elector in two electoral districts save in the one district in respect of the qualification specified in paragraph *(c)*, and in the other district in respect either of the qualification specified in paragraph *(a)* or of the qualification specified in paragraph *(b)*, of this subsection.

(2)—*(a)* For the purposes of paragraph *(b)* of subsection (1) of this section conduct described as fair shall be deemed to have been satisfactory.

(b) In this section the expression " business premises " means any premises (that is to say any building or part of a building, or any place or space which can be so defined as to enable it to be occupied separately) of the annual rental value of not less than two hundred and forty rupees occupied for the purpose of the business, profession or trade of the person to be registered.

(c) Where business premises are in the joint occupation of two or more persons each of the joint occupiers shall, for the purposes of this section, be treated as occupying the premises:

Provided that—

(i) the annual rental value of the premises is not less than the amount produced by multiplying two hundred and forty rupees by the number of the joint occupiers ;

(ii) not more than two joint occupiers shall be entitled to be registered in respect of the same premises, unless they are *bona fide* engaged as partners carrying on their business, profession or trade on the premises.

Disqualifications of Electors.

17. No person shall be qualified to be registered as an elector in any year if he—

(a) is not a British subject or is by virtue of his own act under any acknowledgement of allegiance, obedience, or adherence to a foreign State or Power ; or

(b) was less than twenty-one years of age on the first day of July in that year ; or

(c) has not ordinarily resided in the Colony for the two years immediately preceding the first day of July in that year ; or

(d) has been sentenced by any Court in His Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon ; or

(e) is certified to be insane under any law for the time being in force in the Colony ; or

(f) is disqualified for registration by any law for the time being in force in the Colony relating to offences connected with elections.

Laws as to Elections, etc.

18. Subject to the provisions of the Order, provision may be made by, or in pursuance of, any law enacted under this Order for the following matters, that is to say—

(a) the registration of electors ;

(b) the ascertainment of the qualifications of electors and of candidates for election ;

(c) the holding of elections ;

(d) the definition and trial of offences in relation to elections and the imposition of penalties therefor including disqualification for membership of the Council or for registration as an elector of any person concerned in any such offence.

Vice-President of the Council.

19.—(1) The Council shall, before proceeding to the despatch of any other business (except the taking of the oath of allegiance), at its first sitting after the appointed day and thereafter at its first sitting after every dissolution of the Council, elect a Nominated or Elected Member to be Vice-President of the Council.

(2) A Member holding office as Vice-President shall, unless he earlier resigns his office by writing under his hand addressed to the Governor or ceases to be a Member, vacate his office on the dissolution of the Council.

(3) Whenever the office of Vice-President shall become vacant otherwise than as the result of a dissolution of the Council, the Council shall, at its first or second sitting after the occurrence of the vacancy, elect another Nominated or Elected Member to be Vice-President.

Presiding in Legislative Council.

20. The Governor if present, or, in the absence of the Governor, the Vice-President, or, in the absence of the Vice-President, the Member present who stands first in the order of precedence, shall preside at the sittings of the Council.

Precedence of Members.

21.—(1) The Vice-President shall take precedence next after the Governor, and the other Members of the Council shall take precedence after the Vice-President and among themselves as His Majesty may specially assign, or, if precedence be not so assigned, as follows—

First, the *ex-officio* Members in the order in which they are mentioned in section 5 of this Order ;

Secondly, any other Members who are Members of the Executive Council according to their seniority therein ;

Thirdly, the remaining Members according to the length of time for which they have been continuously Members, Members who have been continuously Members for the same length of time taking precedence according to the alphabetical order of their names.

(2) For the purposes of the preceding subsection—

(a) in ascertaining the length of time for which any person shall have been continuously a Member—

(i) no account shall be taken of any interval between the vacation by that person of his seat in the Council in consequence of a dissolution of the Council and the date of his appointment or re-appointment or election or re-election to fill a vacancy in the Council caused by that dissolution ; and

(ii) if any person, having been for any period immediately before the appointed day a Member of the Council of Government constituted by the existing Letters Patent, is appointed or elected as a Member by virtue of the first appointments or elections to the Council after the appointed day, he shall be deemed to have been a Member during the said period ; and no account shall be taken of any interval between the end of that period and the date upon which he is so appointed or elected as a Member, or of any interval in his Membership of the said Council of Government necessarily following a dissolution of that Council of Government ;

(b) when the Council is dissolved, Nominated Members appointed to fill vacancies caused by such dissolution shall be deemed to have been appointed, and Members elected at the ensuing general election shall be deemed to have been elected by virtue of that election, on the date of the return of the first writ at such election ;

(c) the provisions of paragraph *(b)* of this subsection shall apply to Members appointed or elected by virtue of the first appointments and elections to the Council after the appointed day as if such appointments and elections were consequent upon a dissolution of the Council.

Filling of Vacancies.

22.—(1) Whenever the seat of an Elected Member becomes vacant, a fresh election shall be held to fill the vacancy in accordance with the provisions of this Order.

(2) Whenever the seat of a Nominated Member becomes vacant, the vacancy shall be filled by appointment by the Governor in accordance with the provisions of this Order.

PART III

Legislation and Procedure in Legislative Council

Power to make Laws.

23. Subject to the provisions of this Order, it shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace order and good government of the Colony.

Voting.

24.—(1) Save as otherwise provided in this Order, all questions proposed for decision in the Council shall be determined by a majority of the votes of the Members present and voting.

(2) The Governor or other Member presiding shall not vote unless the votes of the other Members shall be equally divided, in which case he shall have a casting vote.

(3) If, upon any question before the Council, the votes of the other members are equally divided and the Governor or other Member presiding does not exercise his casting vote, the motion shall be declared to be lost.

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Council may transact business notwithstanding Vacancies.

25. The Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the Council or otherwise took part in the proceedings.

Quorum.

26. No business except that of adjournment shall be transacted if objection is taken by any Member present that there are less than twelve Members present besides the Governor or other Member presiding.

Governor's reserved power.

27.—(1) If the Governor shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as a component part of the British Empire, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer) that any Bill introduced, or any motion proposed, in the Council should have effect, then, if the Council fail to pass such a Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor, at any time in his discretion, may, notwithstanding any provisions of this Order or of any Standing Orders of the Council, declare that such Bill or motion shall have effect as if it had been passed by the Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been moved or proposed in the Council or in any Committee thereof ; and thereupon the said Bill or motion shall have effect as if it had been so passed, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall apply accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he shall make any such declaration and the reasons therefor.

(3) If any Member objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such Member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by a Secretary of State and the Governor shall cause notice of such revocation to be published in the *Gazette* ; and from the date of such notification any motion, which shall have had effect by virtue of the declaration revoked, shall cease to have effect and the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

52 & 53 Vict. c. 63.

Assent to Bills.

28.—(1) No Bill shall become a law until either the Governor shall have assented thereto in His Majesty's name and on His Majesty's behalf and shall have signed the same in token of such assent, or His Majesty shall have given his assent thereto through a Secretary of State.

(2) When a Bill is presented to the Governor for his assent, he shall, according to his discretion but subject to the provisions of this Order and of any Instructions addressed to him under His Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, thereto, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor shall reserve for the signification of His Majesty's pleasure any Bill by which any provision of this Order is revoked or amended or which is in any way repugnant to, or inconsistent with, the provisions of this Order, unless he shall have been authorized by a Secretary of State to assent thereto.

(3) A law assented to by the Governor shall come into operation on the day on which such assent shall be given, or if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

(4) A Bill reserved for the signification of His Majesty's pleasure shall become a law as soon as His Majesty shall have given His assent thereto through a Secretary of State and the Governor shall have signified such assent by Proclamation published in the *Gazette*. Every such law shall come into operation on the date of such Proclamation or, if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

Disallowance of Laws.

29.—(1) Any law to which the Governor shall have given his assent may be disallowed by His Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by His Majesty, the Governor shall cause notice of such disallowance to be published in the *Gazette*.

(3) Every law so disallowed shall cease to have effect as soon as notice of such disallowance shall be published as aforesaid and thereupon any enactment repealed or amended by, or in pursuance of, the law disallowed shall have effect as if such law had not been made. Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an Act of Parliament. 52 & 53 Vict. c. 63.

30. Subject to the provisions of this Order, the Governor and the Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under His Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf. Royal Instructions

31.—(1) Subject to the provisions of this Order and of any Instructions under His Majesty's Sign Manual and Signet, the Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for assent, but no such Standing Orders shall have effect until they shall have been approved by the Governor. Standing Orders.

(2) The first Standing Orders of the Council shall be made by the Governor and may be amended or revoked by the Council under subsection (1) of this section.

32. The official language of the Council shall be English but any Member may address the chair in French. Official language.

33. Subject to the provisions of this Order and of the Standing Orders of the Council, any Member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to Standing Orders: Introduction of Bills, etc.

Provided that, except with the recommendation or consent of the Governor signified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition, which in the opinion of the Governor or other Member presiding, would—

(a) dispose of or charge any public revenue or public funds of the Colony, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty ; or

(b) suspend the Standing Orders of the Council or any of them.

34. Except for the purpose of enabling this section to be complied with, no Member of the Council shall sit or vote therein until he shall have taken and subscribed before the Governor, or some person authorized by the Governor in that behalf, the Oath of Allegiance in the form set out in the Third Schedule to this Order: Oath of Allegiance.

Provided that every person authorized by the law of the Colony to make an affirmation instead of taking an oath in legal proceedings may make such affirmation in like terms instead of the said oath.

35.—(1) The sittings of the Council shall be held at such times and places as the Governor shall from time to time appoint by Proclamation published in the *Gazette*. There shall be a session of the Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one session and the first sitting in the next session. Sittings and Sessions.

(2) The first session of the Council shall commence within six months of the appointed day.

36.—(1) The Governor may at any time, by Proclamation published in the *Gazette*, prorogue or dissolve the Council. Prorogation and dissolution.

(2) The Governor shall dissolve the Council at the expiration of five years from the date of the return of the first writ at the last preceding general election, if it shall not have been sooner dissolved.

37. There shall be a general election at such time within four months after the appointed day, and thereafter within three months after every dissolution of the Council, as the Governor shall by Proclamation published in the *Gazette* direct. General Elections.

Annex 13

PART IV

MISCELLANEOUS

Penalty for unqualified persons sitting or voting.

38.—(1) Any person who—

(a) having been appointed or elected a Member of the Council but not having been, at the time of such appointment or election, qualified to be so appointed or elected, shall sit or vote in the Council, or

(b) shall sit or vote in the Council after his seat thereon has become vacant or he has become disqualified from sitting or voting therein, knowing, or having reasonable grounds for knowing, that he was so disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty not exceeding five hundred rupees for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the Supreme Court of the Colony at the suit of the Procureur and Advocate General.

Provisions necessary to give effect to the Order.

39.—(1) At any time before the appointed day the Council of Government constituted by the existing Letters Patent may by laws made under those Letters Patent, and thereafter at any time before the first sitting of the Council under this Order the Governor may by Proclamation, make such provision as appears to them or to him (as the case may be) to be necessary or expedient for giving effect to the provisions of this Order and in particular and without prejudice to the generality of the foregoing power may make provision for all or any of the matters specified in section 18 of this Order ; and the expression " any law for the time being in force in the Colony ", wherever it occurs in this Order, shall include any law or Proclamation made under this subsection.

(2) It shall not be necessary for any law enacted in accordance with the provisions of subsection (1) of this section to be reserved for the signification of His Majesty's pleasure.

(3) Every Proclamation made under subsection (1) of this section shall have the force of law and may be amended, added to or revoked by further Proclamation within the period specified in that subsection.

(4) This section shall come into operation forthwith.

Emoluments.

40.—(1) The Governor and other Officers mentioned in the Fourth Schedule to this Order shall receive by way of annual emoluments the sums respectively specified therein and the said sums are hereby charged on the revenues of the Colony and shall be paid by the Accountant General out of the said revenues upon warrant directed to him under the hand of the Governor.

(2) Nothing in subsection (1) of this section shall prevent the payment to the Governor or to any of the Officers aforesaid of any greater or other sums by way of salary or other emoluments for which provision may be duly made from time to time.

(3) In this section and the Fourth Schedule to this Order the word " Governor " means the person for the time being holding the substantive appointment of Governor and Commander-in-Chief.

Removal of difficulties.

41.—(1) If any difficulty shall arise in bringing into operation any of the provisions of this Order or in giving effect to the purposes thereof, a Secretary of State may, by Order, make such provision as seems to him necessary or expedient for the purpose of removing the difficulty and may by such Order amend or add to any provision of this Order:

Provided that no Order shall be made under this section later than the first day of January, 1950.

(2) Any Order made under this section may be amended, added to, or revoked by a further Order, and may be given retrospective effect to a day not earlier than the date of this Order.

(3) This section shall come into operation forthwith.

Power reserved to His Majesty.

42.—(1) His Majesty hereby reserves to Himself, His Heirs and Successors power, with the advice of His or Their Privy Council, to amend, add to or revoke this Order as to Him or Them shall seem fit.

(2) Nothing in this Order shall affect the power of His Majesty in Council to make laws from time to time for the peace, order and good government of the Colony.

E. C. E. LEADBITTER.

FIRST SCHEDULE

Section 1.

1. Subject to the provisions of rules 2, 3, 4 and 5 of this Schedule, the question of whether a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case.

2. The place of ordinary residence of a person is, generally, that place which is the place of his habitation or home, whereto, when away therefrom, he intends to return. In particular when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where he sleeps.

3. Generally, a person's place of ordinary residence is where his family is; if he is living apart from his family, with the intent to remain so apart from it in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

4. Any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered.

5. Any person, who at any time is serving in the armed forces of the Crown, shall be deemed to be ordinarily resident during the period of such service in the place in which he so resided immediately before he entered on such service, unless he has thereafter established some other ordinary residence elsewhere.

SECOND SCHEDULE

Section 16.

English.
French.
Gujerati.
Hindustani.
Tamil.
Telegu.
Urdu.
Chinese.
The Creole Patois commonly in use in the Colony.

THIRD SCHEDULE

I, ..., do swear that I will be faithful and bear true allegiance to His Majesty King George VI, His Heirs and Successors, according to law. So help me God.

Section 34.

FOURTH SCHEDULE

Section 40.

Governor	Rupees 50,000, salary
Colonial Secretary	Rupees 24,000, salary
Procureur and Advocate-General	Rupees 20,000, salary
Financial Secretary	Rupees 20,000, salary
Governor or Officer for the time being Administering the Government	Rupees 10,000, duty allowance

By Authority: J. ELIEL FÉLIX, Acting Government Printer, 1948. 94/1/48—541

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"Draft of Position Paper from Background Book for Colonial Policy Discussions" in FOREIGN RELATIONS, VOL. II (21 June 1950)

Present Membership of the Special Committee:

Administering Members:

Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom of Great Britain and Northern Ireland, United States of America.

Elected Members:

Brazil, Egypt, India, the Union of Soviet Socialist Republics for a term of three years;

Mexico, the Philippines for a term of two years;

Sweden, Venezuela for a term of one year.

IO Files

Draft of Position Paper From Background Book for Colonial Policy Discussions

CONFIDENTIAL [WASHINGTON,] June 21, 1950.

ITEM III, A, 2—SUBMISSION OF POLITICAL INFORMATION TO THE UNITED NATIONS

BACKGROUND

The problem of the submission of political information to the United Nations by Members administering non-self-governing territories was first discussed at the San Francisco Conference.

Article 73 of the Charter had its genesis at that time in a draft general declaration on colonial policy presented by the United Kingdom to which the Australian Delegation submitted an amendment. This amendment provided for reports upon a specified list of economic, social and educational topics, and, in some cases, at the direction of the General Assembly, reports on political development were to be required. In the redrafts of this amendment the United States combined the two types of reporting and included political information, the United Kingdom omitted reporting, and Australia retained reporting but dropped political information. The U.S.S.R. favored political reporting. The United States in its second redraft of this amendment, however, omitted political information and in the final formulation, political information was not included although there is no full record of the circumstances surrounding the eventual decision on this matter.

From the time of the First Session of the General Assembly, the question of submitting information on political conditions in non-self-governing territories has arisen regularly. In Subcommittee 2 of the Fourth Committee, First Session, it was agreed that such information was of great importance and much to be desired. No action was taken on this question, however, until the *Ad Hoc* Committee sub-

mitted a draft proposal which, after the defeat in the plenary session of a U.S.S.R. amendment which would recommend the submission of information on local participation in administration, was adopted by the General Assembly as Resolution 144 (II). This resolution notes the voluntary submission of political information by some Members and considers it to be in conformity with the Charter and, therefore, to be noted and encouraged. At the same session the Assembly adopted Resolution 142 (II) to which was annexed the Standard Form, the optional Part I of which covers items of a political nature. In the Special Committee, 1948, it was noted that Australia, Denmark, New Zealand, Netherlands, France (for Morocco and Tunisia) and the United States had voluntarily submitted political information.

At the Third Session of the General Assembly two resolutions were adopted relevant to this question: Resolution 218 (III) which provides, *inter alia*, for Secretariat summaries of voluntarily submitted political information and invites information on items in Part I of the Standard Form other than government from those Members who had not previously submitted such information; and Resolution 222 (III) which requests Members concerned to communicate information of a constitutional nature in cases where they have ceased to report on territories under Article 73(*e*).

The Special Committee, 1949, submitted a draft proposal which recalled the provisions of Resolution 144 (II) and expressed the hope that such Members as had not done so would voluntarily include political information in their reports. This was adopted by the Assembly as Resolution 327 (IV) after an amendment which provided that in revision of the Standard Form information on geography, history, peoples, and human rights should cease to be classified as optional and expressed the hope that information on government would be voluntarily submitted. Attempts by the U.S.S.R., both in the Special Committees and in various sessions of the Assembly, to make the submission of political information mandatory have been consistently defeated by sizeable majorities.

DISCUSSION

The question of submission of political information has not only been debated on its own merits but as an ancillary factor in other disputes. In addition to the principal issue based upon the interpretation of Article 73(*e*), the submission of political information has arisen in connection with the general consideration of the purposes for which information is transmitted under Article 73(*e*), and specifically with regard to its use in defining and applying the term "non-self-governing". It has also become a major aspect of the proposed revision of the Standard Form.

502-846—76——30

As a problem, *per se*, the question of submitting political information has involved two interpretative positions: on one hand, the non-administering powers have maintained that Article 73 must be read as a whole. They pointed out that sub-paragraph (*a*) deals with political, as well as economic, social, and educational advancement and that sub-paragraph (*b*) deals specifically with the development of self-government and political institutions. The more extreme view, held by the U.S.S.R., its satellites and Egypt, maintains, therefore, that submission of political information is mandatory under their interpretation of Article 73. The less extreme view, in which India takes the lead with the support of the majority of the non-administering group, has agreed, however, that political information is not mandatory under Article 73(*e*), but has strongly supported its inclusion on a voluntary basis, pointing out that political considerations cannot be divorced from economic, social and educational factors, and stressing that sub-paragraph (*e*) should be given a broad interpretation within the larger context of the Article. On the other hand, by a strictly literal interpretation of the Article, it has been maintained that the obligations enumerated in the sub-paragraphs other than (*e*) are of a general type, conditioned by the nature of Chapter XI as a declaration; whereas, sub-paragraph (*e*) states a specific obligation clearly limited and circumscribed.

In connection with discussions as to the purposes in general for which information is transmitted, it should be noted that, while the language of Article 73(*e*) states that information transmitted thereunder is for information purposes, the terms of reference of the first and subsequent Special Committees have provided for the examination of the summaries and analyses of information transmitted on economic, social and educational conditions and for reports including procedural and substantive recommendations relating to functional fields generally but not with respect to specific territories. Such political information as may be voluntarily submitted, however, is not mentioned in these terms of reference, and the problem has arisen as to the use of this information, particularly as a procedural question of the competence of the Special Committee to discuss and analyze the information, discuss the action of those Members who voluntarily submit such information, and criticize the action of those Members who do not. The non-administering powers have taken the position that political information, voluntarily submitted, is admissible for discussion and recommendation in the Special Committee, as well as the General Assembly, but they have not challenged the general proviso that such recommendations shall not deal with specific territories.

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This general problem of the purpose of political information and the competence of the General Assembly in respect to it has found particular expression as an aspect of the issue of defining the term "non-self-governing" for the purposes of Chapter XI. If the right of the General Assembly not only to determine, but also to apply such a definition is granted, then it can be argued that such a right militates in favor of the obligatory submission of political information, at least for the purpose of determining the status of territories under Chapter XI. If, however, it is agreed that political reporting is voluntary only, questions arise as to (*a*) the competence of the General Assembly to utilize voluntarily submitted political information in its discussion of a general definition of the term non-self-governing, and (*b*) its competence to discuss the status of particular territories on which political information is voluntarily submitted.

In discussions on the Standard Form and its revision, the problem of submission of political information has been a primary consideration. No new factors are involved in this aspect of the problem, however, and essentially the anticipated revision of the Standard Form represents a means for securing a wider interpretation of Article 73. The General Assembly has recommended (Resolution 327 (IV)), that in revision of the Standard Form the optional classification be removed from items in Part I other than government. This was strongly supported by the moderate non-administering Members. In this connection it should be noted that the Standard Form, as a whole, was annexed to Resolution 142 (II) for the guidance of reporting Members and is, therefore, optional in its entirety.

POSITIONS OF THE UNITED KINGDOM, FRANCE, AND BELGIUM

On the question of interpretation of Article 73, the United Kingdom has taken a consistently firm position insisting upon a most literal and strict adherence to the language of the Article. This position regards Chapter XI as a unilateral declaration of intent and the obligations mentioned in Article 73 as consisting of two types: general obligations as stated in sub-paragraphs (*a*), (*b*), (*c*), and (*d*), and a very specific and limited obligation as stated in sub-paragraph (*e*). This position obviously excludes any consideration of the proposition that submission of political information is mandatory in view of the general intent and language of Chapter XI and Article 73. In addition, the United Kingdom has opposed the provision of such information on a mandatory or voluntary basis, claiming that (*a*) the matter was considered and rejected at San Francisco, (*b*) such a move constitutes an extra-legal attempt to rewrite the Charter, and (*c*) there is a difference between the public discussion through normal constitutional processes and the interference of international agencies in

matters which concern only the United Kingdom and its colonial peoples. In addition to opposing voluntary submission, the United Kingdom has stated that it would not conform to such a proposal were it adopted. Belgium has supported this position throughout and has stated that it would only consider changing this interpretation after a decision by the International Court of Justice. Belgium has also held that under Article 55 signatories of the Charter were bound to improve conditions generally but were not expected to furnish information as to whether they were doing so.

France has opposed attempts to interpret Article 73 in the broad sense which would make political reporting on non-self-governing territories mandatory. It has, however, supported voluntary submission at the discretion of the reporting Member, although it has reserved its position on further submission of such information on French territories in view of the decision of the Special Committee, 1949, that discussion of such information was admissible.

Other administering Members, including Australia, New Zealand, Netherlands, Denmark and the United States have supported the position that submission of political information is voluntary under the terms of Article 73(*e*).

On the related question of the purposes for which information is transmitted and the use to which it can be put, the United Kingdom, France, Belgium, and the Netherlands have taken the position that they are not prepared to discuss political or constitutional matters in the Special Committee or in any other organ of the United Nations; and, in addition, they have opposed the competence of the Special Committee to consider and make recommendations upon the general subject of voluntary submission. In taking this view, they have reasserted the argument that information, including that voluntarily submitted, is for information purposes only and not to be discussed nor could resolutions be recommended concerning it.

However, in opposing Resolution 222 (III), the United Kingdom stated that, while it always made public any constitutional changes, [as a result of which it ceased to report on a territory],[1] and had always furnished and would continue to furnish to the library of the United Nations full details on such changes, in its view it was not required at any stage to bring officially to the notice of the Secretary General the constitutional instruments providing for such changes in such a way that the information would become a matter for discussion in the United Nations. This latter position would seem to imply that information officially transmitted, presumably including voluntary

[1] Brackets appear in the source text.

political information, is admissible for discussion in the United Nations. France has stated that it was quite probable that it would not supply political information since the competence of the Special Committee in this matter was decided affirmatively.

It would appear that the administering powers, while originally opposing discussion, reports, and recommendations on information on economic, social, and educational conditions, have acquiesced in these cases but attempted to maintain their original position in regard to voluntarily submitted political information. The United Kingdom and France abstained on the proposal providing for Secretariat summaries of such information and inviting information on Part I other than item (*d*) : government (Resolution 218 (III)).

On the question of definition of the term non-self-governing, with which the problem of submission of political information has become involved, the colonial powers have not objected in principle to the right of the Assembly under Article 10 to attempt such a definition. Their opposition, however, has been most strong on the question of determination of the status of any specific territory under Chapter XI. The relevance of political information to this problem arises principally in connection with the sources of information which the Assembly or the Special Committee might use in their discussions. Consistent with their position against the application of any definition by the Assembly, the United Kingdom, France and Belgium have opposed the official submission or discussion of political information for the purpose of determining the status of any non-self-governing territory under Chapter XI. The United Kingdom, France, and Belgium abstained on Resolution 222 (III) under the provisions of which the United Nations considers it essential that it be informed of constitutional changes by virtue of which information is no longer transmitted and requests communication of appropriate information on the constitutional status and the relationship with the metropole of such territories. France has complied with the provisions of this resolution; the United Kingdom has not. On another occasion, the United Kingdom stated that the question of the constitutional relationship between the metropolitan powers and their territories was a matter within the exclusive jurisdiction of the powers concerned. The latter contention is consistent with the United Kingdom interpretation of Article 2(7) that discussion and recommendation by the United Nations may constitute interference in matters within domestic jurisdiction.[2]

[2] The Department drafted a separate position paper on this subject, "Recourse to the domestic jurisdiction clause of the Charter" (Item III, D, 3, *b*), not printed.

On the question of the Standard Form which is related to the problem of submission of political information by virtue of the optional Part I of the Form, the colonial powers voted in favor of Resolution 142 (II) to which the Form was annexed for the guidance of Members. Belgium, however, made general reference at that time to the tendency to illegally revise the Charter, pointing particularly to the provisions of Part I. The United Kingdom's only reservation was on the practical grounds that compilation of reports should not interfere with the substantive work in non-self-governing territories. In the Fourth Committee, Fourth Session, the United Kingdom opposed, as did Belgium and France, Resolution 327 (IV) which provides, *inter alia*, that in revision of the Form general information on geography, history, people and human rights should cease to be classified as optional. In so doing, the United Kingdom stated that it had agreed to include in its returns under Part I such supplementary information on these subjects as was necessary to a proper understanding of the information transmitted under Article 73(*e*) and that the description "optional" should continue to apply to Part I. This appears to represent a retrogression from the position taken by the United Kingdom in the Special Committee, 1948, where it opposed an invitation to Members to supply information on the items specified above, stating that it was not prepared to submit any information under the optional section, though it would include such information as it deemed necessary on the subjects therein other than government under Part II of the Form. It would appear that had the United Kingdom consistently maintained this earlier view, it should have supported the recommended revision of Part I. The United Kingdom also stated in 1948 that it was not prepared to have anything to do with Part I of the Form as such.

RECOMMENDED UNITED STATES POSITION

1. On the question of submission of political information as a problem, *per se*, the United States should adhere to its present position which, while recognizing that the submission of political information is not required under the provisions of Article 73(*e*), supports the voluntary transmission of such information by Members administering non-self-governing territories. In stating this position, the United States might point out that it wishes to secure the cooperation of all Members of the United Nations in a constructive and reasonable interpretation of Chapter XI, and that, to this end, it will continue to oppose attempts to interpret Article 73 in its widest sense as obligating the submission of political information, but similarly, it seeks to avoid the provocative results of a rigid insistence upon a narrow and literal interpretation of the obligation set forth in sub-paragraph (*e*). The

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United States representative might also call attention to the fact that only the U.S.S.R., its satellites and Egypt have insisted upon an interpretation which would make political reporting mandatory; whereas, a majority of the colonial and non-colonial powers have supported voluntary submission. Acceptance and implementation of the latter point of view by all colonial powers would, in the view of the United States, be tactically desirable as a possible means of preventing the strengthening of the extreme, U.S.S.R. position.

2. Should the question be raised as to the position of the United States on the use of or purpose for which political information is voluntarily submitted, the United States should state that, in relation to the Special Committee, it maintains the same position on its competence with regard to information voluntarily transmitted as on other information transmitted under Article 73(*e*), *viz.*, that the Committee is competent to discuss, report, and make substantive and procedural recommendations upon functional fields generally, but not with respect to specific territories. The United States feels that such a position is consistent with (1) the voluntary character of such political information as is transmitted, (2) the request made by the General Assembly to the Secretary General to summarize and analyze such information, (3) the considerations which prompted the present procedure on social, economic and educational information, and (4) the provisions of Resolution 334 (IV) providing for the preliminary consideration by the Committee of the factors to be taken into account in deciding whether any territory is or is not non-self-governing.

In respect to the General Assembly and the issue of defining "non-self-governing", the United States should reply that, while it does not consider that recognition of the right of the General Assembly to attempt such a definition alters the interpretation of Article 73 in such a way as to make submission of political information mandatory, it takes the view that the General Assembly is competent to utilize such political information as is voluntarily submitted in its discussion of a general definition. But the United States believes that the General Assembly should not make recommendations on specific territories to individual administering Members, irrespective of whether they had voluntarily submitted political information on those territories or not. The United States has consistently maintained that the submission of voluntary information in no way prejudices the right of administering Members to determine the status of their territories under Chapter XI.

3. Should the question of the proposed revision of the Standard Form arise, the United States should state that insofar as such revision would involve changes in the optional classification of items

a, *b*, *c* and *e* under Part I, it considers that the provisions of paragraph 3, Resolution 327 (IV) should be complied with in view of (*a*) the essentially optional character of the Standard Form as a whole, (*b*) the fact that the General Assembly did not recommend that item (*d*) : government, cease to be classified as optional, and (*c*) the principle, to which the United States subscribes, that resolutions of the General Assembly should be faithfully complied with by Members of the United Nations.

4. In commenting generally upon the voluntary submission of political information by Members administering non-self-governing territories, the United States representative might emphasize the importance of a broad and constructive approach to this problem, pointing out that it would appear desirable, in view of the essential nature of the United Nations and the spirit of the Charter, as well as for pressing, contemporary tactical considerations, that those countries who are most intimately associated with the development of democratic, constitutional government and whose experience has been widest in the problems of its evolution should take every opportunity to expound its virtues, discuss its problems, and answer its critics, especially in respect to those areas of the world where they have undertaken the responsibility to develop democratic self-government. To adopt other than a liberal, constructive attitude toward the discussion of fundamental political problems, even upon the soundest legal grounds, is to provide the opportunity for unjustified presuppositions and insinuations.

IO Files

Draft of Position Paper From Background Book for Colonial Policy Discussions

CONFIDENTIAL [WASHINGTON,] June 22, 1950.

ITEM III, B, 1—THE RELATIVE FUNCTIONS OF THE UNITED NATIONS AND THE ADMINISTERING AUTHORITIES, AND THE TENDENCY OF THE UNITED NATIONS TO CONCERN ITSELF WITH ADMINISTRATION, AS WELL AS WITH SUPERVISION OF THE TRUST TERRITORIES

BACKGROUND

The United Nations Charter does not make clear the distinction between the terms "administration" and "supervision". Spokesmen for the British, French, and Belgian Governments have repeatedly expressed in UN bodies the view that the functions of the United Nations in relation to Trust Territories are strictly limited to super-

Annex 15

Extracts from the Mauritius Gazette (*General Notices*) (1951-1965)

OBITUARY NOTICE

CLAUDE PHILIPPE JEAN SALIMAN, Second Class Teacher, Government Primary Schools, Education Department, died on 14th January, 1951.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

General Notice No. 75 of 1951.

APPOINTMENTS

(M.P. 4058)

JOSEPH ANDRÉ D'ESPAGNAC, to be Chief Officer, Fire Services, with effect from the 1st of January, 1951.

(P.F. 5068)

PHILIPPE BENJAMIN OHSAN, Inspector, Police Department, to be Bandmaster, with effect from the 1st of July, 1950.

ARRIVAL AND RESUMPTION OF DUTY

(P.F. 5068)

PHILIPPE BENJAMIN OHSAN, Bandmaster, Police Department, 11th January, 1951, from leave.

REVERSION TO SUBSTANTIVE APPOINTMENT

(M.P. 4058)

C. G. DECOTTER, Station Officer, Fire Services, 1st January, 1951.

By direction of His Excellency the Governor.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

General Notice No. 76 of 1951.

(M.P. 11810)

APPOINTMENT IN THE MAGISTRACIES

His Excellency the Governor has been pleased to appoint Mr. J. Desplaces, Attorney-at-Law, to act as Magistrate for Mauritius and the Dependencies and has assigned to him the Lesser Dependencies with effect from the date of the departure of the next vessel for Chagos Archipelago.

By direction of His Excellency the Governor.

The Secretariat,
Mauritius, 3rd February, 1951.

K. V. MACQUIRE,
Acting Colonial Secretary.

Annex 15

(P.F. 12096)

1952, on leave. —, Officer in charge of the Malaria Eradication Scheme, 2nd October,

REVERSION TO SUBSTANTIVE APPOINTMENT

F. NOZAIC, Assistant Registrar General, 7th October, 1952. (P.F. 1315)

E. GÉRARD, Taxing Officer, Registrar General's Department, 7th October, 1952. (P.F. 1315)

H. H. HARGREAVES, Superintendent of Prisons, 7th October, 1952. (P.F. 12140)

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 892 of 1952. (M.P. 12345/55)

CHANGE OF NAME

His Excellency the Officer Administering the Government in Council has been pleased to authorise SOOROOJPERSAD BHOLAH to change his name and surname into those of RAMCHANDAR REECHAYE.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 893 of 1952. (M.P. 12427)

LAND SETTLEMENT ADVISORY COMMITTEE

His Excellency the Officer Administering the Government has been pleased to appoint Dr. the Honourable S. Ramgoolam and the Honourable V. Ringadoo to be additional members of the Land Settlement Advisory Committee.

2. This Committee is now composed as follows :—

The Land Settlement Officer, *Chairman*
The Civil Commissioner (South),
The Civil Commissioner (North),
The Civil Commissioner (Moka—Flacq),
The Director of Public Works (or his representative),
The Liaison Officer for Agriculture and Fisheries,
The Honourable D. Luckeenarain,
The Honourable A. M. Osman, O.B.E.,
Dr. the Honourable S. Ramgoolam,
The Honourable V. Ringadoo,
The Honourable J. N. Roy,
The Honourable H. R. Vaghjee.

The Secretariat,
Mauritius, 15th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 894 of 1952. (M.P. 1746)

SACK FACTORY BOARD

With reference to General Notice No. 251 of 1952, His Excellency the Officer Administering the Government has been pleased to appoint Mr. R. Lincoln to be a member of the Sack Factory Board, in the place of Mr. Serge Staub during his absence on leave.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 895 of 1952. (M.P. 9719/2)

APPOINTMENT IN THE MAGISTRACIES

His Excellency the Officer Administering the Government has been pleased to appoint Mr. Jacques André Cyril Cantin, Barrister-at-Law, to act as Magistrate for Mauritius and the Dependencies with effect from the date of the departure of the "Sir Jules" from the Chagos Islands.

The Secretariat,
Mauritius, 18th October, 1952.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 680 of 1963.

LEGAL SUPPLEMENT

The undermentioned Government Notices and Ordinances are published in the Legal Supplement to the number of the *Government Gazette* :—

The Road Traffic Ordinance, 1962.
(Government Notice No. 41 of 1963)

The Central Housing Authority (Execution of Documents and Instruments) (Amendment) Rules, 1963.
(Government Notice No. 42 of 1963)

The Civil Establishment (General) (Amendment No. 51) Order, 1963.
(Government Notice No. 43 of 1963)

The Telephone Tariff Regulations, 1963.
(Government Notice No. 44 of 1963)

The Ministry of Finance (Integration) Ordinance, 1963.
(Ordinance No 17 of 1963)

The Ministry of Agriculture and Natural Resources (Integration) Ordinance, 1963.
(Ordinance No. 18 of 1963)

The Development (General Purposes) Loan Ordinance, 1963.
(Ordinance No. 19 of 1963)

The Investment in Mauritius Government Securities Ordinance, 1963.
(Ordinance No. 20 of 1963)

The Road Traffic (Amendment) Ordinance, 1963.
(Ordinance No. 21 of 1963)

The Telfair Street (Modification) Ordinance, 1963.
(Ordinance No. 22 of 1963)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
29th June, 1963.

A. F. BATES,
Acting Chief Secretary

General Notice No. 681 of 1963. (M.P. 23...

NEW JERUSALEM CHURCH SOCIETY FOR ...

In accordance with section 5 of the New Jerusalem Church Society Ordinance, (Cap. 375) His Excellency the Governor has been pleased to approve the election of Mrs. Y. Walter as Vice-President of the New Jerusalem Church Society for the rest of the year in the place of Mr. Lucien de Chazal, resigned.

Chief Secretary's Office,
Port Louis,
25th June, 1963.

A. F. BATES,
Acting Chief Secretary

General Notice No. 682 of 1963. (E/406/2/01...

APPOINTMENT OF ADDITIONAL CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to approve the appointment of Mr. Joseph Marden, Post Officer Grade II, as Additional Civil Status Officer, Quartier Militaire with effect from the 1st July, 1963.

General Notice No. 683 of 1963. (E/406/2/01)

APPOINTMENT OF CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to approve the appointment of Miss Chan Shiou Ti Chan Tung as Civil Status Officer of Port Louis with effect from the 1st July, 1963. General Notice No. 568 of 1963, concerning the appointment of Miss Cathaye Mootoosamy as Civil Status Officer, is hereby cancelled.

Chief Secretary Office,
Port Louis,
25th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 684 of 1963. (M.P. 2497/1)

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. Shunmoogum Mootoosamy, a District Magistrate for Mauritius and its Dependencies.

This assignment is in addition to the assignment made to him by the Honourable the Chief Justice of each and every district of the Colony.

Chief Secretary's Office,
Port Louis,
25th June, 1963.

A. F. BATES,
Acting Chief Secretary.

General Notice No. 685 of 1963. (M.P. 1836/14)

TURKISH CONSULAR REPRESENTATION

With reference to General Notice No. 929 of 1961, His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that Mr. Fikret Berker has been appointed as Consul-General of Turkey in London, with jurisdiction in all British Colonies and Protectorates, in succession to Mr. Ismael Soysal.

Mr. Fikret Berker is accordingly granted provisional recognition in his consular capacity pending the issue of Her Majesty's Exequatur.

Chief Secretary's Office.
Port Louis,
27th June, 1963.

A. F. BATES,
Acting Chief Secretary.

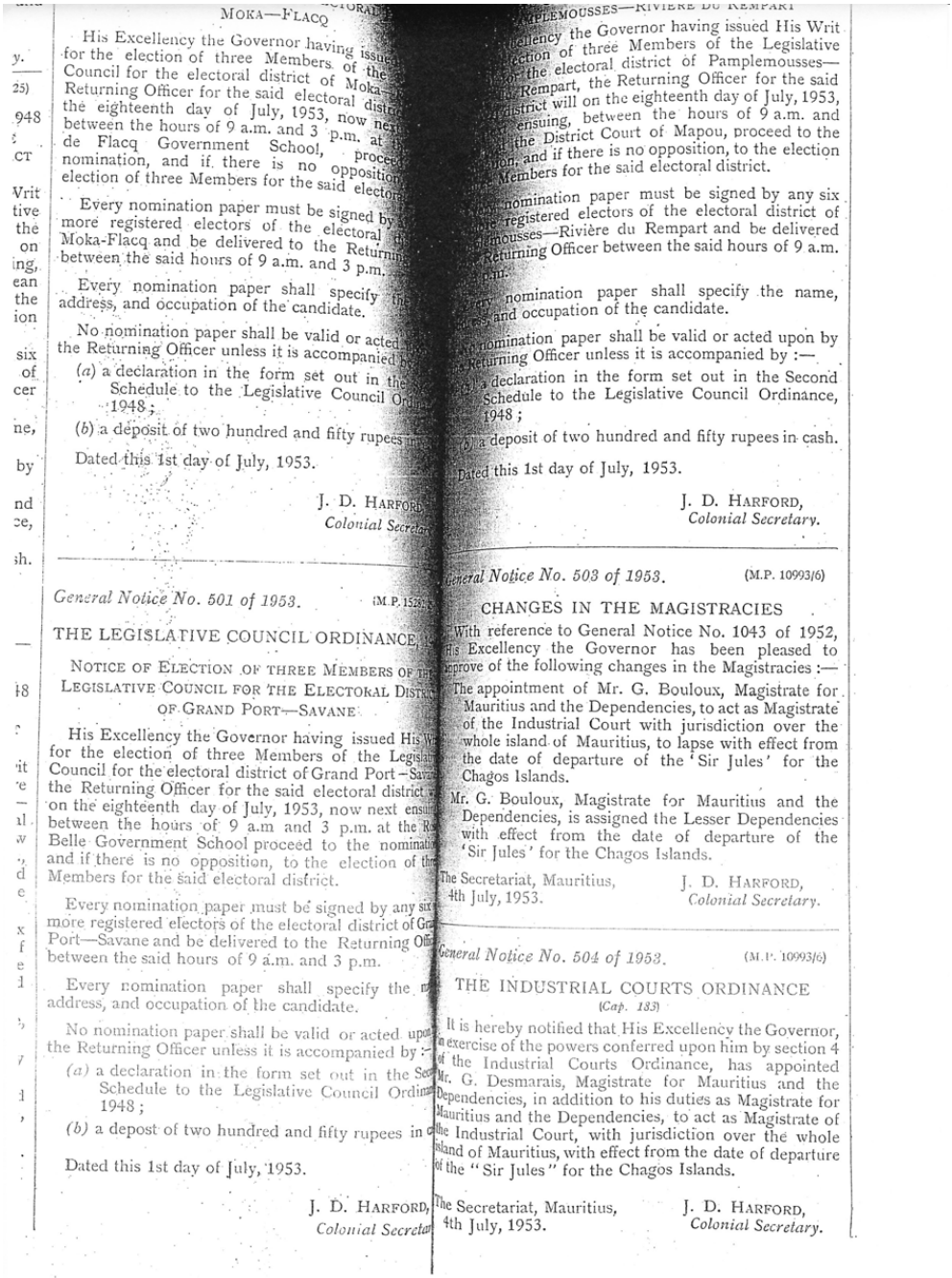
General Notice No. 686 of 1963. (M.H.S. 36)

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 2 of 1962 shortly entitled :

Annex 15



MOKA—FLACQ

His Excellency the Governor having issued
for the election of three Members of the
Council for the electoral district of Moka—
Returning Officer for the said electoral distr
the eighteenth day of July, 1953, now nex
between the hours of 9 a.m. and 3 p.m. at
de Flacq Government School, proceed
nomination, and if there is no opposition
election of three Members for the said electora

Every nomination paper must be signed by
more registered electors of the electoral
Moka-Flacq and be delivered to the Returnin
between the said hours of 9 a.m. and 3 p.m.

Every nomination paper shall specify the
address, and occupation of the candidate.

No nomination paper shall be valid or acted
the Returning Officer unless it is accompanied
(*a*) a declaration in the form set out in the
Schedule to the Legislative Council Ordi
1948;
(*b*) a deposit of two hundred and fifty rupees

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secreta

General Notice No. 501 of 1953. (M.P. 1528

THE LEGISLATIVE COUNCIL ORDINANCE

NOTICE OF ELECTION OF THREE MEMBERS OF TH
LEGISLATIVE COUNCIL FOR THE ELECTORAL DIST
OF GRAND PORT—SAVANE

His Excellency the Governor having issued His W
for the election of three Members of the Legisla
Council for the electoral district of Grand Port—Sava
the Returning Officer for the said electoral district
on the eighteenth day of July, 1953, now next ensu
between the hours of 9 a.m and 3 p.m. at the R
Belle Government School proceed to the nominati
and if there is no opposition, to the election of th
Members for the said electoral disfrict.

Every nomination paper must be signed by any six
more registered electors of the electoral district of Gra
Port—Savane and be delivered to the Returning Offi
between the said hours of 9 a.m. and 3 p.m.

Every nomination paper shall specify the
address, and occupation of the candidate.

No nomination paper shall be valid or acted upo
the Returning Officer unless it is accompanied by :—
(*a*) a declaration in the form set out in the Sec
Schedule to the Legislative Council Ordina
1948;
(*b*) a depost of two hundred and fifty rupees in

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secreta

PLEMOUSSES—RIVIÈRE DU REMPART

Excellency the Governor having issued His Writ
ection of three Members of the Legislative
the electoral district of Pamplemousses—
Rempart, the Returning Officer for the said
district will on the eighteenth day of July, 1953,
ensuing, between the hours of 9 a.m. and
the District Court of Mapou, proceed to the
ion, and if there is no opposition, to the election
Members for the said electoral district.

nomination paper must be signed by any six
registered electors of the electoral district of
mousses—Rivière du Rempart and be delivered
Returning Officer between the said hours of 9 a.m.
p.m.

nomination paper shall specify the name,
and occupation of the candidate.

nomination paper shall be valid or acted upon by
Returning Officer unless it is accompanied by :—
(*a*) a declaration in the form set out in the Second
Schedule to the Legislative Council Ordinance,
1948;
(*b*) a deposit of two hundred and fifty rupees in cash.

Dated this 1st day of July, 1953.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 503 of 1953. (M.P. 10993/6)

CHANGES IN THE MAGISTRACIES

With reference to General Notice No. 1043 of 1952, His Excellency the Governor has been pleased to approve of the following changes in the Magistracies :—

The appointment of Mr. G. Bouloux, Magistrate for Mauritius and the Dependencies, to act as Magistrate of the Industrial Court with jurisdiction over the whole island of Mauritius, to lapse with effect from the date of departure of the 'Sir Jules' for the Chagos Islands.

Mr. G. Bouloux, Magistrate for Mauritius and the Dependencies, is assigned the Lesser Dependencies with effect from the date of departure of the 'Sir Jules' for the Chagos Islands.

The Secretariat, Mauritius,
4th July, 1953.

J. D. HARFORD,
Colonial Secretary.

General Notice No. 504 of 1953. (M.P. 10993/6)

THE INDUSTRIAL COURTS ORDINANCE
(*Cap. 133*)

It is hereby notified that His Excellency the Governor, in exercise of the powers conferred upon him by section 4 of the Industrial Courts Ordinance, has appointed Mr. G. Desmarais, Magistrate for Mauritius and the Dependencies, in addition to his duties as Magistrate for Mauritius and the Dependencies, to act as Magistrate of the Industrial Court, with jurisdiction over the whole island of Mauritius, with effect from the date of departure of the "Sir Jules" for the Chagos Islands.

The Secretariat, Mauritius,
4th July, 1953.

J. D. HARFORD,
Colonial Secretary.

ARRIVAL AND ASSUMPTION OF DUTY

MRS. MARJORIE EDNA COATES, Education Officer, Education Department, arrived on 28th August, 1957, and assumed duty on 2nd September, 1957, on contract.

General Notice No. 745 of 1957.

APPOINTMENT

LUC MARCEL FIJAC, Assistant Establishment Officer, Secretariat, to act as Establishment Officer, with effect from the 15th September, 1957.

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 838 of 1957. (M.P. 6168/13)

OPENING OF ADDITIONAL CIVIL STATUS OFFICES

Notice is hereby given that His Excellency the Governor has, in exercise of the powers vested in him under section 6 (3) of the Civil Status Ordinance—Cap 39, Laws of Mauritius—approved the establishment of two Civil Status Offices, one at Beau Bassin and one at Vacoas (La Caverne) respectively.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 839 of 1957. (M.P. 16672/1)

MAGISTRATE FOR LESSER DEPENDENCIES

His Excellency the Governor has been pleased to appoint Mr. L. Paul Toureau, Civil Commissioner, to act as Magistrate for Mauritius and the Dependencies, with the assignment of the Lesser Dependencies, for the purpose of visiting the Chagos Islands, with effect from the date of departure of the *M.V. Sir Jules* for Agalega on or about the 23rd October, 1957.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 840 of 1957. (E/406/2/01/408

APPOINTMENT OF CIVIL STATUS OFFICER

His Excellency the Governor has been pleased to appoint Mr. Basheeray Yoosoofkhan Moortoozakhan, Temporary Clerk, Registrar General's Department, as Civil Status Officer, Central Civil Status Office, with effect from the 15th October, 1957.

Colonial Secretary's Office,
Port Louis.
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 841 of 1957.

LEGAL SUPPLEMENT

The undermentioned Government Notice is published in the Legal Supplement to this number of the *Government Gazette* :—

The Bread (Control of Manufacture and Sale) (Amendment) Order, 1957.
(Government Notice No. 61 of 1957)

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

General Notice No. 842 of 1957.

SPECIAL LEGAL SUPPLEMENT

The undermentioned Bills are published for general information in the Special Legal Supplement to this number of the *Government Gazette* :—

A Bill "To establish "La Clinique Mauricienne" and to provide for the incorporation and management thereof".

A Bill "To provide for the incorporation and management to the Mauritius Bar Association and matters incidental thereto".

A Bill "To amend the Trade Marks Ordinance".

By direction of His Excellency the Governor.

Colonial Secretary's Office,
Port Louis,
19th October, 1957.

ROBERT NEWTON,
Colonial Secretary.

3rd and last publication

General Notice No. 843 of 1957.

THE MAURITIUS LEGISLATIVE COUNCIL

Notice of Private Bill proposed for introduction in the Legislative Council

WHEREAS it is provided under Standing Order of the Standing Orders and Rules of the Legislative Council that when any Private Bill shall be proposed which may directly affect the private rights or property of any person or company, notice shall be given to parties concerned of the general nature and object of such Bill by advertisement in the *Government Gazette* to be published one month before the *first* reading of such Bill ;

AND WHEREAS it is further provided that such advertisement shall be inserted *three times* at the least in the *Government Gazette* before such first reading ;

AND WHEREAS a petition has been presented by Messrs. M. de Spéville, Q.C., L. E. Venchard, G. Du J. R. Hein, J. R. Hein, Q.C., C. K. L. Yip Tong, A. J. nauth, C. Lamalétie, C. de Labauve d'Arifat, R. Drubi de Broglio, R. d'Unienville, A. M. Ahmed, H. E. Wal M. Gujadhur, R. Montocchio, R. Jomadar, R. Boodl S. Bhuckory, E. Madhoo, J. Bedaysee, R. Sewgobi L. Pillay, A. Osman, E. Bussier and H. Nahal Barristers-at-law, practising before the Courts of Colony, for the purpose set out in the Schedule here

THIS IS therefore to give notice for the *third* t to all parties which may be concerned that a B entitled "To provide for the incorporation and mana ment of the Mauritius Bar Association and mat incidental thereto" is proposed for introduction i the Legislative Council and that the general nature a object of such Bill are set out in the Schedule her

Council Office,
Port Louis,
1st October, 1957.

L. REX MOUTOU,
Clerk, Legislative Counc

SCHEDULE

The Bill referred to above aims at providing for incorporation and management of an association styled "Mauritius Bar Association" for the following purpo namely, the safeguard, maintenance and promotion o interests of the Mauritius Bar, the upholding of the ho dignity, reputation and independence of the members th and the furtherance of their interests in connection wit practice of their profession.

eneral Notice No. 8

TENDE

GOVER

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the Treasury on Wed
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4. The deposit of Rs
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Treasury, Port Lou
0th October, 1957.

eneral Notice No. 845

CRIMINAL

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ourth Session on and
1958.

9th October, 1957.

eneral Notice No. 846

NOTICE UNDER S

COMPANI

CANCELLATION OF RE

Notice is hereby given
e been struck off the
The Mauritius Stone I
Pierrefonds Ltd.

ated at Port Louis,
October, one thousand

Annex 15

... the 4th February, 1963.

ARRIVAL AND RESUMPTION OF DUTY

(M.L./P.F. 207)

GOINSAMY RAMASAWMY, Principal Assistant Secretary, returned from official business on the 4th February and resumed duty on the 5th February, 1963.

REVERSION TO SUBSTANTIVE APPOINTMENT

(ML/PF 212)

ABDOOL AHUD HOSSENBUX, Assistant Secretary, 5th February, 1963.

DEPARTURE

(P.F. 25466)

KENNETH CAULFIELD PEARSON, Establishment Secretary, 9th February, 1963, on leave.

By direction of His Excellency the Governor.

hief Secretary's Office,
Port Louis,
13th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 145 of 1963.

SPECIAL LEGAL SUPPLEMENT

The undermentioned Bills are published for general information in the Special Legal Supplement to this number of the *Government Gazette* :—

A Bill "The Pensions (Amendment) Bill".

A Bill "The Civil Code (Amendment) Bill".

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
16th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 146 of 1963.

NON DISALLOWANCE OF ORDINANCES

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinances of the Legislature of Mauritius :—

(M.P. 4799/4)

Ordinance No. 23 of 1962 shortly entitled :
"The Renganaden Seeneevassen Memorial Foundation (Incorporation) Ordinance, 1962".

(F/REV/123/1)

Ordinance No. 17 of 1962 shortly entitled :
"The Customs Tariff (Amendment) Ordinance, 1962".

(M.P. 1646/16)

Ordinance No. 25 of 1962 shortly entitled :
"The Phœnix Military Cemetery (Repeal) Ordinance, 1962".

ef Secretary's Office
'ort Louis,
1 February, 1963.

TOM VICKERS,
Chief Secretary.

In exercise of the powers conferred upon him by Section 5 (1) of the Representation of the People Ordinance, 1958, His Excellency the Governor has been pleased to appoint :

(1) Mr. F. R. Mosses to be Assistant Registration Officer with effect from the 3rd January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 34—Belle Rose
No. 35—Quatre Bornes
No. 36—Stanley
No. 37—Rose Hill
No. 39—Beau Bassin
No. 40—Petite Rivière
in replacement of Mr. C. Paul ;

(2) Mr. C. Joachim to be Assistant Registration Officer with effect from the 3rd January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 11—Grand'Baie
No. 12—Poudre d'Or
No. 13—Piton
No. 14—Rivière du Rempart
in replacement of Mr. R. M. Hurdowar

(3) Mr. I. Mamoojee to be Assistant Registration Officer with effect from the 9th January, 1963, for each of the following electoral districts as defined in Proclamation No. 10 of 1958 :—
No. 27—Black River
No. 40—Petite Rivière
in replacement of Mr. E. Appadou.

Chief Secretary's Office,
Port Louis,
11th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 148 of 1963.

TERMINATION OF APPOINTMENT OF ADDITIONAL CIVIL STATUS OFFICER

His Excellency the Governor has approved the termination of appointment of Mr. Indraparsad Lollchand as Additional Civil Status Officer for Grand Gaube, with effect from the 18th January, 1963.

Chief Secretary's Office,
Port Louis,
15th February, 1963.

TOM VICKERS,
Chief Secretary.

General Notice No. 149 of 1963. (M.P. 16672/1)

MAGISTRATE FOR LESSER DEPENDENCIES

(*Courts Ordinance (Cap. 168) as subsequently amended*)

His Excellency the Governor, with the concurrence of the Chief Justice, has been pleased to appoint Mr. Barrister Régis Bourdet, to act as Magistrate for Mauritius and the Dependencies, with the assignment of the Lesser Dependencies, for the purpose of visiting the Chagos Archipelago, with effect from the date of the departure of the M. V. "Mauritius" for the Chagos Archipelago on or about the 16th February.

Chief Secretary's Office,
Port Louis,
8th February, 1963.

TOM VICKERS,
Chief Secretary.

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 40 of 1963 shortly entitled :

"The Tobacco Board Employees' Provident Fund Ordinance, 1950, (Repeal) Ordinance, 1963".

Chief Secretary's Office,
Port Louis,
25th March, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 271 of 1964.

MAGISTRATE FOR THE LESSER DEPENDENCIES

(Courts Ordinance (Cap. 168) as subsequently amended)

His Excellency the Governor, with the concurrence of the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. R. Lallah, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting Chagos, with effect from the date of the departure of the M.V. Mauritius on or about the 4th April, 1964.

Chief Secretary's Office,
Port Louis,
20th March, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 272 of 1964.

BANKING STATISTICS

NUMBER OF REPORTING BANKS : 4

Figures as at 31st December, 1963
(All figures are in rupees (000 omitted))

LIABILITIES	Rs	ASSETS	
1. Notes in circulation ...	—	1. Cash	
2. Deposits :		2. Balances due by other banks in the Colony ...	
(i) Demand	174,717	3. Balances due from banks abroad	
(ii) Time ...	10,722	4. Loans and advances :	
(iii) Savings ...	20,641	(i) Primary production (including processing of primary products) ...	
3. Balances due to :		(ii) Other industries (including Commerce, Transport and Distribution) ...	
(i) Other banks in the Colony	4,290	(iii) Other advances ...	
(ii) Banks abroad ...	5,220	5. Investments :	
4. Other Liabilities ...	66,276	(i) Local ...	
		(ii) Other ...	
		6. Other Assets :	
		(i) Bills discounted ...	
		(ii) Bills receivable ...	
		(iii) Other	
Total Liabilities ...	281,866	Total Assets ...	

MAURITIUS GOVERNMENT SERVIC

VACANCIES FOR TEMPORARY METEOROLOGICAL ASSISTANTS (MALE) IN THE METEOROLOGICAL DEPAR

Salary : Rs 2,748 per annum
Age Limit : Between 18 and 35 years
Closing date : 14th April, 1964
Qualifications :

Cambridge School Certificate with credit in mathematics and one science subject or an acc alternative qualification.

For application forms and other details, apply in to the Establishment Division of the Chief Sec Office.

No consideration will be given to applications made on the prescribed forms, which should be sup by the required certificates. Applications and ann should be forwarded to the Secretary, Public S Commission, 10, de Caën Street, Rose Hill.

Establishment Division,
Chief Secretary's Offic
18th March, 1964. Port L

2nd and last publi

General Notice No. 274 of 1964.

NOTICE IN TERMS OF SECTION 5 OF LAND ACQUISITION ORDINANCE No. 1952

Notice is hereby given that the portions of described hereinafter have been acquired by G ment for a public purpose, to wit :— The Construct Schools.

DESCRIPTIONS

Portion No. 1 of an extent of one arpent, Co Measure, forms part of a property admeasuring approximately belonging to Mon Désert Alma Lt terms of title deed transcribed in Vol. 510 No. 2 situated at Verdun in the District of Moka a bounded as follows :—

Towards the North by an Estate Road on hundred and ten and a half feet or 92.50 met Towards the East by the surplus of the prope Mon Désert Alma Ltd. on one hundred and five feet or 50.29 metres.
Towards the South by the Sinuosities of a drain Towards the West by Verdun Road on one hu and fifty five feet or 47.24 metres.

Portion No. 2 of an extent of one arpent, Co Measure, forms part of a property admeasuring approximately belonging to the Anglo Ceylon General Estates Co. Ltd. in terms of title deed cribed in Vol. 185 No. 351 is situated at Britannia the Labourers' Camp) in the District of Savanne a bounded as follows :—

Towards the North East partly by the surplus o property of Anglo Ceylon and General Estate Ltd. on fifty and three fourths feet or 15.46 m and partly by an Estate Road on ninety one one-fourth feet or 27.80 metres.
Towards the South East by the surplus of property of Anglo Ceylon and General Estates Ltd. on three hundred and fifteen and one-fo feet or 96.08 metres.
Towards the South West by an Estate Road on hundred and forty two feet or 43.28 metres.
Towards the North West by the surplus of property of Anglo Ceylon and General Estates Ltd. on three hundred and seven and a half fe

Annex 15

A Bill "Further to amend the Trade Marks Ordinance".

A Bill "To amend the Crown Lands Ordinance".

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
2nd May, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 446 of 1964.

LEGAL SUPPLEMENT

The undermentioned Government Notice and Ordinances are published in the Legal Supplement to this number of the *Government Gazette* :—

The Valuation Lists Regulations, 1964.
(Government Notice No. 44 of 1964)

The Customs (Amendment) Ordinance, 1964.
(Ordinance No. 5 of 1964)

The Hire-Purchase (Credit Sales) Ordinance, 1964.
(Ordinance No. 6 of 1964)

The Mauritius Broadcasting Corporation Ordinance, 1964.
(Ordinance No 7 of 1964)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
2nd May, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 447 of 1964.

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable the Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. A. G. M. Ahmed, a District Magistrate for Mauritius and its Dependencies.

This assignment is in addition to the assignment made to him by the Honourable the Chief Justice of each and every district of the Colony.

Chief Secretary's Office,
Port Louis,
28th April, 1964.

TOM VICKERS,
Chief Secretary.

General Notice No. 448 of 1964.

NON DISALLOWANCE OF ORDINANCE

His Excellency the Governor has been informed by the Right Honourable the Secretary of State for the Colonies that the power of disallowance will not be exercised in respect of the following Ordinance of the Legislature of Mauritius :—

Ordinance No. 32 of 1963 shortly entitled :

"The Central Electricity Board Ordinance, 1963".

Chief Secretary's Office,
Port Louis,
27th April, 1964.

TOM VICKERS,
Chief Secretary.

Salary Scale : Rs 2,748 to Rs 5,0
Age Limit : between 18 and officers over 35 apply.
Closing Date : 18th May, 1964.

Qualifications :—

Either : Cambridge School Ce pass in English Langu Mathematics ;

Or : London General Certific in five subjects at Ordin one and the same sitting Language, French and

Or : An acceptable alternative c

For application forms and other deta to the Establishment Division of the Office.

No consideration will be given to a made on the prescribed forms, which sh by the required certificates. Applicatic should be forwarded to the Secretar Commission, 10, de Caën Street, Rose

Establishmen
Chief Secre

22nd April, 1964.

General Notice No. 450 of 1964.

NOTICE

ASSIGNMENT OF DISTRICTS TO M

The Honourable the Chief Justice following changes in the assignments c trict Magistrates with effect from the 21

1. The special charge of the 1st Divis Court of Port Louis to L. E. Ve District Magistrate, lapses ;
2. C. de Labauve d'Arifat, Esquire, D is given the special charge of the 1 District Court of Port Louis and h of the District Court of Plaines Wi Division, lapses as from the same
3. Y. P. Espitalier-Noël, Esquire, Dist given the special charge of the I Plaines Wilhems, Rose Hill Div charge of the IInd Division of the Port Louis, lapses as from the sam
4. A. M. G. Ahmed, Esquire, Distri given the special charge of the IIn District Court of Port Louis, his the District of Pamplemousses la same date.
5. C. Nazroo, Esquire, District Magist special charge of both the Distric Rempart and Pamplemousses.

FRANCE
Master an

24th April, 1964.

ets to announce the death, on the 54, of Mrs. Marie Olga Jasmin, Teacher mary Schools, Ministry of Education rs.

Office,

A. S. ALLAN,
4. *Acting Chief Secretary.*

To. 1007 of 1964.

APPOINTMENTS

URICE RAULT, Magistrate, Intermediate , to act as Presiding Magistrate, with 26th October, 1964.

RALALL, Administrative Assistant, to be tary, with effect from the 26th October,

GÉRARD LALOUETTE, Puisne Judge, r Puisne Judge, with effect from the 964.

PHUL, Magistrate, Intermediate Criminal Puisne Judge, with effect from the 964.

ND RESUMPTION OF DUTY

IEN MOOTOOSAMY, Superintendent of ctober, 1964, from leave and resumed h October, 1964.

puty Director of Agriculture, 19th Oc- om leave and resumed duty on the 964.

IONS TO SUBSTANTIVE APPOINTMENTS

AVY, Assistant Superintendent of Pri- ber, 1964.

L, Assistant Superintendent of Prisons, 964.

E PREFUMO, Chief Officer, Prisons School, 20th October, 1964.

His Excellency the Officer Administment.

Office,

A. S. ALLAN,
. *Acting Chief Secretary.*

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o. 1008 of 1964.

L LEGAL SUPPLEMENT

ioned Bill is published for general e Special Legal Supplement to this *ernment Gazette*:—

r to amend the Co-operative Societies 45".

His Excellency the Officer Administment.

ffice,

A. S. ALLAN,
. *Acting Chief Secretary.*

The Interpretation and General Clauses Ordinance, 1957.

(Government Notice No. 146 of 1964)

The Town Council of Vacoas—Phoenix (General Rate) (Amendment) Regulations, 1964.

(Government Notice No. 147 of 1964)

The Customs Tariff (Amendment No. 2) Ordinance, 1964.

(Ordinance No. 28 of 1964)

The Public Holidays (Amendment) Ordinance, 1964.

(Ordinance No. 29 of 1964)

The Explosives (Amendment) Ordinance, 1964.

(Ordinance No 30 of 1964)

The Labour Clauses in Public Contracts Ordinance, 1964.

(Ordinance No. 31 of 1964)

The Ministry of Social Security (Integration) Ordinance, 1964.

(Ordinance No. 32 of 1964)

The Old Age Pensions (Amendment) Ordinance, 1964.

(Ordinance No. 33 of 1964)

The Sugar Industry Reserve Funds (Amendment) Ordinance, 1964.

(Ordinance No. 34 of 1964)

The Ministry of Information, Posts and Telegraphs, and Telecommunications (Integration) Ordinance, 1964.

(Ordinance No. 35 of 1964)

By direction of His Excellency the Officer Administering the Government.

Chief Secretary's Office,
Port Louis,
31st October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

General Notice No. 1010 of 1964.

DECLARATION OF POST VACANT

His Excellency the Officer Administering the Government has declared vacant the post of Teacher, Government Schools, Ministry of Education, held by Miss Marie Lise Ramasamy who failed to return to Mauritius to resume duty on the expiry on the 17th March, 1964, of approved leave spent in Britain.

Chief Secretary's Office,
Port Louis,
26th October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

General Notice No. 1011 of 1964.

MAGISTRATE FOR LESSER DEPENDENCIES

(The Courts Ordinance (Cap. 168) as subsequently amended)

His Excellency the Officer Administering the Government, with the concurrence of the Honourable the Chief Justice, has been pleased to approve the following assignments :—

(1) The Lesser Dependencies to Mr. N. A. Abbasakoor, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting the Chagos Archipelago with effect from the date of departure of M. V. "Mauritius" on or about the 18th November, 1964, and

(2) The Lesser Dependencies to Mr. S. J. Forget, acting Magistrate for Mauritius and its Dependencies, for the purpose of visiting St. Brandon with effect from the departure of "La Perle II" on or about the middle of November, 1964.

Chief Secretary's Office,
Port Louis,
29th October, 1964.

A. S. ALLAN,
Acting Chief Secretary.

NISTRY OF EDUCATION

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Est

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eneral Notice No. 1013 of

MAURITIUS GOVE

ACANCIES FOR ASSISTANT S
THE GENERAL STO

Salary Scale : Rs 2,904
Age Limit : between
Closing date : 25th No

Qualifications :—

Either : A Cambridge Sc
in at least five
Language or
Elementary M
subjects.

Or : A London Gene
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Or : An acceptable al

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26th October, 1964.

Annex 15

General Notice No. 405 of 1965.

LEGAL SUPPLEMENT

The undermentioned Government Notices and Ordinance are published in the Legal Supplement to this number of the *Government Gazette* :—

Nationality and Passport Matters arising out of the Independence of The Gambia,
(Government Notice No. 22 of 1965)

The Wages Council (Printing Industry) Order, 1965.
(Government Notice No. 23 of 1965)

The Breweries (Amendment) Ordinance, 1965.
(Ordinance No. 2 of 1965)

By direction of His Excellency the Governor.

Chief Secretary's Office,
Port Louis,
30th April, 1965.

TOM VICKERS,
Chief Secretary.

General Notice No. 406 of 1965.

MAGISTRATE FOR THE LESSER DEPENDENCIES

His Excellency the Governor, after consultation with the Honourable Chief Justice, has been pleased to assign the Lesser Dependencies to Mr. R. Lallah, a District Magistrate for Mauritius and its Dependencies, as from the 19th April, 1965. This assignment is in addition to previous assignments made to him.

2. The assignment of the Lesser Dependencies to Mr. A. G. M. Ahmed published in General Notice No. 44, of 1964 lapses from the same date.

Chief Secretary's Office,
Port Louis,
23rd April, 1965.

TOM VICKERS,
Chief Secretary.

General Notice No. 407 of 1965.

MAURITIUS GOVERNMENT SERVICE

VACANCIES FOR TECHNICAL INSTRUCTORS TO TEACH:—
(a) METALWORK AND MACHINE WORKSHOP
(b) WOODWORK
AT THE JOHN KENNEDY COLLEGE IN THE MINISTRY OF EDUCATION AND CULTURAL AFFAIRS.

Salary Scale : Rs 9,000 to Rs 16,320.
Age Limit : Under 35 years—serving officers over 35 years of age may apply.
Closing Date : 4th June, 1965.

Qualifications :—

For the teaching of Metalwork and Machine Workshop

A full Technological City and Guilds Certificate in Machine Shop Engineering or equivalent qualifications. Candidates must have served an apprenticeship to the trade and have good experience subsequently in fitting and machine work. Previous teaching experience is desirable.

For the teaching of Woodwork

A full Technological City and Guilds Certificate in Carpentry and Joinery or equivalent qualifications. Candidates must have served an apprenticeship to the trade and must have good experience subsequently in this work. Previous teaching experience

For application forms and ot
person to the Establishment D
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Candidates in the United Kingd
Mauritius Students' Unit, 16, U
London, W. 1.

No consideration will be given
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Commission, 7, Louis Pasteur Stre

Establish
Chief

23rd April, 1965.

General Notice No. 408 of 1965.

MAURITIUS GOVERNMI

VACANCIES IN THE DEPARTMEN

Applications are invited for the
Department of Agriculture :—

(1) Four Stock Inspectors
(2) Five Assistant Agricultural C
(3) One Scientific Assistant (D
Services)
(4) Four Agricultural Cadets

Salary Scales :—

(a) For Stock Inspector, Assista
and Scientific Assistant — Rs
(b) (i) For Cadet possessing F
College of Agriculture — Rs 3
(ii) For Cadet possessing Hon
College of Agriculture — Rs 3
(iii) For Cadet possessing a U
addition to Pass Diploma or
the College of Agriculture — F

Age Limit :—

(a) For posts of Stock Inspector,
Officer and Scientific Assistar
35 years — serving officers o
may apply.
(b) For posts of Cadet — betwee
serving officers over 26 years o

Closing Date :—
20th May, 1965.

Qualifications :—

(a) For posts of Stock Inspector,
Officer and Scientific Assista
Diploma of the College of A
(b) For posts of Cadet :—
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an acceptable alternative
preference to candidates
Honours or Pass Diplom
Agriculture, possess a degr
in the United Kingdom o
Second preference to cand
not holders of a Universit
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For application forms and other d
to the Establishment Division of t
Office.

Annex 16

Mauritius (Constitution) Order in Council, 1958 (30 July 1958)

Amendment of section 4 of principal Order

2. Section 4 of the principal Order shall have effect as if—

(i) the words "or expedient" were inserted after the word "necessary";

(ii) for the full-stop at the end of paragraph (*b*) there were substituted a semi-colon followed by the word "and"; and

(iii) the following new paragraph were inserted at the end, that is to say—

"(*c*) otherwise for providing, maintaining or securing good government in Malta during any such period".

W. G. Agnew.

MAURITIUS

The Mauritius (Constitution) Order in Council, 1958

At the Court at Buckingham Palace, the 30th day of July, 1958

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

Introductory

Citation and commencement

1.—(1) This Order may be cited as the Mauritius (Constitution) Order in Council, 1958.

(2) This Order shall be published in the Gazette and, save as otherwise expressly provided in this Order, it shall come into operation on such day (hereinafter called "the appointed day") as the Governor, acting in his discretion, by Proclamation published in the Gazette shall appoint(a):

Provided that at any time after the making of this Order the boundaries of electoral districts may be fixed and electors may be registered in accordance with the provisions of sections 29, 30, 31 and 32 of this Order, and of any law enacted under the Mauritius (Electoral Provisions) Order in Council, 1958.

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

"the Colony" means the Island of Mauritius (including the small islands adjacent thereto) and the Dependencies of Mauritius;

"the Gazette" means the Government Gazette of the Colony;

"the Governor" means the Governor and Commander-in-Chief of the Colony and includes the officer for the time being adminis-

(a) Day appointed, 31.12.58.

Annex 16

tering the Government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy;

"law" includes any instrument having the force of law made in exercise of a power conferred by a law;

"Municipal Corporation" includes a Town Council;

"public office" means, subject to the provisions of subsection (3) of this section, an office of emolument under the Crown or an office of emolument under a Municipal Corporation within the Colony;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"the Public Seal" means the Public Seal of the Colony;

"the public service" means the service of the Crown in respect of the government of the Colony;

"session" means the sittings of the Legislative Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Legislative Council is sitting continuously without adjournment, and includes any period during which the Council is in committee;

"the Speaker" and "the Deputy Speaker" mean respectively the Speaker and the Deputy Speaker of the Legislative Council;

"the Supreme Court" means the Supreme Court of the Colony.

(2) Any reference in this Order to the holder of an office by the term designating his office includes, to the extent of his authority, any person who is for the time being authorized to perform the functions of that office.

(3) (*a*) For the purposes of this Order a person shall not be deemed to be a public officer by reason of receiving—

(i) any salary or allowance as Speaker, Deputy Speaker, Minister, Acting Minister or as a member of the Legislative Council;

(ii) any salary or allowance as Mayor, Chairman or a member of a Municipal Corporation, or as the Standing Counsel or the Attorney of a Municipal Corporation;

(iii) a pension or other like allowance in respect of service under the Crown or under a Municipal Corporation.

(*b*) A provision in any law in force in the Colony that an office shall be deemed not to be a public office for any of the purposes of this Order shall have effect as if it were included in this Order.

(4) References in this Order to Her Majesty's dominions shall be construed as if they were references to all countries or territories within the Commonwealth.

(5) For the purposes of this Order the resignation of a member of any body or holder of any office established by this Order that is required to be addressed to any person shall be deemed to have effect from the time at which it is received by that person:

Provided that a resignation (other than the resignation of the Deputy Speaker) that is required to be addressed to the Speaker shall, if the office of Speaker is vacant, or the Speaker is absent from the Colony, be deemed to have effect from the time at which it is received by the Deputy Speaker on behalf of the Speaker.

(6) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Order may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(7) Save as in this Order otherwise provided or required by the context, the Interpretation Act, 1889(a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Revocation

3. The Orders in Council mentioned in the First Schedule to this Order are revoked, but this revocation shall not prejudice anything lawfully done thereunder, and in particular shall not affect the continued operation of any law in force in the Colony immediately before the appointed day.

PART II

Executive Council

Executive Council

4.—(1) There shall be an Executive Council for the Colony which, subject to the provisions of section 10 of this Order, shall consist of three ex officio members and nine appointed members.

(2) The ex officio members and the appointed members shall be styled Ministers.

Functions of Executive Council and exercise of Governor's powers

5.—(1) The Executive Council shall be the principal instrument of policy and shall perform such functions and duties, and exercise such powers, as may from time to time be prescribed by or under this Order, any other Orders of Her Majesty in Council, any Instructions under Her Majesty's Sign Manual and Signet or, subject to the provisions of this Order and of such other Orders and Instructions as aforesaid, by any other law in force in the Colony.

(2) The Governor shall, save as is otherwise provided by this Order or by any Instructions under Her Majesty's Sign Manual and Signet,—

(*a*) consult with the Executive Council in the exercise of all powers conferred upon him by this Order other than powers which he is by this Order directed or empowered to exercise in his discretion; and

(*b*) act in accordance with the advice of the Executive Council in any matter on which he is by this subsection obliged to consult with the Executive Council.

Ex officio members

6. The ex officio members of the Executive Council shall be the Colonial Secretary, the Attorney-General and the Financial Secretary.

(a) 52 & 53 Vict. c. 63.

Annex 16

Appointed members

7.—(1) The appointed members of the Executive Council shall be persons who are elected or nominated members of the Legislative Council and shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State the appointment of any person to be a member of the Executive Council.

Tenure of office of appointed members

8.—(1) Subject to the provisions of this Order, an appointed member of the Executive Council shall hold office as such during Her Majesty's pleasure.

(2) An appointed member of the Executive Council shall vacate his office—

(*a*) when, after any dissolution of the Legislative Council, he is informed by the Governor that the Governor is about to reappoint him as a member of the Executive Council or to appoint another person in his place ; or

(*b*) if he ceases to be a member of the Legislative Council otherwise than by reason of a dissolution of that Council ; or

(*c*) if he resigns his office by writing under his hand addressed to the Governor ; or

(*d*) if he is absent from the Colony without written permission given by the Governor, acting in his discretion.

Determination of questions as to membership

9. Any question whether any person is a member of the Executive Council shall be determined by the Governor, acting in his discretion.

Temporary members of the Executive Council

10.—(1) Whenever an ex officio or an appointed member of the Executive Council is unable, because of his illness or absence from the Colony, to perform his functions as a member of the Council, the Governor, acting in his discretion, may, by Instrument under the Public Seal, appoint a person to be temporarily a member of the Council :

Provided that he shall appoint a person who is a public officer in place of an ex officio member, and a person who is an elected or nominated member of the Legislative Council in place of an appointed member.

(2) A person appointed under this section to be temporarily a member of the Executive Council—

(*a*) shall hold office as such during Her Majesty's pleasure ;

(*b*) shall cease to hold office as such when he is notified by the Governor that the member in whose place he was appointed is again able to perform the functions of his office, or when the office of the member in whose place he was appointed becomes vacant.

(3) The Governor shall forthwith report to a Secretary of State any appointment made under this section.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Executive Council—

(*a*) as they apply in relation to ex officio members, if he was appointed in place of such a member ; and

(*b*) as they apply in relation to appointed members, if he was appointed in place of such a member.

Official oath

11. Before entering upon the functions of his office every ex officio member and every appointed member of the Executive Council and every person appointed to be temporarily a member of the Council shall make and subscribe before the Governor, or some other person authorized in that behalf by the Governor, an oath for the due execution of that office in the following form : —

"I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of ..... So help me God ":

Provided that every person authorized by law to make an affirmation instead of an oath in legal proceedings may, instead of making the said oath, make an affirmation in like terms.

Summoning of Executive Council

12. The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion:

Provided that the Governor shall summon the Council if five or more members of the Council so request.

Proceedings in Executive Council

13.—(1) The Governor shall, so far as practicable, attend and preside at all meetings of the Executive Council, and in his absence such member as the Governor may either generally or specially appoint shall preside.

(2) No business shall be transacted at any meeting of the Executive Council if there are less than five members of the Council present at the meeting and any member present has objected to the transaction of business on that account.

(3) Subject to the last foregoing subsection, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part in those proceedings.

Assignment of departments

14.—(1) The Governor, acting in his discretion, may by directions in writing—

(*a*) charge any ex officio member of the Executive Council with the administration of any department or subject ;

(*b*) declare which departments or subjects may be assigned to members of the Executive Council other than ex officio members ; and

Annex 16

(*c*) revoke or vary any directions given under this subsection.

(2) The Governor may by directions in writing—

(*a*) charge any member of the Executive Council, other than an ex officio member, with the administration of any department or subject during such time as it shall be declared, under paragraph (*b*) of the foregoing subsection, to be a department or subject which may be assigned to members other than ex officio members; and

(*b*) revoke or vary any directions given under this subsection.

Leave of absence

15. The Governor, acting in his discretion, may grant leave of absence from his duties to any member of the Executive Council.

Commencement of Part II and transitional provisions

16.—(1) This Part shall come into operation on such day after the appointed day as the Governor, acting in his discretion, by Proclamation published in the Gazette shall appoint(a); and thereupon the Executive Council established by the Mauritius Letters Patent, 1947 and 1954, shall cease to exist.

(2) Whenever the Governor has occasion, before the commencement of this Part, to exercise any power conferred upon him by any other Part of this Order, then, unless the power is one which he is by this Order directed or empowered to exercise in his discretion, he shall, in the exercise of the power, consult with the said Executive Council in such circumstances, and on such conditions, as may be prescribed by such provisions as may at that time have effect, of the Instructions issued under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony and dated the 19th day of December, 1947, as amended by Additional Instructions dated the 22nd day of February, 1952.

PART III

Legislative Council

Legislative Council

17. There shall be a Legislative Council for the Colony which shall consist of a Speaker, three ex officio members, forty elected members and such nominated members, not exceeding twelve in number, as the Governor may, under the provisions of this Order, appoint.

The Speaker

18.—(1) The Speaker shall be a person who is not an ex officio, nominated, or elected member of the Legislative Council and who does not hold any public office, and shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal.

(2) The Speaker shall hold office during Her Majesty's pleasure and, subject thereto, for such period as may be specified in the Instrument by which he is appointed, and shall not vacate his office by reason of a dissolution of the Legislative Council:

Provided that the Speaker may, by writing under his hand addressed to the Governor, resign his office.

(a) Day appointed for commencement of Part II, 7. 3. 59.

(3) If the office of Speaker is vacant, or if the Speaker is absent from the Colony or for any other reason unable to perform the functions of his office, the Governor, acting in his discretion, may by Instrument under the Public Seal appoint a person to act as Speaker; and the provisions of this Order other than subsection (1) of this section shall apply in relation to that person as they apply in relation to the Speaker.

The Deputy Speaker

19.—(1) The Legislative Council shall—

(*a*) at its first sitting in every session, and

(*b*) at its first sitting after the occurrence of a vacancy in the office of Deputy Speaker,

or as soon thereafter as may be convenient, elect as Deputy Speaker of the Legislative Council one of its own members, who is not a member of the Executive Council.

(2) The Deputy Speaker shall, unless he earlier vacates his office under the provisions of this Order, hold office until some other person is elected as Deputy Speaker under paragraph (*a*) of the foregoing subsection.

(3) (*a*) A person shall vacate the office of Deputy Speaker—

(i) upon ceasing to be a member of the Legislative Council; or

(ii) upon becoming a member of the Executive Council.

(*b*) The Deputy Speaker may by writing under his hand addressed to the Speaker or, in the absence of the Speaker or if there is no Speaker, to the Clerk of the Legislative Council, resign his office.

(4) In any election of a Deputy Speaker under this section the votes of the members of the Legislative Council shall be given by ballot in such a manner as not to disclose how any particular member votes.

Ex officio members

20. The ex officio members of the Legislative Council shall be the Colonial Secretary, the Attorney-General and the Financial Secretary.

Elected members

21. The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Order and elected in the manner provided by any law enacted under the Mauritius (Electoral Provisions) Order in Council, 1958, or this Order.

Nominated members

22.—(1) Subject to the provisions of section 24 of this Order, the nominated members of the Legislative Council shall be British subjects of the age of twenty-one years or upwards and shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State every appointment of any person to be a nominated member of the Legislative Council.

Annex 16

Qualifications for elected membership

23. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Legislative Council if, and shall not be qualified to be so elected unless, he—

(*a*) is a British subject of the age of twenty-one years or upwards;

(*b*) has resided in the Colony for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(*c*) has resided in the Colony for a period of not less than six months immediately before the date of his nomination for election; and

(*d*) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Council.

Disqualifications for elected and nominated membership

24. No person shall be qualified to be elected or appointed a member of the Legislative Council who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) holds, or is acting in, any public office;

(*c*) (i) in the case of an elected member, is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Colony for or on account of the public service, and has not, within one month before the day of election, published in the English language in the Gazette and in a newspaper circulating in the electoral district for which he is a candidate a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company, therein; or

(ii) in the case of a nominated member, is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Colony for or on account of the public service, and has not disclosed to the Governor the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(*d*) has been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions and has not been discharged or has obtained the benefit of *cessio bonorum* in the Colony;

(*e*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Colony;

(*f*) is under sentence of death imposed on him by a court in any part of Her Majesty's dominions, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(*g*) in the case of an elected member, is disqualified for election by any law in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election ; or

(ii) any responsibility for the compilation or revision of any electoral register ; or

(*h*) is disqualified for membership of the Council by any law in force in the Colony relating to offences connected with elections.

Tenure of office of elected and nominated members

25.—(1) Subject to the provisions of this Order, a nominated member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) The seat of an elected or a nominated member of the Legislative Council shall become vacant—

(*a*) upon a dissolution of the Council ;

(*b*) if he resigns it by writing under his hand addressed, if he is an elected member, to the Speaker, or if he is a nominated member, to the Governor ;

(*c*) if, being an elected member, he is appointed as a nominated member of the Council or, being a nominated member, he is, with his consent, nominated as a candidate in any election of a member to the Council ;

(*d*) if he ceases to be a British subject ;

(*e*) if he becomes a party to any contract with the Government of the Colony for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to him to be just to do so, the Governor, acting in his discretion, may exempt any elected or nominated member from vacating his seat under the provisions of this paragraph, if such member, before becoming a party to such contract as aforesaid, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Governor the nature of such contract and his interest or the interest of any such firm or company therein ;

(*f*) if he ceases to be resident in the Colony ;

(*g*) if any of the circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election thereto by virtue of paragraph (*a*), (*b*), (*d*), (*e*), (*g*) or (*h*) of the last foregoing section ; or

(*h*) in the circumstances mentioned in the next following section.

Vacation of seat on sentence

26.—(1) Subject to the provisions of this section, if an elected or nominated member of the Legislative Council is sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment

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(by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the foregoing subsection, and he may again perform his functions as a member of the Council.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Determination of questions as to membership

27.—(1) Any question whether a person has been validly appointed as a nominated member of the Legislative Council or whether a nominated member of the Legislative Council has vacated his seat therein shall be determined by the Governor, acting in his discretion.

(2) Any question whether a person has been validly elected as a member of the Legislative Council, or whether an elected member of the Legislative Council has vacated his seat therein, shall be determined by the Supreme Court.

Temporary members of the Legislative Council

28.—(1) Whenever an ex officio or a nominated member of the Legislative Council is unable, because of his illness or absence from the Colony, to perform his functions as a member of the Council, the Governor, acting in his discretion, may by Instrument under the Public Seal appoint a person to be temporarily a member of the Council:

Provided that he shall appoint a person who is a public officer in place of an ex officio member, and a person qualified for appointment as a nominated member in place of a nominated member.

(2) A person appointed under this section to be temporarily a member of the Legislative Council—

(*a*) shall hold his seat in the Council during Her Majesty's pleasure;

(*b*) shall vacate his seat when he is notified by the Governor that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of the member in whose place he was appointed becomes vacant.

(3) The Governor shall forthwith report to a Secretary of State any appointment made under this section.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Legislative Council—

(*a*) as they apply in relation to ex officio members, if he was appointed in place of such a member; and

(*b*) as they apply in relation to nominated members, if he was appointed in place of such a member.

Electoral districts

29.—(1) For the purpose of electing members of the Legislative Council the Colony shall be divided into forty electoral districts, each of which shall return one member.

(2) The boundaries of each electoral district shall be fixed by the Governor by Proclamation published in the Gazette.

Qualifications of electors

30. Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector in one electoral district only, but he shall not be entitled to be registered as an elector unless he—

(*a*) is a British subject of the age of twenty-one years or upwards; and

(*b*) has resided in the Colony for a period of at least two years immediately before the date of registration or is domiciled in the Colony and is resident therein at that date; and

(*c*) has resided in the electoral district in which he claims to be registered for a period of at least six months immediately before the date of registration.

Disqualifications of electors

31. No person shall be entitled to be registered as an elector in any electoral district who—

(*a*) has been sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*b*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Colony; or

(*c*) is disqualified for registration as an elector by any law in force in the Colony relating to offences connected with elections.

Right to vote at elections

32.—(1) Any person who is registered as an elector in an electoral district shall, while so registered, be entitled to vote at any election for that district unless he is prohibited from so voting by any law in force in the Colony—

(*a*) because he is a returning officer; or

(*b*) because he has been concerned in any offence connected with elections.

(2) No person shall vote at any election for any electoral district who is not registered as an elector in that district.

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Law as to elections

33. Subject to the provisions of this Order, a law enacted under this Order may provide for the election of members of the Legislative Council, including (without prejudice to the generality of the foregoing power) the following matters, that is to say:—

(*a*) the qualifications and disqualifications of electors;

(*b*) the registration of electors;

(*c*) the ascertainment of the qualifications of electors and of candidates for election;

(*d*) the division of the Colony into electoral districts for the purpose of elections;

(*e*) the holding of elections;

(*f*) the determination of any question which may arise as to whether any person has been validly elected a member of the Legislative Council or as to whether the seat of any elected member in the Legislative Council has become vacant;

(*g*) the definition and trial of offences relating to elections and the imposition of penalties therefor, including disqualification for membership of the Legislative Council, or for registration as an elector, or for voting at elections, of any person concerned in any such offence; and

(*h*) the disqualification for election as members of the Legislative Council of persons holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

PART IV

Legislation and Procedure in Legislative Council

Power to make laws

34. Subject to the provisions of this Order, the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Colony.

Royal Instructions

35. Subject to the provisions of this Order, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

Standing Orders

36.—(1) Subject to the provisions of this Order and of any Instructions under Her Majesty's Sign Manual and Signet, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for assent; but no such Standing Orders shall have effect unless they have been approved by the Governor, acting in his discretion.

(2) The first Standing Orders of the Legislative Council shall, subject to the provisions of this Order, be the Standing Orders of the Legislative Council constituted under the Mauritius (Legislative Council) Orders in Council, 1947 to 1958, and in force at the time of the revocation of those Orders, and may be amended or revoked by the Council under the foregoing subsection.

Official language

37. The official language of the Legislative Council shall be English but any member may address the chair in French.

Presiding in Legislative Council

38. The Speaker, or in his absence the Deputy Speaker, or in their absence a member of the Legislative Council (not being a member of the Executive Council) elected by the Legislative Council for the sitting, shall preside at any sitting of the Council.

Legislative Council may transact business notwithstanding vacancies

39. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Council or otherwise took part in those proceedings.

Quorum

40.—(1) If at any sitting of the Legislative Council a quorum is not present and any member of the Council who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Council.

(2) For the purposes of this section a quorum shall consist of sixteen members of the Legislative Council in addition to the person presiding.

Voting

41.—(1) Save as otherwise provided in this Order, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting, and if, upon any question before the Council, the votes of the members are equally divided the motion shall be lost.

(2) (*a*) The Speaker shall have neither an original nor a casting vote; and

(*b*) any other person, including the Deputy Speaker, shall, when presiding in the Legislative Council, have an original vote but no casting vote.

Introduction of Bills

42.—(1) Subject to the provisions of this Order and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Orders of the Council.

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(2) Except on the recommendation or with the consent of the Governor the Legislative Council shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Colony or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to the Colony;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision should be made for any of the purposes aforesaid; or

(*c*) receive any petition which, in the opinion of the person presiding in the Council, requests that provision be made for any of the purposes aforesaid.

Governor's reserved power

43.—(1) If the Governor considers that it is expedient in the interest of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Council fail to pass such Bill or to carry such motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Order or of any Standing Orders of the Council, declare that such Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was so introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Council, including any committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefor.

(3) If any member of the Legislative Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall cause notice of such revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

(5) The powers conferred on the Governor by this section shall be exercised by him in his discretion.

Assent to Bills

44.—(1) A Bill shall not become a law until—

(*a*) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent, or

(*b*) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified such assent by Proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, acting in his discretion but subject to the provisions of this Order and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure :

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

(*a*) any Bill by which any provision of this Order is revoked or amended or which is in any way repugnant to, or inconsistent with, the provisions of this Order ; and

(*b*) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Council or of its members ;

unless he has been authorized by a Secretary of State to assent to it.

Disallowance of laws

45.—(1) Any law to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of the publication of that notice.

(3) The provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply in relation to the annulment of any law under this section as they apply in relation to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Oath of allegiance

46.—(1) Subject to the provisions of this section, no member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath of allegiance in the following form :—

"I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God."

(2) If, between the time when a person becomes a member of the Legislative Council and the time when the Council next sits thereafter a meeting takes place of any committee of the Council of which such person is a member, such person may, in order to enable him to attend

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the meeting and take part in the proceedings of the committee, make and subscribe the oath of allegiance before a judge of the Supreme Court; and the making and subscribing of the oath in such manner shall suffice for all the purposes of this section.

In any such case the judge shall forthwith report to the Council through the Speaker or, as occasion may require, through the Deputy Speaker that the person in question has made and subscribed the oath of allegiance before him.

(3) For the purposes of this section, every person authorized by law to make an affirmation instead of an oath in legal proceedings may, instead of making the oath mentioned in the foregoing subsection, make an affirmation in like terms.

Privileges of Legislative Council and members

47. A law enacted under this Order may determine and regulate the privileges, immunities and powers of the Legislative Council and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the members thereof.

Sessions

48.—(1) Subject to the provisions of this Order, the sessions of the Legislative Council shall be held in such place and begin at such time as the Governor by Proclamation published in the Gazette may appoint.

(2) The first session of the Legislative Council shall begin within twelve months after the appointed day; and thereafter a session of the Council shall be held from time to time so that a period of twelve months shall not intervene between the date when the Council last sat in one session and the date appointed for its first sitting in the next session.

Prorogation and dissolution

49.—(1) The Governor may at any time, by Proclamation published in the Gazette, prorogue or dissolve the Legislative Council.

(2) The Governor shall dissolve the Legislative Council at the expiration of five years from the date when the Council first meets after any general election unless it has been sooner dissolved.

General elections

50. There shall be a general election at such time within three months after the appointed day, and thereafter within three months after every dissolution of the Legislative Council, as the Governor by Proclamation published in the Gazette shall appoint.

PART V

The Public Service

Appointments etc. of officers in public service

51.—(1) Power to make appointments to offices in the public service including appointments on promotion and transfer) and to dismiss nd to exercise disciplinary control over officers in that service shall st in the Governor.

(2) (*a*) Subject to the provisions of paragraph (*b*) of this subsection, e Governor may delegate, in such manner and on such conditions as

he may think fit, to any officer in the public service any of the powers conferred on the Governor by the foregoing subsection.

(*b*) The Governor shall not—

(i) delegate any such power unless he has obtained the consent of a Secretary of State to such delegation; or

(ii) delegate any such power with respect to officers whose annual emoluments exceed such sum as may be prescribed by a Secretary of State.

(*c*) For the purposes of this subsection the emoluments of an officer shall (whether or not he is employed on terms that include eligibility for pension) include only such emoluments as, under the law for the time being in force relating to pensions, are taken into account in computing pensions.

(3) If any law in force in the Colony immediately before the appointed day confers on any officer in the public service any power to appoint, promote, transfer, dismiss, or exercise disciplinary control over, other officers in the public service, that power shall be deemed to have been delegated to that officer by the Governor under the last foregoing subsection, and shall be exercisable by that officer until it is revoked by the Governor or until the provision conferring it has been repealed or revoked.

Public Service Commission

52.—(1) There shall be for the Colony a Public Service Commission (in this Part referred to as "the Commission") which shall consist of a chairman and such number of other members as may be prescribed by any law enacted in pursuance of subsection (1) of section 54 of this Order.

(2) The chairman and other members of the Commission shall be appointed by the Governor, acting in his discretion.

(3) The Governor, acting in his discretion, may revoke the appointment of the chairman or any other member of the Commission.

(4) No person shall be appointed as a member of the Commission if he is a member of the Legislative Council and, if any member of the Commission becomes a member of the Legislative Council, his appointment as a member of the Commission shall thereupon be deemed to be revoked.

Public Service Commission to advise Governor

53.—(1) The Governor may, either generally or specially and in whatever manner he thinks fit, refer to the Commission for its advice any matter relating to the appointment of any person to an office in the public service, or the dismissal or disciplinary control of officers in the public service, or any other matter that, in his opinion, affects the public service.

(2) It shall be the duty of the Commission to advise the Governor on any question that he refers to it under this section, but the Governor shall not be obliged to act in accordance with its advice.

Laws relating to Public Service Commission

54.—(1) Subject to the provisions of this Order, any law enacted under this Order may provide for all or any of the following matters:—

(*a*) the number, tenure of office and terms of service of members of the Commission;

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(*b*) the organization of the work of the Commission and the manner in which it shall perform its functions;

(*c*) grounds of disqualification for membership of the Commission;

(*d*) consultation by the Commission with persons other than members of the Commission;

(*e*) the appointment, tenure of office and terms of service of staff to assist the Commission in performing its functions;

(*f*) the delegation to any member of the Commission of all or any of the powers and duties of the Commission;

(*g*) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences.

(2) Any law in force in the Colony immediately before the appointed day which provides for any of the matters mentioned in the foregoing subsection shall, in so far as it is not inconsistent with the provisions of this section, be deemed for the purposes of this section to have been enacted under this Order.

Exclusion of judges

55. References in this Part to officers in the public service do not include judges of the Supreme Court or any person appointed to be temporarily a judge of that Court.

PART VI

Judges

Retirement and resignation of judges

56.—(1) Subject to the provisions of this Part; a judge of the Supreme Court shall hold office until he attains the age of sixty-two years:

Provided that the Governor, acting in his discretion, may permit a judge to continue in office beyond the age of sixty-two years for a period which does not exceed, or for consecutive periods which do not in the aggregate exceed, three years.

(2) A judge of the Supreme Court may at any time resign his office by writing under his hand addressed to the Governor.

(3) No office of judge of the Supreme Court shall be abolished while there is a substantive holder of that office.

Removal of judges

57.—(1) A judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with the next following subsection.

(2) A judge of the Supreme Court shall be removed from office by the Governor by Order under the Public Seal if the question of removing him from office has, at the request of the Governor, made in pursuance of the next following subsection, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of

the Judicial Committee Act, 1833(a), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(3) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then

(*a*) the Governor shall by Order under the Public Seal (which he may vary or revoke by another such Order) appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions or a court having jurisdiction in appeals from any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Governor shall request that the question should be referred accordingly.

(4) Subject to the provisions of the last foregoing subsection, the provisions of the Commissions of Inquiry Ordinance(b), as in force on the appointed day, shall apply in relation to a tribunal appointed by an Order made under that subsection as if they were commissioners appointed by a commission issued under the Ordinance, and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(5) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (3) of this section the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor that he should not request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(6) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

(7) This section shall apply to any person appointed to be temporarily a judge of the Supreme Court as it applies to a substantive holder of the office of judge of the Supreme Court, but without prejudice to the provisions of section 6 of the Courts Ordinance(c), as enacted by the Courts (Amendment) Ordinance, 1954(d), or to any other provision made by any law for the time being in force in the Colony for the termination of the appointment of such a person at the end of a

(a) 3 & 4 Will. 4. c. 41. (b) Revised Mauritius Ordinances, 1945, cap. 286.
(c) Revised Mauritius Ordinances, 1945, cap. 168. (d) Ordinance No. 12 of 1954.

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particular period or when his services as a temporary judge of the Supreme Court are no longer required.

Salaries and conditions of service

58.—(1) There shall be charged on the revenues of the Colony and paid thereout to judges of the Supreme Court, and to any person appointed to be temporarily a judge of that Court, such salaries as may be prescribed by any law in force in the Colony.

(2) The salary of a judge of the Supreme Court, or of any person appointed to be temporarily a judge of that Court, shall not be reduced, nor shall his pension rights and other conditions of service be made less favourable to him after his appointment; and, for the purpose of this subsection, if he elects that one of two or more laws shall apply to him, that law shall be deemed to be more favourable than the other law or laws.

(3) Nothing in this section shall prevent the reduction, if the cost of living falls, of a cost of living allowance payable to a judge of the Supreme Court, or to any person appointed to be temporarily a judge of that Court.

PART VII

Miscellaneous

Penalty for sitting or voting in Legislative Council when unqualified

59.—(1) Any person who sits or votes in the Legislative Council knowing or having reasonable ground for knowing that he is not entitled to do so shall be liable to a penalty not exceeding five hundred rupees for each day upon which he so sits or votes.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit of the Attorney-General.

Provisions to give effect to Order

60.—(1) At any time before the appointed day the legislature established by the Mauritius (Legislative Council) Orders in Council, 1947 to 1958, may, by laws enacted under those Orders, make such provision as appears to them to be necessary or expedient for the purpose of bringing any Ordinance in force in the Colony immediately before the appointed day into accord with the provisions of this Order or otherwise for giving effect, or enabling effect to be given, to those provisions; but no such law shall come into operation before the appointed day.

(2) This section shall come into operation forthwith.

Emoluments

61.—(1) The Governor and the other officers mentioned in the Second Schedule to this Order shall receive emoluments at the annual rates respectively specified in that Schedule; and the sums necessary to defray the cost of those emoluments are hereby charged on the revenues of the Colony, and shall be paid thereout by the Accountant-General upon warrant directed to him under the hand of the Governor.

(2) Nothing in this section shall prevent the payment to the Governor or any other officer of any additional sums for which provision may be made from time to time.

Removal of difficulties

62.—(1) If any difficulty arises in bringing into operation any of the provisions of this Order or in giving effect to the purposes thereof, a Secretary of State may, by Order, make such provision as seems to him to be necessary or expedient for the purpose of removing the difficulty and may by such Order amend or add to any provision of this Order:

Provided that no Order shall be made under this section later than twelve months after the appointed day.

(2) Any Order made under this section may be amended, added to or revoked by a further Order, and may be given retrospective effect to a date not earlier than the date of this Order.

(3) This section shall come into operation forthwith.

Power reserved to Her Majesty

63.—(1) Her Majesty hereby reserves to Herself, Her Heirs and Successors power, with the advice of Her or Their Privy Council, to amend, add to or revoke this Order as to Her or Them shall seem fit.

(2) Nothing in this Order shall affect the power of Her Majesty in Council to make laws from time to time for the peace, order and good government of the Colony.

W. G. Agnew.

FIRST SCHEDULE Section 3

The Mauritius (Legislative Council) Order in Council, 1947(a).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1950(b).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1951(c).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1952(d).
The Mauritius (Legislative Council) (Amendment) (No. 2) Order in Council, 1952(e).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1953(f).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1956(g).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1957(h).
The Mauritius (Legislative Council) (Amendment) Order in Council, 1958.
The Mauritius (Electoral Provisions) Order in Council, 1958.

SECOND SCHEDULE Section 61

	Annual rate of emoluments.
Governor	Rupees 55,000 salary and Rupees 20,000 duty allowance.
Other Officer for the time being Administering the Government.	Rupees 49,500 salary and Rupees 20,000 duty allowance.
Colonial Secretary	Rupees 40,000 salary.
Attorney-General	Rupees 36,000 salary.
Financial Secretary	Rupees 36,000 salary.
Speaker	Rupees 30,600.

(a) Rev. XIII, p. 277; S.R. & O. 1947 I, p. 2736. (b) S.I. 1950 II, p. 1546.
(c) S.I. 1951 II, p. 1416. (d) S.I. 1952 III, p. 3992. (e) S.I. 1952 III, p. 3993.
(f) S.I. 1953 II, p. 2799. (g) S.I. 1956 II, p. 3031. (h) S.I. 1957 II, p. 3081.

Annex 16

The Mauritius (Constitution) (Amendment) Order in Council, 1958

At the Court at Buckingham Palace, the 19th day of December, 1958

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation, and commencement

1.—(1) This Order may be cited as the Mauritius (Constitution) (Amendment) Order in Council, 1958, and the Mauritius (Constitution) Order in Council, 1958(a) (hereinafter referred to as "the principal Order") and this Order may be cited together as the Mauritius (Constitution) Orders in Council, 1958.

(2) This Order shall come into operation forthwith and shall be published in the Government Gazette of Mauritius.

Sidenote to section 2 of principal order

2. In the margin of section 2 of the principal Order the word "Interpretation" is inserted as a sidenote.

Amendment of principal Order

3. Subsection (2) of section 16 of the principal Order is amended by substituting for the words "February, 1952." the words "February, 1952, and the 1st day of April, 1958.".

4. Part V of the principal Order is amended—

(*a*) by inserting as subsection (4) of section 51:—

"(4) The powers conferred upon the Governor by this section shall be exercised by him in his discretion."; and

(*b*) by substituting, in subsection (1) of section 53, for the words "The Governor" the words "The Governor, acting in his discretion.".

W. G. Agnew.

ADDITIONAL INSTRUCTIONS passed under the Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Mauritius.

Dated 1st April, 1958.

ELIZABETH R.

ADDITIONAL INSTRUCTIONS to Our Governor and Commander-in-Chief in and over Our Colony of Mauritius, or other Officer for the time being Administering the Government of Our said Colony.

Whereas We are minded further to amend the Instructions under the Royal Sign Manual and Signet dated the nineteenth day of December,

(a) *See* Pt. II, p. 2914, of this volume.

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Alfred J. E. Orian, Department of Agriculture, Mauritius, *Report on a Visit to Diego Garcia* (9-14 Oct. 1958)

REPORT ON A VISIT TO DIEGO GARCIA

by

ALFRED J. E. ORIAN,

Assistant Entomologist — Department of Agriculture, Mauritius

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I — INTRODUCTION

The writer left Mauritius per M. V. "SIR JULES" on the 1st October 1958 and reached Diego Garcia on the morning of the 9th. The "SIR JULES" left for Peros Banhos and Salomon, returning a few days later. The writer spent altogether 6 days in the island which he left on the 15th, arriving in Mauritius on the 23rd.

II — DIEGO GARCIA : SITUATION, TOPOGRAPHY AND CLIMATE

Diego Garcia is the southernmost atoll of the Chagos Group, which is situated between the parallels of 4°44'S. and 7°41'S. and the meridians of 70°47'E. and 72°52'E., about midway between Ceylon and Mauritius. It is the most important island of the Archipelago ; its distance from Mauritius is 1,174 miles in a north-easterly direction. It is a typical atoll made up of a narrow ribbon of land varying in width from 30 yards to 1¼ mile and almost completely encircling a vast V-shaped lagoon opening to the ocean towards the north-west. Three small islands lie across the mouth of the lagoon, which is itself 13 miles long and 4 to 6 miles broad ; they are known by the names of West (1), Middle and East Islands (2).

Diego Garcia covers an area of about 6,000 acres ; the land is subject to alterations, being at times washed away in one part and raised at another. The whole of the land composing the atoll is very low ; the highest point being only 30 feet above high tide level and the general elevation 3 to 5 feet, so that the island appears to rise just above the waves. It is surrounded by reefs — the outer or seaward shore being higher than the inner or lagoon shore. Swamps formed by the sea or back-waters are fairly extensive in places. The strong tidal currents cause considerable beach erosion.

The nature of the soil varies a great deal from place to place consisting in some localities of bare coral rock while in others it is made up of calcareous sand and no coral. Also some parts of the land are older than others : these older parts have apparently been covered by vegetation for a considerable period for there is a thick peaty mould lying on the surface. According to Bourne, who visited the island in 1885, "the great strip of land which constitutes Diego" was formerly a series of disconnected islets which have since joined together by the accumulation of sand and coral debris between them. Deposits of guano occur here and there mixed with sand and marine shells or organic matter.

Diego Garcia was discovered by the Portuguese in the XVth century. It is named after two famous navigators of the same nationality :

(1) Or Bird Island or Isle Majaz.

(2) Or Isle Grand'Barbe — the largest of the three ; it is 800 yards long and nearly 100 yards broad.

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DIEGO DIAZ and GARCIA DE NORONHA. When first discovered, it was already covered by a luxuriant vegetation of coconut palms, of tatamaka (*Calophyllum inophyllum* L.), of bois blanc (*Hernandia peltata* Meissn), and of gayac (*Intsia bijuba* O. Ktze). The whole island is now devoted to the cultivation of the coconut, but its central part " was evidently at one time a large garden for taro : *Calocasia antiquorum* Schott " (3) (Plate II).

Before the piercing of the Suez Canal, Diego Garcia was a coaling station for ships going to Australia from Aden and back while earlier still it was a safe shelter for 17th and 18th century privateers. It was visited in August 1914 by the famous German battleship " EMDEN ". As there was no wireless in those days, the population, ignorant of the outbreak of war, allowed the ship to load its full complement of fuel and fresh food... only to learn of hostilities between Britain and Germany from a British destroyer 24 hours after the Emden had left. During the last war it was one of the bases held by the R.A.F. and R.A. in the Indian Ocean.

The Archipelago lies on the southern limit of the North-west monsoon and winds at that season are from N.E. through N.W. to West. The S.E. trade wind prevails from April to October, blowing with persistence from June to September. Fortunately a natural windbreak is provided by the almost unbroken zone of *Scaevola frutescens* Krause (Bois manioc), *Thespesia populnea* Soland, and of *Tournefortia argentea*, L. (Veloutier). Calms are very rare and cyclones do not occur. The climate is typically equatorial ; the temperature varies little throughout the year and rarely exceeds 32°C or falls below 22°C. The weather is coolest when the S.E. Trade Wind is at its strongest. The dry season lasts from June to September and the wet season from October to March. The rainfall is high with fairly great variations. In 1957 it was 128 inches and this year (September 1957 — August, 1958) it dropped to 88.5 inches.

High rainfall and temperature, absence of cyclones and a constant supply of soil water can easily explain the dense vegetation which is to be found everywhere except where the soil conditions constitute a limiting factor. These conditions are responsible for the absence of a distinct flowering season and for the gigantic size of many native and cultivated trees (Wiehe 1939). The atoll is covered with luxuriant vegetation of bright green colour and is fringed by pure white sandy beaches. In places the tree-line is 125 feet high, while clumps of *Casuarina equisetifolia* Forst., reach 80 feet or more.

III — THE COCONUT PLANTATIONS AND THE COCONUT INDUSTRY

The main industry of the island is the production of copra ; this is exported to Mauritius where oil is extracted and the press-cake or poo-

(3) Taro : *songe creole*. It is called " Via " in Diego. However, the plant called " Via " in Mauritius is different and its scientific name is *Typhonodorum lindleyanum* Schott — a giant arum.

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Plate II — A plantation underplanted with seedlings *Cola acuminata* in foreground.

Plate III. — Group of palms dying from rhinoceros beetle attack.

nac is valuable when added to poultry feed mixtures. Some guano is also exported. Table I summarises the island's production.

TABLE I

Year	No. of nuts collected	Weight in tons of copra exported to Mauritius	Weight of copra used for Diego edible oil requirements	Remarks
1957	4,817,000	590	34 tons	In addition 16,000 nuts were used in seedling production
1958	4,514,000	558	36 ,,	This is equivalent to 26,520 bottles of oil

This year's guano production amounted to 1,425 tons. In addition 800 tons are in stock at Diego.

NATURAL AND ARTIFICIAL GROVES

The coconut groves are nearly all natural plantations which are very old; as a result yields are going down. In places the palms are intermingled with trees and other dense undergrowth on which grow epiphytic ferns, such as *Asplenium nidus* L. (an edible species commonly called " langue de vache "), while at their base and on the ground are thick tufts of *Psilotum triquetrum* Sw. thus forming an inextricable jungle. Owing to the dense foliage and the very low light intensity resulting therefrom, the palms are sometimes bent, with spirally twisted trunks.

A tremendous effort in replanting has been made in the past few years and regular plantations of the palm are now to be found e.g. at Nordest, East Point and Carcasse.

In striking contrast with the compact undergrowth of the natural groves, the vegetation of artificial groves changes to creeping plants associated with noxious weeds such as *Tridax procumbens* L. (Herbe caille), *Fimbrystilis spathacea* Rath. (Herbe malgache), *Bryophyllum pinnatum* Kurze (Soudefafe), *Stachytarpheta indica* Vahl (Queue de rat), *Achyrantes aspera* L. (Herbe sergent), *Stenotaphrum dimidiatum* (4) Bronqn. (Chiendent bourrique), *Bidens pilosa* L. (Villebague), *Ageratum conyzoides* L. (Herbe bouc), *Boerhaavia diffusa* L. (Liane nina), *Portulaca oleracea* L. (Purslane, pourpier), *Passiflora suberosa* L. (Liane poc-poc)

(4) In many places this grass suffers from " chlorosis " probably due to some mineral deficiency.

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and the ubiquitous shrub *Morinda citrifolia* L. (Bois tortue). Plants making up the beach community are frequently parasitized by *Cassytha filiformis* L. (Liane sans fin).

A large number of nuts are lost through germination. In the past, planting was only carried out to replace dead trees, and small holes were made in which self-sown seedlings removed with a hoe were planted (hence the name " coco-pioche "). This practice has disappeared altogether and large holes are now dug (3—7' diameter and from 4-10' deep according to the water table) and the hard pan underlying the surface is thoroughly broken. The establishment of seedlings is therefore not as slow as before and better trees result. Selection of seedlings, however, is not effected in nurseries. Nor is manuring of established plantations practised. It might be advantageous to use some of the lower grade guano to improve the soil in deficient areas. The only manuring is at planting time in the hole dug which is filled with organic matter and ash from burnt coir and coconut leaves.

Weeding is an important problem and is done by hand : gangs of labourers simply cutting down and burning the undergrowth from which some charcoal is made at the same time. Weed-killers are not used ; should such be employed great care should be exercised to prevent injury to the coconut trees. A flame thrower might perhaps be used where *Bryophyllum* (soudefafe) is plentiful.

Ripe nuts are allowed to fall on the ground ; these are collected weekly and the husks removed. Formerly the husks instead of being burnt were stacked round the trunks of the palms up to a height of 3-4 feet. This practice favoured the development of the rhinoceros beetle and also of adventitious roots along the trunk (Plate IV). The de-husked nuts are transported in donkey-drawn carts and the meat is dried in the copra-kilns at East Point. Formerly the kernels were broken and the meat then spread on drying platforms with sliding corrugated iron roofs. Sun drying has sometimes to be resorted to, but it is altogether an unsatisfactory operation for should rain occur the wet copra does not keep and becomes rancid and mouldy. It is also more readily attacked by the copra beetle (*Necrobia rufipes* Deg.) (5) than kiln-dried copra.

Owing to the small size of the nuts, about 8,000 to 8,500 nuts are required for 1 ton of copra.

INSECT ENEMIES OF THE COCONUT PALM

About 800 insects have been recorded throughout the world on the coconut palm. Of these, nearly 25% are specific to the genus *Cocos*. Only about half a dozen have so far gained access to Diego. Top of the list comes the rhinoceros beetle.

(5) COLEOPTERA : Family Corynetidae (Cleridae). It is a small metallic blue beetle with reddish legs measuring 3.5 mm to 6 mm. in length.

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The following is a list of coconut pests in Diego :—

TABLE II

Pests	Insect Order	Notes
(1) *Oryctes rhinoceros* L.	Coleoptera : Scarabaeidae	Commonly called the rhinoceros beetle
(2) *Aspidiotus destructor* Sign.	Hemiptera: Coccoidea-Diaspidae	The coconut scale
(3) *Chrysomphalus ficus* Ashm.	— do —	A round flat scale
(4) *Pseudococcus adonidum* L.	Hemiptera : Pseudococcidae	A white fluffy mealy bug
(5) *Pseudococcus* sp.	— do —	— do —

Aspidiotus destructor Sign.

This is the widespread coconut scale. It is a Diaspine coccid which also attacks a wide range of plants, including the banana, mango, papaw, avocado, breadfruit and *Barringtonia* sp. (Bonnet de prêtre). This leaf pest is covered by a flat delicate waxy and semi-transparent scale. The male scales have an oval outline, the female scales are circular. The eggs hatch under the scale and the larvae crawl out slowly in search of a suitable place to fix themselves by inserting their rostra into the leaf. The spread takes place in a number of ways : human agency (coconut leaf baskets), insects, birds and wind. *Chilocorus nigritus* F., a coccinellid beetle or lady bird introduced earlier from Mauritius was recovered but was present in insufficient numbers to check the scale. Thus, at Nordest a number of young coconut palms were severely attacked. The young fronds showed pronounced yellow and brown dying leaflets. The scales were so numerous as to form a continuous light brown crust on the undersurface of the entire fronds. There are indications that a few palms have been killed by this scale and not by the rhinoceros beetle.

It is suggested that new importations of *C. nigritus* be made from Mauritius. Another coccinellid *Cryptognatha nodiceps* Muls. present in Trinidad and Fiji could also be tried as its introduction into the latter islands was very successful against *Aspidiotus*.

It may be mentioned that the following ladybirds also prey upon *Aspidiotus* : — *Scymnus oblongosignatus* Muls., *Scymnus* sp. *Scymnomor-*

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phus sp., *Lindorus lophanthae* Blaisd., *Exochomus laeviusculus* Wse., *Chilochorus politus* Muls. As these occur in Mauritius, it is also suggested that one or more of these insects be introduced into Diego for trial. An alternative control measure on small palms is to use a 0.2% malathion solution followed by an application of parathion, but as these substances are organophosphorus chemicals, they can only be used under expert guidance.

Chrysomphalus ficus Ashm. is another Diaspine coccid present in Diego Garcia. It is a round flat scale which can be controlled by coccinellids or by chemical treatment.

Pseudococcus spp.

These mealy bugs are common everywhere and are tended by ants; more commonly by *Technomyrmex detorquens* Wik. The ants intensify the attacks by carrying the young stages from leaf to leaf and palm to palm and warding off parasitic and predaceous insects. To keep the ants off, monthly sprayings with 0.5% chlordane might be made, when no other treatment of the palms is necessary.

Acarina

In a number of cases the palms showed signs of attack apparently by a mite; but in spite of repeated searches, the mite *Raoiella indica* Hirst was not encountered during the author's inspections of the groves. This does not rule out its presence in the island and investigations at other periods of the year would be necessary to find out whether it is present or not.

DISEASES OF THE COCONUT PALM

The author ventures to make the following remarks on some diseases of the coconut palm which he observed during his visit: *Bud rot*, *Stem rot* and *Stem bleeding disease*, *Yellowing*, *Leaf spot*, *Quick tapering* and *Premature nutfall*.

Bud-rot — This disease fortunately is not very common. A few cases were seen at East Point, at Cimetière "Zenfan", and at Noroit. The attacked trees which are growing on unsuitable soil, seem also to have been adversely affected by strong winds. The only control measure advocated if the disease develops in epidemic proportion is burning down of affected trees.

Stem-rot and Stem bleeding — This occurs throughout the island. The symptoms are fairly easy to detect and are characterized by the formation of drops of brown ooze from the bark which is cracked in a number of places, and of reddish-brown or dark streaks along the stem. The pathogen is a fungus *Ceratostomella paradoxa* (de Seynes) Dade. In advanced cases of the disease, large cavities appear inside the stem.

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(Plate IV, trunk above abnormal roots). More than a score of heavily affected trees were counted in different places. Although the vigour of the palms is obviously impaired as a result of this disease, crops of nuts were present in all cases encountered.

The diseases known as "knife-cut" and "little leaf" were not seen although in one case large gashes were found on a palm, but it was difficult to decide whether the effects were due to human agency or to natural causes.

Yellowing — Pronounced leaf yellowing is common at a number of places. Sometimes it is restricted to occasional trees, at other times a fairly large area is affected, as for example at Carcasse, Verger, Canoterie, Aux puits. As pointed out already the mite *Raoiella* was not encountered in the island ; the yellowing might be of pathological nature or be due to some unfavourable soil condition. A soil survey or possibly a study of soil profiles only might throw light on the problem.

Leaf spot caused by *Pestalozzia palmarum* Cke. is of extremely frequent occurrence resulting sometimes in a severe blight on young seedlings.

Tapering stem wilt or pencil point disease — In some areas the palms are apparently affected by a disease which involves rapid shrinkage in diameter, barrenness and yellowing of the tips. In advanced cases the decrease in leaf area and in stem diameter is such that the crown fails to produce leaves and dies (Plate V).

Premature nutfall — The fall of immature nuts (button nuts) within 2 months of the emergence of the spadix is a normal phenomenon. At a later stage when the endosperm of the fruit is just being formed nutfall must be attributed to insect attack or to some other adverse factor. It is known that attacks of the bug *Amblypelta cocophaga* China in some countries (e.g. British Solomon Islands Protectorate) leads to premature fruit fall, but as neither this insect nor any allied form was encountered, the cause of the trouble must be looked for elsewhere. In any case large losses of potential crop result and the problem deserves closer attention as in some areas a considerable number of trees are non-bearing.

Lightning injury

A number of trees were found with the dead leaves still attached to the crown ; as their death could not be attributed to commonly occurring causes, it is possible that they had been struck by lightning. These trees decay rapidly and serve as breeding ground for the rhinoceros beetle.

The Rat Problem

The rat problem at Diego is comparable in magnitude to the

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ravages of the rhinoceros beetle. According to observations and calculations an increase of more than ¼ of the nuts collected could be obtained were it not for destruction by rats.

An abstract from Charles Regnaud's book on the coconut (6) concerning damage to coconuts by rats is worth quoting as it explains the nature of the injury caused by this pest:—

> « Il y a 240 ans que Pyrard écrivait : « Les rats ne s'attaquent qu'à ceux qui sont encore verts (les fruits), à cause que les secs sont trop durs à ronger, point que ces animaux désirent principalement d'en boire l'eau et ont cette industrie de faire un trou par dessus, de peur que l'eau ne se répande, et font ce trou de leur même grosseur, afin qu'ils puissent entrer dedans pour boire et manger ; et quand ce fruit n'a plus de substance dedans, il s'empire et tombe de telle sorte qu'aux îles non peuplées la terre en est couverte.....
>
> Ces petits quadrupèdes n'ont pas changé de mœurs, depuis l'époque où Pyrard a signalé leurs dévastations. Ils pullulent encore dans toutes les îles où sont répandus les cocotiers... Le plus souvent, les rats entament le coco tout autour du point où il adhère à son calice persistant, en cet endroit le fruit est très tendre : aussi ont-ils bientôt atteint la noix, qui n'a pas encore atteint la dureté qu'elle doit offrir plus tard et fait leurs délices de la crème et de l'eau qu'elle contient. Chose assez singulière, les rats s'attaquent indifféremment aux cocos encore très jeunes, ou à ceux qui ont déjà acquis toute leur grosseur : ils creusent même ceux qui ne sont pas plus gros qu'un œuf d'oie.....
>
> Dans quelques-unes des îles de la mer de l'Inde, qui sont sous la dépendance de Maurice on a introduit des chats, espérant ainsi détruire ou du moins diminuer le nombre des rats : mais on n'a pas tardé à s'apercevoir que les chats dévoraient exclusivement les jeunes oiseaux de mer qui leur offraient une pâture plus délicate et infiniment plus facile à se procurer. On a souvent recours, dans ces mêmes îles, à un moyen analogue a celui employé dans certaines parties de la France pour la destruction des taupes. On a des *chercheurs de rats* : ce sont des noirs qui, en outre de la paye mensuelle, reçoivent la gratification d'un verre de rhum par douzaine de queues de rats qu'ils rapportent à l'établissement ; mais ce moyen est encore insuffisant »...

Besides cats, dogs were introduced in Diego to destroy the rats ; the attempt was not a success, as the dogs were not of the right type and they are now but degenerate mongrels which constitute a nuisance and should, in their turn, be exterminated. Introduction of the mongoose

(6) Histoire Naturelle, hygiénique et économique du cocotier. Paris 1806. pp. 22-23.

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must be ruled out for obvious reasons. Trapping is not very efficient as only about 600 rats were destroyed by that means from September 1957 to August 1958. Reference is here made to an article (7) by J. R. Williams, former Entomologist of the Department of Agriculture on rat control and it is recommended that those interested in the problem in Diego should read the article.

Poison should be used with great caution, because after eating certain toxic substances, rats run for water and in Diego drinking water is in many cases obtained from wells. Substances containing warfarin, which give good results when properly used, should in the author's opinion be the type of poison to try.

Metal shields or strips of tin, something like an open small umbrella might be nailed round the palms in such a fashion that the lower rim stands out from the trunk, thus preventing ascent. This, however, is a costly job for in saline air metal corrosion is rapid and owing to increase in girth of the trees the shields burst.

BIOLOGICAL ASSOCIATIONS

A word might here be introduced about the origin of the coconut palm. Botanists generally accept O. F. Cook's views about the American origin of the coconut palm (1901), but this seems inadmissible for the crab *Birgus latro* Hbst. does not occur in American coasts and it is improbable that such an organism could have been evolved independently of the coconut.

At the time of my visit this crab (commonly called the Robber Crab or the " Cipaye ") seemed very scarce. According to the Manager it does not at the moment cause important losses.

On the other hand, the large red crab, *Cardisoma carnifex* Hbst. (commonly called " troulourou ") causes severe depredations in vegetable gardens ; further they seriously damage the only road which crosses the island. They could be controlled by pesticide treatment.

IV – THE RHINOCEROS BEETLE

Before discussing methods for the control of *Oryctes rhinoceros* L., it is necessary to review briefly its life cycle and its effects upon the growth of the coconut palm. It is an Asiatic beetle which probably gained access to Diego Garcia during World War I, " being already firmly established in 1939 in some localities " (Wiehe). It now menaces the entire production of copra and consequently of poonac.

Notes on the life-cycle

The length of the life cycle of the insect from egg to adult has

(7) Field rats on sugar estates and methods for their control. *Rev. Agric. Maur.* 32 : 2 : 1953 pp. 56-66.

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been variously assessed. Ghosh (1911) regarded it as being 336 days. Corbett (1932) found the minimum time, under laboratory conditions, to be just under four months and the maximum just over 9½ months, while other writers have found it to be 2 years. Obviously it varies with temperature and humidity. The adults occur throughout the year, but are more abundant from January to May. They lie in concealment during day-time and begin their flight at dusk, when they attack the coconut palm and burrow into its heart. Sometimes they simply bite through the folded leaf so that when it unfolds later, the leaflets are found perforated or cut symmetrically off. At other times they bite right through to the growing point and the tree is doomed.

The adult has been found to live for just under 3½ months under laboratory conditions. The female starts laying about one month after emergence and the total number of eggs varies between 27 and 60. They are placed singly, or a few at a time, in decaying palm stems or humus-laden rubbish heaps. The eggs average 3.5 mm by 2 mm (Plate I); they are creamy white in colour and increase considerably in size before hatching; they are often surrounded with hardened earth.

In Diego, under fairly humid conditions they hatch in about 8 days. The newly-hatched larva or grub measures 5-6 mm in length (Plate). As many as 40 to 100 larvae have been counted in a few feet of coco-nut stem. Dead trees are soon converted into a damp brown powdery mass, and it has been calculated that over a thousand beetles can be bred from a rotten coconut tree before it is quite destroyed.

The grub lies on its side; it is fleshy and translucent and has three stages of development; when full grown it measures 70 mm x 25 mm. It has a large brown head with powerful black mandibles. The body is covered with numerous reddish bristles and reddish brown spiracles occur along its sides; the anal segment is very swollen. Larval life averages four months. The grub finally enters the pupal stage which is of short duration, so that pupae are comparatively rare to find. The pupa is at first white but later turns brown. The size varies, but is generally about 48 mm by 20 mm. The sex is indicated by the size of the horn on the head which as in the adult is prominent in the male. The adult beetle is very hard and chitinous almost shining black above and reddish brown below and measuring from 50 to 65 mm by 20 to 35 mm. When it emerges from the pupa, it is yellowish to brown in colour; the thorax is notched and scooped out in front toward the head. The elytra are smooth with longitudinal grooves and fine punctures. The legs are stout, spiny and adapted for digging.

Campaign of eradication

Prior to 1951, the Entomology Division of the Department of Agriculture supplied Diego Ltd. with several colonies of *Scolia oryctophaga* Coq. for release in the atoll, apparently without result. In

November of the same year, N. L. H. Krauss, who was collecting *Scolia ruficornis* F. in Zanzibar for despatch to American possessions in the Pacific, kindly sent two consignments of the wasp (Plate I) to Mauritius for forwarding to Diego Garcia. The following table summarizes the position in December, 1951.

TABLE III — Shipment of *S. ruficornis* F. from Zanzibar to Diego Garcia

Shipment No.	Date sent from Zanzibar	No. sent from Zanzibar	Date of arrival in Mauritius	No. received in Mauritius		Date sent from Mauritius to Diego	No. sent from Mauritius to Diego
				Alive	Dead		
1	19.11.51	60 ♀♀ 10 ♂♂	22.11.51	55 ♀♀ 8 ♂♂	5 ♀♀ 2 ♂♂	7.1.51	36 ♀♀
2	29.11.51	64 ♀♀ 6 ♂♂	3.12.51	56 ♀♀ 6 ♂♂	8 ♀♀ —	7.12.51	53 ♀♀ 6 ♂♂

The total shipped to Diego was thus 89 ♀♀ and 6 ♂♂. The wasps became established and were recovered in 1956. The writer this year collected about a hundred wasps at East Point and Paille Sec. In spite of these recoveries, it is evident that the control of *Oryctes rhinoceros* (L) through scolid wasps has not yet proved its effectiveness and that infestation remains chronic throughout the island. The Manager of the island seeing that the percentage paratism is negligible started a campaign of collection and destruction of the eggs, larvae and adult beetles (8). The total catch during the past year (September 1957 to August 1958) has been 691,657. During my short stay in Diego Garcia the catch consisted of 40 eggs, 854 larvae, 34 pupae and 51 adults (27 ♂♂ and 24 ♀♀). Not one of these larvae was parasitized.

Suggestions for dealing with the beetle

The problem of rhinoceros beetle control is now complicated by the fact that nut production is falling, this being due to the old age of the trees. Although an intensive programme of replanting has been start-

(8) The usual method of destruction of the adult is to employ labourers (especially women) provided with a long flexible iron wire terminated by a barb with which to spear the beetle in its burrow at the base of the leaf stalks. (Incidentally this method is also employed in India where a « beetle rod », i.e. an iron rod 2 1/2 feet x 3/8" with a hook at one end and another end bent to form a ring for a handle, is used. — Ref. Clerian, M. C. & Anatanarrayanan, K. P., *Indian J. Agric. Sci.* 1939. 9 : 571-599). Attacks can easily be seen because of the pre ence of « dead hearts » or central fronds killed by the beetle.

Countings of all stages of the beetle are then made and payment is 3 eggs, larvae or adults for one cent. Another method is to attract the adults by small fires at night and beat them into the fire while larvae are destroyed in trap logs. The author finds the economic value of the methods of collection uncertain.

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ed. out of 16,000 seedlings planted last year, already a third have died through attacks of the beetle which is now, and has been for the past few years, a pest of considerable importance in the island. The writer therefore feels that a new approach to its control should be made :—

10. The use of insecticides should be introduced to ensure the protection of palms in their first years of life.

20. Improved methods of destruction of the larvae should be enforced together with insecticidal treatment of compost pits and refuse heaps.

30. New parasites should be sent to Diego Garcia, for biological control has one great advantage : its effects are usually permanent and once achieved it requires no further attention.

Insecticidal control

Treatment of crown of young palms : B. A. O'Connor after seeing a report of the Indian Central Coconut Committee (9) and experimenting with BHC - sawdust mixtures in Fiji recommends the following :— " Placing a mixture of one part by volume of a BHC formulation in nine parts of damp saw dust in the axils of the youngest four or five fronds of every palm (10). The two formulations which have been commonly used are the dispersible powders containing 6.5% and 10% gamma isomer respectively ". A wettable powder containing 32% diazinon mixed with sawdust is more effective but unfortunately more expensive (11). I am also informed that 2% dieldrin granules applied around the base of the growing tips of young coconut palms seems likely to prevent damage.

Treatment of compost heaps, dung, etc — Intensive breeding having been observed in dung heaps, it is imperative to treat these with Agrocide 26, a new gammexane formulation now just available on the local market.

Treatment of beetle holes — As already stated adult beetles are usually speared or harpooned inside their holes at the base of the leaf stalks. It is essential that the holes in the palms be plugged with the mixture recommended above for crown treatment as other beetles have been observed to enter old holes on a number of occasions. It might also be useful to add a compatible fungicide to the mixture for in a number of cases a rot follows attacks of the beetle.

The use of trap logs.

After having seen the labourers search for grubs in trap logs, the

(9) 7th Annual Report (April 1951 — March 1952) p. 23.
(10) *Agric. J. Fiji* Dec. 1954, **25** no. 3 & 4, p. 87.
(11) " " " 1957, **28** no. 1 & 2, pp. 15-18.

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author is of opinion that the procedure is fraught with the greatest danger. Instead of being traps, dead coconut trunks simply constitute infestation foci in the plantations. Scrupulous sanitation of the plantations should therefore be immediately resorted to and dead coconut trunks should be removed and burned at the earliest possible opportunity. Indeed not even a single husk should be left in the groves. Unless this be done and unless the recommendations made above be given effect to, the chances of eradication of *Oryctes rhinoceros* L. would be remote.

Biological control

Predatory beetles of the families Histeridae *Hololepta (Leionata)* and Elateridae (*Photophorus jansoni* and *Pyrophorus* spp.) could perhaps be obtained from New Zealand and Trinidad for introduction into Diego. The large carabid *Mecoderma spinifer* Broun and the huge Reduviid bug *Platymeris rhadamanthus* Gerst, which are respectively reported to attack the grub and adult beetle of *Oryctes*, could possibly help in the control of the rhinoceros beetle.

V — OTHER PROBLEMS

The vegetable garden — The island suffers from a great shortage of vegetables. Maize and sweet potato are grown on a small scale, but the former is parasitized by *Striga asiatica* O. Kuntze. and by a rust. The variety of sweet potato is not very palatable. The sphingid moth *Herse convolvuli* L., although present, is a minor pest of the plant.

Fruit trees — These are extremely scarce in Diego. At East Point, however, mango, jamalac, bread fruit, hog plum, jackfruit, bilimbi, papaw, seem to thrive well. Citrus plants apparently suffer from deficiency diseases. A few scale insects were also found. The insects could be controlled with insecticides.

Pesticides are not used against vegetable and fruit pests. In view of this, it is suggested that one of the employees of the Company should follow certain selected lectures in Pathology and Entomology at the College of Agriculture. Perhaps employees taking their leave could be given an extra 6 months for such training.

Improvement of soil — Considerable benefit should be derived from a visit to the island by a qualified soil chemist.

Flies and Mosquitoes — Owing to the high temperature and humidity, flies and mosquitoes breed in enormous numbers. The effect of countless bites from mosquitoes must be very depressing. It was noted that in addition to wells, coconuts eaten by rats and invariably containing rain water, bred legions of larvae. To check mosquitoes, disused wells should be sprayed with D. D. T. at regular intervals. Where practicable, fallen nuts should be burnt. Reduction of the fly population by the use of malathion could also be tried.

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VI – SUMMARY

Nut production in the atoll of Diego Garcia is falling. This is caused by a number of factors : the groves are old and need replanting ; rats also destroy about a quarter of the crop ; but the greatest damage is caused by the rhinoceros beetle, *Oryctes rhinoceros* L., which kills about 1/3 of the seedlings being replanted. Insecticidal treatment is recommended to prevent damage to the young palms ; improved sanitation of the groves would probably reduce larval population to a very low level.

VII – ACKNOWLEDGEMENTS

The writer wishes to record his thanks to Mr. G. Lanier, the Manager of Diego Garcia and to his staff for the kindness shown to him during his stay in the island and for their assistance in supplying some of the data presented in this report. It is his pleasant duty also to tender sincere thanks to Mr. J. Lamusse, Secretary of Diego Ltd., and to Captain d'Argent of the M. V. " SIR JULES " who spared no effort to make his visit an agreeable one.

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Marcel Merle, "Les plébiscites organisés par les Nations Unies", *Annuaire français de droit international*, Vol. 7 (1961)

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LES PLÉBISCITES ORGANISÉS PAR LES NATIONS UNIES

MARCEL MERLE

Le droit des peuples à disposer d'eux-mêmes a été inscrit, en 1945, parmi les buts fondamentaux que l'Organisation des Nations Unies se proposait d'atteindre. On ne saurait pourtant affirmer que le comportement des Etats membres se soit toujours inspiré de cet idéal. Alors que le règlement des litiges territoriaux consécutifs aux traités de paix de 1919 avait donné lieu à de nombreux plébiscites souvent placés sous les auspices de la Société des Nations (1), les changements de frontières intervenus depuis 1945 n'ont été, en règle générale, ni précédés ni suivis par la consultation des populations intéressées. Certes, la pratique du plébiscite ou du referendum (2) n'a pas été complètement abandonnée. La France a organisé, en 1947, un plébiscite dans les communes de Tende et de La Brigue cédées par l'Italie en vertu du traité de paix de 1947; elle a accepté un referendum pour trancher le sort de la Sarre, en 1955. A ces exemples, on peut ajouter celui du referendum constituant du 28 septembre 1958 qui a permis aux territoires d'outre-mer rattachés à la France, d'opter individuellement entre l'appartenance à la Communauté et l'indépendance. Mais ce ne sont là que des exemples isolés par rapport aux nombreuses circonstances dans lesquelles le sort de populations a été décidé impérativement par des tiers ou par des gouvernements non régulièrement mandatés à cet effet.

En face de ce déclin du droit des peuples à disposer d'eux-mêmes dans la pratique des Etats, il est à première vue remarquable de constater que l'Organisation des Nations Unies a eu plusieurs fois recours à la solution du plébiscite pour fixer le sort de certains territoires. Quatre plébiscites ont été organisés par les Nations Unies. Le premier a eu lieu au Togo sous administration britannique le 7 novembre 1959; le second dans la partie septentrionale du Cameroun sous administration britannique le 7 novembre 1959;

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(1) Cf. « Plébiscites exécutés depuis 1920 sous le contrôle d'organisations internationales », Mémorandum préparé par le Secrétariat des Nations Unies, Doc. A/C/4/351 du 20 février 1957.

(2) Les deux termes ont une signification très différente en droit constitutionnel, mais on peut les considérer comme synonymes en droit international.

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le troisième dans les deux parties du Cameroun sous administration britannique les 11-12 février 1961; enfin, un plébiscite a été organisé le 9 mai 1961 dans le Samoa occidental placé sous l'administration de la Nouvelle-Zélande. A ces quatre exemples, il convient de rattacher, pour des raisons qui seront exposées plus loin, le contrôle exercé par les Nations Unies sur les élections législatives qui ont eu lieu le 27 avril 1958 au Togo sous administration française, ainsi que le contrôle des élections générales et du referendum qui ont eu lieu en septembre 1961 au Ruanda-Urundi sous administration belge.

Dans ces différentes circonstances, l'intervention des Nations Unies a permis d'obtenir une consultation dont les résultats, sauf dans un cas, n'ont pu être contestés; les vœux exprimés par les populations intéressées ont servi de base à l'Assemblée générale de l'O.N.U. pour déterminer le statut juridique ou territorial de ces collectivités; quant au seul cas dans lequel la solution adoptée à la suite de la consultation populaire a été contestée, le grief essentiel est tiré du comportement de la puissance administrante avant le plébiscite, des conditions mêmes dans lesquelles elle a appliqué les principes posés par l'Assemblée générale et, au fond, du degré d'aptitude de la population à se prononcer en connaissance de cause.

Le succès obtenu dans les autres expériences, en dépit de la complexité des intérêts en présence et des contestations qui les ont généralement précédées, mérite de retenir l'attention. Il faut cependant relever que si l'O.N.U. a pu faire appliquer et respecter le droit des peuples à disposer d'eux-mêmes, c'est parce que son action s'est déroulée dans un contexte particulièrement favorable : les territoires intéressés étaient placés sous le régime de tutelle, c'est-à-dire que leur sort dépendait étroitement des décisions prises par l'Assemblée générale des Nations Unies. Il était donc facile à cette dernière de décider le recours au plébiscite et de fixer, souverainement, l'objet et les modalités de la consultation ainsi que d'interpréter les résultats du vote. D'autre part, la présence, sur le territoire où le plébiscite devait avoir lieu, d'autorités locales dépendant, plus ou moins directement, de la puissance administrante était de nature à favoriser considérablement la tâche des Nations Unies qui allaient pouvoir limiter leur intervention sur le terrain à des opérations de consultation et de contrôle. Le succès de toute la procédure semble donc étroitement conditionné par l'existence du régime de tutelle qui, pour être l'enjeu de ces différents plébiscites, n'en a pas moins fourni à l'organisation internationale le fondement juridique et les moyens matériels de son intervention. C'est ce que montre l'examen des phases successives de l'action des Nations Unies dans le déclenchement, le déroulement et l'interprétation du plébiscite.

I

LE DÉCLENCHEMENT DU PLÉBISCITE

Le chapitre XII de la Charte des Nations Unies ne contient aucune disposition particulière concernant la levée de la tutelle. Ce problème délicat peut cependant être résolu par référence à deux dispositions générales. L'article 76 précise que les fins du régime de tutelle sont les suivantes :

> b) ... « favoriser également leur évolution (des territoires) progressive vers la capacité à s'administrer eux-mêmes ou l'indépendance compte tenu des conditions particulières à chaque territoire et à ses populations, des aspirations librement exprimées des populations intéressées et des dispositions qui pourront être prévues dans chaque accord de tutelle. »

De ce texte il ressort 1) que le régime de tutelle a un caractère provisoire et qu'il doit tendre à la réalisation de l'indépendance, 2) que les populations intéressées doivent être consultées préalablement à la levée de la tutelle, 3) que l'autonomie ou l'indépendance ne pourront être accordées à chaque territoire qu'en fonction de ses « conditions particulières » — ce qui suppose l'appréciation individuelle et discrétionnaire du stade d'évolution et de maturité justifiant la levée éventuelle de la tutelle (réserve faite du cas où le terme du régime de tutelle a été fixé d'avance, comme cela s'est produit pour la Somalie).

L'article 85 déclare par ailleurs :

> « en ce qui concerne les accords de tutelle relatifs à toutes les zones qui ne sont pas désignées comme zones de tutelle stratégique, les fonctions de l'Organisation, y compris l'approbation des termes des accords de tutelle et de leur modification ou amendement, sont exercées par l'Assemblée générale. »

On peut considérer qu'en l'absence de toute disposition expresse en sens contraire la compétence de l'Assemblée générale s'étend, *a fortiori*, à l'hypothèse de la levée de la tutelle.

De la combinaison des articles 76 et 85 de la Charte, il ressort donc que l'Assemblée générale a qualité pour 1) apprécier si le degré d'évolution atteint par le territoire justifie ou non la levée de la tutelle, 2) consulter les populations intéressées sur leurs préférences.

Le fondement juridique de l'intervention des Nations Unies est donc incontestable et c'est bien à l'Assemblée générale qu'il appartient d'exercer les prérogatives attribuées par la Charte à l'Organisation des Nations Unies. Certes, l'Assemblée n'intervient pas seule. Elle est, en ce domaine comme en tout ce qui touche le régime de tutelle, assistée par le Conseil de tutelle. Ce dernier ne s'est pas contenté d'un rôle secondaire. Les missions de visite qu'il a envoyées dans les différents territoires ont étudié sur place le degré de maturité des populations et formulé des avis très précis et fortement motivés sur l'opportunité ainsi que sur les conditions juridiques et matérielles de la consultation envisagée. D'autre part, les puissances administrantes ne sont

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pas demeurées inactives : ce sont elles, dans le cas du Togo et du Cameroun, qui ont soulevé le problème de la cessation du régime de tutelle. La Grande-Bretagne a invoqué un argument irréfutable : le Togo et le Cameroun placés sous sa responsabilité étaient administrés, conformément aux termes mêmes des accords de tutelle, comme partie intégrante de la Côte de l'Or et de la Nigéria. L'indépendance de ces deux colonies de la Couronne devait forcément remettre en question le mode d'administration des territoires sous tutelle qui leur étaient associés, sinon même le maintien de la tutelle. Au-delà de ces arguments d'ordre juridique, il semble d'ailleurs que les puissances administrantes aient été désireuses de se décharger de la lourde responsabilité que constituait pour elles l'administration des territoires sous tutelle.

Initiatives individuelles, enquêtes approfondies ont donc précédé, dans chaque cas, l'intervention de l'Assemblée générale. C'est cependant elle qui a statué en dernier ressort, sans toujours tenir compte des avis qui lui avaient été communiqués. La responsabilité assumée en la matière par l'Assemblée générale apparaît considérable. Elle concerne : 1) l'opportunité de l'organisation du plébiscite, 2) la nature de la consultation envisagée, 3) les modalités de la consultation.

1) *L'opportunité de l'organisation du plébiscite.*

La question ne se poserait pas si l'O.N.U. avait fait automatiquement procéder à un plébiscite dans tous les cas de levée de tutelle. Or, l'Assemblée générale n'a exigé aucun plébiscite préalablement à la levée de la tutelle sur la partie du Cameroun confiée à l'administration de la France ni sur le Tanganyika sous administration britannique.

L'explication de cette différence de traitement ne peut pas être trouvée dans l'identité de situation des territoires où un plébiscite a été organisé : dans deux cas (Togo et Cameroun britanniques) le problème à résoudre était l'option entre le maintien de la tutelle ou le rattachement à un territoire voisin sur le point d'accéder à l'indépendance; mais dans les deux autres cas (Togo français et Samoa occidental), l'option proposée était identique à celle qui aurait pu être proposée aux habitants du Cameroun français : indépendance pure et simple ou maintien de la tutelle.

La confrontation entre ces différentes situations permet de rendre compte de la jurisprudence de l'Assemblée générale. Celle-ci décide de procéder à un plébiscite en fonction de deux considérations différentes.

a) Il y a d'abord lieu à un plébiscite si le statut envisagé pour le territoire comporte une solution autre que l'indépendance pure et simple. Tel était le cas pour le Togo britannique à qui l'on voulait donner à choisir entre le maintien de la tutelle et le rattachement à la Côte de l'Or indépendante, et pour le Cameroun britannique au sujet duquel on a envisagé successivement l'option entre le maintien de la tutelle et le rattachement au Nigéria (plébis-

cite au Cameroun septentrional en date du 7 novembre 1959) puis l'option entre le rattachement au Nigéria ou à la République indépendante du Cameroun (plébiscites dans les deux parties du Cameroun les 11 et 12 février 1961). L'importance de l'enjeu paraît à cet égard une justification suffisante du plébiscite. Les populations ne peuvent être affectées d'office à telle ou telle collectivité étatique. La consultation préalable doit leur permettre de fixer librement leur destin en tant que collectivité nationale.

b) Mais il y a également lieu à plébiscite dans le cas où les populations n'ont pas été en mesure de se prononcer librement sur leur sort — même si la question du rattachement à un autre Etat ne se pose pas et même si les autorités en cause (dirigeants locaux et puissance administrante) sont d'accord pour demander la levée de la tutelle. Le critère adopté est ici purement formel et se ramène à l'exigence d'une consultation libre au suffrage universel des adultes.

La solution est particulièrement nette dans le cas du Samoa occidental. La puissance administrante (Nouvelle-Zélande) et les dirigeants samoans étaient d'accord pour l'accès du territoire à l'indépendance; mais la population locale n'avait jamais été consultée au suffrage universel ni par voie électorale ni par referendum ou plébiscite. Avant d'accorder la levée de la tutelle, l'Assemblée générale a estimé nécessaire d'organiser sous son contrôle un plébiscite au Samoa occidental.

De cette situation il convient de rapprocher celle du Togo sous administration française. Il n'y a pas eu, à proprement parler, de « plébiscite » dans cette partie du Togo. Mais l'Assemblée générale a été amenée à superviser les élections législatives organisées le 27 avril 1958 par les autorités togolaises et elle a donné à ce contrôle la même portée qu'à un plébiscite. Pour comprendre ce détour, il faut rappeler que le Conseil de tutelle avait refusé le 13 août 1956, d'assurer la surveillance du referendum projeté par la France et donnant aux Togolais le choix entre un nouveau statut et le maintien du régime de tutelle. Le referendum en question eut bien lieu le 28 octobre 1956 et donna une forte majorité en faveur de la suppression de la tutelle (3). Mais, comme la consultation avait eu lieu sous le contrôle exclusif des autorités françaises, l'Assemblée générale ne crut pas devoir accéder immédiatement à la demande de levée de la tutelle; elle décida d'abord d'envoyer sur place une Commission chargée d'examiner l'application du nouveau statut (Résolution 1046 (XI) du 23 janvier 1957), puis, à la demande des autorités locales soucieuses de sortir du provisoire, accepta de superviser les prochaines élections générales qui devaient avoir lieu en 1958. La Résolution 1182 (XII) du 29 novembre 1957 établit nettement un lien entre les élections sous le contrôle des Nations Unies et la levée de la tutelle puisque l'Assemblée générale priait :

(3) Cf. sur ce point : E. P. Luce ; « *Le referendum du Togo* ». Editions Pedone, 1958.

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« le Conseil de tutelle d'examiner ces questions et de faire rapport à leur sujet à l'Assemblée générale lors de sa treizième session, afin qu'elle puisse, *si la nouvelle Assemblée législative du Togo et l'autorité administrante le lui demandent*, prendre une décision, compte tenu des conditions qui règneront alors, en ce qui concerne l'abrogation du régime de tutelle. »

Une interprétation identique de la portée de ces élections générales est donnée par le Commissaire des Nations Unies dans la conclusion de son rapport :

« Si, comme l'a maintes fois répété le gouvernement togolais au cours de nos discussions, ces élections n'étaient que la mise à exécution d'une réforme intérieure, c'est-à-dire l'application du suffrage universel au renouvellement de la Chambre des députés, et n'exigeaient aucune législation extraordinaire ou exceptionnelle, chacun cependant était convaincu qu'un événement historique était en marche qu'augurait la présence d'une mission de supervision des Nations Unies. Chacun avait de grandes appréhensions quant au résultat du scrutin et à ses répercussions sur l'avenir du territoire, selon le choix qui serait fait... Il n'y a pas le moindre doute dans mon esprit que le résultat d'ensemble des élections reflète fidèlement les vœux de la population du Togo quant à la désignation de ses élus à la Chambre des députés. *Cette constatation est de la plus haute importance parce qu'elle signifie que la nouvelle Chambre a véritablement le droit de parler au nom du peuple togolais... Le scrutin du 27 avril peut être considéré comme un événement historique dans l'évolution du Togo vers la réalisation des fins du régime de tutelle.* »

L'exemple du projet de supervision des élections générales au Ruanda-Urundi n'est pas moins caractéristique. Dans sa Résolution 1579 (XV), en date du 20 décembre 1960, l'Assemblée générale se déclare :

« Consciente de la responsabilité qui lui incombe de veiller à ce que la surveillance des élections par l'O.N.U. soit efficace et que *les élections qui fourniront la base de l'indépendance du territoire* se déroulent dans des conditions satisfaisantes de telle sorte que leurs résultats ne soient entachés d'aucun doute et ne puissent donner lieu à aucune contestation. »

Pour atteindre cet objectif, l'Assemblée générale a demandé le renvoi des élections prévues pour le mois de janvier 1961 et leur report à une date plus éloignée permettant à l'Assemblée générale de :

« superviser les élections qui doivent se tenir au Ruanda-Urundi en 1961 sur la base du suffrage universel et direct des adultes ainsi que les mesures préparatoires qui précéderont ces élections, telles que l'établissement des listes électorales, le déroulement de la campagne électorale et l'organisation d'un système de scrutin qui assure le secret du vote. »

Quant à la Résolution 1605 (XV) du 21 avril 1961, elle conteste la représentativité d'« organes de gouvernement qui ont été établis au Ruanda-Urundi par des moyens irréguliers et illégaux » et fonde explicitement la nécessité de l'intervention des Nations Unies sur l'obligation d'assurer une consultation régulière.

Dans ces trois cas, l'exigence de l'O.N.U. a donc porté sur la forme de la consultation. Le contrôle exercé par l'organisation internationale est destiné à garantir la régularité et la sincérité des opinions exprimées par la population — dès qu'un doute apparaît sur les conditions dans lesquelles cette population a été antérieurement consultée ou s'apprête à être consultée.

Cette interprétation peut être confirmée, *a contrario*, par l'exemple du Cameroun sous administration française. La Résolution 1349 (XIII), adoptée par l'Assemblée générale le 13 mars 1959, a fixé la levée de la tutelle au

1er janvier 1960. Cette décision, qui ne comporte pas de recours au plébiscite ou à la supervision des élections par les Nations Unies, est longuement motivée par l'examen de la situation locale et par les garanties ou promesses fournies par les autorités camerounaises quant à l'existence ou au rétablissement des libertés fondamentales et à l'organisation de nouvelles élections générales immédiatement après l'indépendance. On peut estimer que l'Assemblée générale a interprété d'une manière trop optimiste la situation intérieure au Cameroun, mais la motivation de la décision prise fait nettement ressortir que les garanties exigées par les Nations Unies portent sur la liberté d'expression et sur la régularité du mandat en vertu duquel les autorités locales sollicitent l'indépendance. Si ces conditions sont déjà réunies, l'Assemblée générale le constate et consent à la levée de la tutelle sans autre formalité; si le doute subsiste quant à l'existence de ces conditions préalables, l'Assemblée générale intervient soit en organisant un plébiscite, soit en exigeant la supervision des élections.

En l'état actuel des choses, la jurisprudence de l'Assemblée générale de l'O.N.U. paraît donc bien commandée par un double souci : consulter les populations quand le sort de la collectivité en tant qu'entité politique distincte se trouve en cause; assurer la liberté d'expression dans tous les cas où la situation locale ne permet pas de dégager clairement la tendance dominante de l'opinion sur l'avenir du pays. Si tels sont les principes qui paraissent avoir guidé les choix de l'Assemblée générale, il convient de préciser que l'organe en question n'est aucunement lié, pour l'avenir, par les décisions précédentes. Dans la limite des principes très généraux posés par la Charte, l'Assemblée générale est libre d'apprécier souverainement chaque situation particulière et de décider de l'organisation d'un plébiscite.

Les initiatives prises par l'Assemblée générale quant à la nature et aux modalités de la consultation démontrent d'ailleurs l'étendue des pouvoirs de cet organisme et la liberté d'interprétation dont il dispose.

2) *La nature de la consultation.*

Il n'appartient pas seulement à l'Assemblée générale de décider de l'organisation d'un plébiscite. Elle peut et elle doit aussi déterminer l'objet de la consultation. La nature et le contenu des opérations placées sous le contrôle des Nations Unies varient en effet d'un cas à l'autre en fonction des options qui sont prises par l'Assemblée.

On a déjà observé que, dans le cas du Togo sous administration française, l'Assemblée générale s'est contentée de la supervision des élections générales, en se réservant le droit de fixer le sort définitif du territoire après consultation de l'autorité administrante et des autorités issues des élections contrôlées par les Nations Unies. Il s'agit, dans cette hypothèse, d'une consultation indirecte.

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Dans les autres cas, les populations intéressées ont été directement consultées sur leur sort. Mais c'est l'Assemblée générale elle-même qui a fixé, pour chaque territoire, les termes de l'option proposée aux populations. Pour le Togo et le Cameroun sous administration britannique, la question posée concernait uniquement le statut international du territoire (maintien de la tutelle ou intégration à un Etat voisin). Dans le cas du Samoa occidental la consultation portait à la fois sur le statut politique interne, défini par la Constitution du 28 octobre 1960, et sur l'indépendance sur la base de ladite Constitution. Le plébiscite avait donc ici une double portée, constitutionnelle et internationale.

Le cas du Ruanda-Urundi est encore différent puisque la consultation placée sous le contrôle des Nations Unies avait un double objet : d'une part les élections générales au suffrage universel, d'autre part un referendum sur le point de savoir si les habitants du Ruanda désiraient conserver la monarchie.

C'est cependant dans le cas du Togo et du Cameroun sous administration britannique que l'Assemblée générale a pris les plus grandes responsabilités et, il faut bien le reconnaître, les plus grands risques. Les Togolais ont eu à choisir, le 9 mai 1956, entre le maintien de la tutelle ou le rattachement à la Côte de l'Or devenue indépendante. 42 % ont opté en faveur de la première solution et 58 % en faveur de la seconde. Les résultats auraient certainement été différents si l'Assemblée générale avait posé la question sous une autre forme pour tenir compte du courant favorable — au moins dans une partie du territoire — à la réunification des deux parties du Togo sous la forme d'un Etat indépendant.

Le choix exercé par l'Assemblée générale n'a pas été moins important pour la solution de l'affaire du Cameroun. Dans un premier plébiscite, qui n'a pu se dérouler qu'au Cameroun septentrional le 7 novembre 1959, l'option offerte portait sur le maintien de la tutelle ou sur le rattachement au Nigéria. La première solution l'emporta nettement par 70 546 voix contre 42 788. Or, le second referendum, qui a pu être organisé les 11 et 12 février 1961 dans les deux parties du Cameroun, ne comportait plus qu'une option entre le rattachement au Nigéria ou à la République du Cameroun. L'absence d'une tierce solution — en l'espèce l'indépendance pure et simple — a été considérée comme regrettable dans le rapport établi par le Commissaire des Nations Unies au sujet du Cameroun méridional :

> « Au début de la préparation du plébiscite, des questions ont fréquemment été posées aux observateurs et au personnel du plébiscite touchant l'absence d'une troisième option prévoyant l'indépendance pure et simple du territoire... Il est certain qu'à ce moment là une partie considérable de la population aurait souhaité une option de cette nature... »

Il n'y a pas lieu de prendre parti ici sur l'opportunité des choix effectués par l'Assemblée générale entre les différentes solutions possibles. Il suffit de constater que les décisions prises par les Nations Unies ont orienté, dès le

départ, les différents plébiscites. Il n'était évidemment pas concevable, sous le prétexte d'appliquer le droit des peuples à disposer d'eux-mêmes, d'offrir aux populations consultées une gamme de solutions qui eût entraîné la dispersion des votes et la confusion des résultats. Aussi bien le point le plus délicat dans l'organisation d'un plébiscite n'est-il pas tant la décision de principe que la détermination des termes de l'option proposée aux électeurs. C'est bien l'Assemblée générale qui a tranché cette question capitale en fonction de l'interprétation qu'elle a donnée des intérêts majeurs des populations consultées.

3) *Les modalités de la consultation.*

L'Assemblée générale a également fixé, dans ses Résolutions, les modalités de la consultation. Certes, l'organisation du plébiscite incombe, comme nous le verrons, aux autorités locales. Mais l'intervention des Nations Unies a déterminé la procédure et le cadre de la consultation.

En ce qui concerne la procédure, l'exigence posée par l'Assemblée générale concerne la liberté d'expression mais aussi la définition du corps électoral. La règle générale est celle du suffrage universel des adultes (l'âge de la capacité électorale étant fixé à 21 ans). Cette initiative équivalait, pour la plupart de ces territoires, à une innovation révolutionnaire. Le cas est particulièrement net pour le Samoa occidental dont les dirigeants proposaient, conformément à la tradition locale, l'application d'un mode de suffrage restreint fondé sur le vote des seuls chefs de famille (mataï). C'est d'ailleurs selon ce procédé qu'avaient été élus, en 1957, les membres de l'Assemblée législative responsable de l'élaboration de la Constitution soumise au plébiscite. L'Assemblée générale n'a pas été sensible à l'argument et elle a exigé, comme dans les autres plébiscites, que la consultation prévue ait lieu au suffrage universel direct des adultes. De ces décisions concordantes, on peut déduire que le recours à ce mode de suffrage constitue, au regard des Nations Unies, une condition nécessaire de l'exercice du droit des peuples à disposer d'eux-mêmes.

Mais il existait une autre difficulté à résoudre au sujet du mode de décompte des voix. Fallait-il considérer le territoire sous tutelle comme une entité et apprécier les résultats dans leur ensemble; ou bien pouvait-on diviser le territoire en plusieurs zones dont le sort individuel serait déterminé par le jeu des majorités ? L'Assemblée générale a recouru successivement aux deux procédés. Dans le cas du Togo sous administration britannique, elle a refusé, contrairement aux conclusions de la mission de visite, de dénombrer séparément les voix dans le Nord et dans le Sud du pays. La solution unitaire a prévalu et tous les ressortissants du Togo ont suivi le sort fixé par la majorité de la population, bien que les habitants du Togo méridional aient manifesté leur hostilité à l'union avec la Côte de l'Or. Cette solution est

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d'autant plus curieuse que l'Assemblée générale a adopté la solution inverse dans le cas du Cameroun : deux consultations distinctes ont été organisées le même jour, dans le Nord et dans le Sud et, sur le vu des résultats, le Nord a été rattaché au Nigéria et le Sud à la République du Cameroun. Si les résultats avaient été totalisés et considérés uniquement dans leur ensemble, comme au Togo, la solution du rattachement à la République du Cameroun l'eût emporté par 331 530 voix contre 244 037 (4).

On ne saurait mieux souligner l'importance des décisions prises par l'Assemblée générale. Encore une fois leur opportunité n'a pas à être appréciée ici. Mais si l'on se place au point de vue de l'efficacité, il est certain que l'intervention de l'Assemblée générale a permis de trancher des questions délicates au sujet desquelles les parties intéressées auraient eu beaucoup de mal à trouver un accord. L'utilité d'un arbitrage extérieur aux parties en cause est incontestable; mais un tel arbitrage n'aurait pu être obtenu si l'Assemblée générale n'avait pas été l'autorité qualifiée pour décider souverainement des conditions de cessation de la tutelle.

C'est également l'existence du régime de tutelle qui va faciliter l'exécution des opérations du plébiscite.

II

Le déroulement du plébiscite

Il ne suffit pas de décider de l'opportunité d'une consultation populaire, ni de fixer ses objectifs et ses modalités. Il faut encore en assurer l'exécution dans des conditions qui ménagent la liberté d'expression mais aussi le maintien de l'ordre public. Les difficultés à surmonter sont, par définition, redoutables puisque le plébiscite a précisément pour objet de trancher une contestation entre deux ou plusieurs solutions qui divisent l'opinion publique locale et qui suscitent la convoitise de tierces puissances. A ces obstacles qui tiennent à la nature même du plébiscite venaient s'ajouter, dans les cas qui nous intéressent, des difficultés particulières tenant à la nature du terrain et du milieu socio-politique : difficultés de communication, encadrement insuffisant des populations par une administration moderne, introduction de procédures électives dans des pays où l'éducation politique — sinon parfois l'instruction tout court — peut être notoirement insuffisante. La moindre erreur de manœuvre risque de provoquer des troubles graves et de fausser le résultat du scrutin.

Il était hors de question que les Nations Unies pussent affronter toutes

(4) On peut également signaler que dans la Résolution 1579 (XV) du 20 décembre 1960, l'Assemblée générale a pris d'avance position en faveur de l'union des deux parties du territoire du Ruanda-Urundi au stade de l'indépendance.

ces difficultés et prendre directement en mains l'organisation des plébiscites. Elles ont bénéficié du concours des autorités locales qui ont assumé la responsabilité de l'organisation juridique et matérielle de la consultation prescrite par l'Assemblée générale des Nations Unies. Dans la plupart des cas, c'est la puissance administrante qui est intervenue. Cela a parfois soulevé des difficultés : le Togo et le Cameroun sous tutelle britannique étaient administrés, en vertu des accords de tutelle, comme partie intégrante de la Côte de l'Or et du Nigéria. Or, ces deux territoires se trouvaient directement intéressés au résultat du plébiscite. Il fallait donc prendre une série de mesures pour éviter l'intervention et la pression des autorités et des forces politiques de la Côte de l'Or et du Nigéria et, pour cela, isoler tant bien que mal les territoires où le plébiscite devait avoir lieu. L'Assemblée générale a formulé des principes à cet égard et c'est principalement l'exécution de la résolution 1473 (XIV) par le Royaume-Uni que conteste la République du Cameroun. Mais quels que fussent les problèmes à résoudre, les puissances administrantes ne pouvaient esquiver une responsabilité étroitement liée à la mission qu'elles avaient reçue des Nations Unies. Elles ont pris les mesures législatives et réglementaires nécessaires, en désignant un haut fonctionnaire pour exercer la responsabilité principale de l'opération. Dans le cas du Togo, sous administration française, ces attributions ont été exercées par le Gouvernement et le Parlement togolais à qui la République française avait déjà délégué une partie de ses compétences. En aucun cas, les représentants de l'O.N.U. ne sont intervenus directement dans la préparation ni dans le déroulement du plébiscite ou des élections.

Leur rôle s'est limité à deux fonctions — au demeurant capitales : surveillance et consultation. Les deux fonctions sont étroitement liées dans la pratique, mais il est utile de les dissocier au stade de l'analyse pour bien comprendre en quoi a consisté l'intervention des Nations Unies dans la préparation et dans le déroulement de ces consultations.

1) *La mission de surveillance.*

Le Commissaire élu par l'Assemblée générale des Nations Unies et les membres de son personnel ont, avant toute chose, un rôle d'observation justifié par la nécessité de rendre compte à l'Assemblée générale des conditions dans lesquelles la consultation s'est déroulée. La surveillance porte aussi bien sur la phase préparatoire que sur les opérations directement liées au scrutin.

a) Au cours de la phase préparatoire, la surveillance doit tout d'abord s'exercer sur tous les mécanismes juridiques mis en œuvre : législation ou réglementation du droit de suffrage, du mode de scrutin, du découpage électoral, des garanties administratives et judiciaires offertes aux électeurs, aux partis et, éventuellement, aux candidats, etc. Cette tâche incombe plus spé-

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cialement au chef de la mission, c'est-à-dire au Commissaire des Nations Unies, qui, pour recueillir plus facilement ces informations, doit rester en contact permanent avec les autorités qualifiées pour prendre ces mesures. Mais les textes et les règles de droit ne sont pas seuls en cause. Leur application soulève une masse de problèmes : il suffit de songer aux formalités d'inscription sur la liste électorale dans des pays où l'état-civil est à peine ébauché et où l'analphabétisme est encore largement répandu; il faut aussi vérifier sur place si les consignes destinées à assurer la liberté de propagande sont effectivement respectées, veiller à ce que les termes de l'option proposée à la population soient bien connus et aussi bien compris, etc. Pour toutes ces tâches, le Commissaire des Nations Unies est assisté d'un certain nombre d'observateurs répartis sur le terrain, dans des secteurs déterminés, dès l'arrivée de la mission des Nations Unies. Ces observateurs sont chargés de suivre dans le détail toutes les opérations préparatoires au plébiscite ou aux élections et de signaler immédiatement au Commissaire les incidents ou les anomalies qui peuvent se produire à l'échelon local. Grâce à ce réseau d'observateurs, la mission des Nations Unies peut, dans chaque territoire, avoir une vue précise et détaillée de la préparation au plébiscite.

b) Au stade final, c'est-à-dire au cours des opérations de vote et de dépouillement, la mission de surveillance revêt une importance beaucoup plus grande encore : il s'agit, pour les observateurs des Nations Unies, de contrôler la régularité du scrutin, de déceler les fraudes et d'éviter toute falsification des résultats. Le contrôle exige ici la présence physique des observateurs auprès des bureaux de vote et des centres de dépouillement. Bien que tous ces lieux ne puissent être visités le jour même du scrutin en raison du nombre insuffisant d'observateurs, le contrôle a été assez étendu pour que les Nations Unies aient, en général, une vue convenable de l'ensemble du scrutin.

Enfin, les observateurs des Nations Unies ont à rendre compte des réactions provoquées dans leurs zones respectives par l'annonce des résultats du scrutin.

La réunion de tous ces renseignements doit permettre à l'Assemblée générale de porter une appréciation solidement étayée sur la régularité et, par voie de conséquence, sur la validité du plébiscite. Aussi bien aurait-on pu, théoriquement, s'en tenir à ce stade de la surveillance du plébiscite par les agents des Nations Unies. Les Commissaires désignés par les Nations Unies ont cependant interprété leur mission d'une manière plus extensive; ils ont estimé qu'il ne suffisait pas de comptabiliser les irrégularités commises par les autorités responsables du plébiscite et qu'il valait mieux s'efforcer, dans toute la mesure du possible, de les prévenir afin de ne pas compromettre le résultat de l'opération. Cette conception de leur tâche a conduit les Commissaires au plébiscite — sous le couvert de la fonction consultative — à une coopération étroite avec les autorités locales.

2) *La fonction consultative.*

Les informations reçues par le Commissaire au plébiscite, dans le cadre de la mission de surveillance, permettent de déceler, au jour le jour, les irrégularités qui peuvent survenir dans la conception et dans l'exécution des opérations préparatoires au plébiscite. Il est dans la logique du système de contrôle que le Commissaire des Nations Unies porte au moins à la connaissance des autorités responsables les irrégularités commises par rapport aux prescriptions de l'Assemblée générale. Les groupes minoritaires ou les partis d'opposition n'ont d'ailleurs pas manqué d'alerter les agents des Nations Unies et de dénoncer devant eux les pratiques ou les règles qu'ils considèrent comme des manœuvres de la puissance administrante ou des autorités locales. Le Commissaire et ses adjoints se sont trouvés ainsi placés dans une position d'arbitre qui les a incités à intervenir activement dans la préparation de la consultation.

Cette intervention n'a jamais pris la forme d'une substitution aux pouvoirs des autorités compétentes pour organiser le plébiscite. Elle a revêtu, selon les cas, des modalités différentes.

Dans l'hypothèse la plus favorable, les autorités locales ont soumis au Commissaire les projets de lois ou de décrets et ont sollicité son avis avant de les publier — au besoin après rectification. Une coopération aussi étroite n'a pu toujours être réalisée. Quand les textes essentiels ou les mesures les plus importantes avaient été prises avant l'arrivée sur place de la mission des Nations Unies, il ne restait au Commissaire d'autre ressource que de critiquer les dispositions qui lui paraissaient contraires aux prescriptions formulées par l'Assemblée générale pour la conduite du plébiscite. Enfin, le Commissaire pouvait signaler aux autorités compétentes les incidents de toute nature survenant au cours de l'exécution des mesures législatives ou réglementaires, soit en attirant son attention sur l'inconvénient de telle pratique, soit en demandant des éclaircissements sur tel ou tel fait, soit en recommandant de prendre les dispositions nécessaires pour éviter le renouvellement de telle ou telle manœuvre.

Dans l'ensemble, les autorités locales ont accepté loyalement cette coopération, comme en témoigne l'abondante correspondance échangée avec la mission des Nations Unies. Les autorités locales n'ont pas toujours aligné leurs positions sur celles du Commissaire; mais elles l'ont fait dans la plupart des cas. Quand elles ont maintenu leur point de vue, elles ont été obligées de le justifier publiquement.

Le rôle de conseiller ou d'arbitre joué par le Commissaire a été poussé si loin qu'on a vu, dans certaines circonstances, les autorités locales se retourner vers lui pour lui demander d'intervenir en vue d'éviter des incidents qui auraient pu compromettre le succès du plébiscite. C'est ainsi que le Commis-

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saire au Togo sous administration française a pu, sur requête formelle du gouvernement togolais, prévenir une grève générale que les syndicats menaçaient d'organiser pour protester contre la lenteur de la procédure d'inscription sur les listes électorales.

Si la coopération a été la règle au sommet, elle a été aussi pratiquée à la base. Les observateurs des Nations Unies ne se sont pas toujours contentés de surveiller passivement les opérations. On les a utilisés pour contribuer aux campagnes d'information destinées à éclairer les populations sur la portée du plébiscite; on a eu aussi recours à eux pour instruire de leurs devoirs les citoyens désignés pour constituer les bureaux de vote ou les équipes de scrutateurs. Ce sont là des tâches qui relèvent de l'assistance technique.

Qu'il s'agisse de la surveillance des opérations ou de la mission de contrôle et d'assistance, le contrôle exercé par les Nations Unies n'a pas été un vain mot. La présence et l'action positive du Commissaire et des observateurs ont garanti, aux yeux des populations, l'impartialité de la consultation et ont constitué un précieux facteur du maintien de l'ordre au cours de cette phase délicate où se jouait le destin du territoire. Mais elles ont aussi permis de fournir à l'Assemblée générale des éléments d'appréciation objectifs sur le déroulement et sur les résultats de la consultation. Il appartient en effet au Commissaire de présenter, sous forme de rapport synthétique, l'ensemble des observations faites au cours de sa mission. Les rapports constituent une précieuse source de documentation, grâce à une relation détaillée des événements et aux appréciations qui sont portées sur l'enchaînement des faits et sur le comportement des hommes. Mais ce rapport ne constitue qu'un élément du dossier. C'est à l'Assemblée générale et à elle seule qu'il appartient d'en tirer les conséquences politiques et juridiques.

III

L'interprétation des résultats

Dans les plébiscites ordinaires, le résultat du scrutin peut emporter de plein droit la décision. S'il y a eu contrôle international des opérations, la Commission compétente se borne à donner officiellement connaissance des résultats; l'exécution de la décision populaire incombe alors aux parties en cause qui devront régler entre elles les conditions dans lesquelles s'effectue la succession aux compétences territoriales.

Dans le cas des consultations supervisées par les Nations Unies, il en va différemment. Le choix populaire n'est qu'un élément de la situation. La décision finale appartient à l'Assemblée générale qui dispose d'un pouvoir discrétionnaire d'appréciation quant à la validité, à la signification et à la portée des résultats.

1) *Appréciation de la validité des résultats.*

Le rapport établi par le Commissaire au plébiscite contient normalement tous les éléments d'appréciation quant à la régularité et à la validité du plébiscite. Mais l'avis formulé par le Commissaire ne lie ni le Conseil de Tutelle ni l'Assemblée générale qui peuvent parfaitement se prononcer en sens contraire. En fait, cette situation ne s'est pas présentée. La conclusion des cinq rapports fournis par les Commissaires était favorable à la régularité et à l'impartialité des consultations. Le Conseil de Tutelle et l'Assemblée générale n'ont pas remis en question la validité des quatre plébiscites ni celle des élections générales au Togo sous administration française. Mais ils étaient en droit de le faire et il suffit d'imaginer une situation plus confuse ou un rapport aux conclusions plus hésitantes pour apercevoir l'importance du rôle de l'Assemblée sur ce point.

Mais il ne suffit pas de considérer les résultats comme régulièrement acquis; il faut encore en dégager la signification.

2) *Appréciation de la signification des résultats.*

La clarté des résultats obtenus par la méthode du plébiscite masque souvent des situations complexes qui laissent à une autorité extérieure et supérieure aux parties une marge importante d'appréciation. Les Commissaires des Nations Unies n'ont pas manqué de constater le trouble suscité auprès des électeurs par l'incertitude de tel ou tel choix qui leur était proposé. Ainsi les Togolais et les Camerounais sous administration britannique pouvaient légitimement s'interroger sur la portée exacte de l'union de leur territoire avec la Côte de l'Or, le Nigéria ou la République du Cameroun. Les modalités de cette union pouvaient varier sensiblement selon le rapport des forces politiques à l'intérieur des nouveaux Etats promus à l'indépendance ou selon l'aménagement interne (centralisation ou fédéralisme) qui prévaudrait dans ces collectivités de rattachement. De même les électeurs samoans pouvaient se demander quelle était la portée de la liaison établie par le plébiscite entre les deux questions qui leur étaient soumises puisque l'une portait sur le texte d'une Constitution et l'autre sur l'accès à l'indépendance sous le régime de cette Constitution. Sur ces divers points, l'Assemblée aurait pu intervenir pour préciser la signification du vote. Si elle ne l'a pas fait, c'est parce que de son avis les circonstances consécutives au plébiscite ont dissipé ou atténué rapidement les incertitudes qui pouvaient hypothéquer le résultat du scrutin. Mais il est au moins deux cas où l'Assemblée générale a tranché des questions litigieuses en imposant sa propre interprétation du plébiscite.

Pour le Togo sous administration britannique, on pouvait se poser la question de savoir comment interpréter un vote qui avait donné, dans le

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Nord du territoire, une majorité pour l'union avec la Côte de l'Or et, dans le Sud, une majorité favorable au maintien du régime de tutelle. Le Commissaire des Nations Unies n'avait pas pris parti sur la question, se contentant de présenter le décompte des voix par circonscriptions. L'Assemblée générale, confirmant sa décision antérieure, a refusé de distinguer les votes du Nord et du Sud et n'a considéré que les résultats globaux favorables à l'union avec la Côte de l'Or. Une interprétation différente aurait aussi bien pu prévaloir.

Le second cas concerne l'interprétation, par l'Assemblée générale, des résultats du premier plébiscite organisé dans le Cameroun septentrional. Ayant à choisir entre l'union au Nigéria et le maintien du régime de tutelle, les électeurs s'étaient prononcés à une nette majorité en faveur de la seconde solution. Le Commissaire des Nations Unies a estimé, dans son rapport, que ce vote exprimait surtout une « protestation contre le système d'administration locale en vigueur au Cameroun septentrional » et que la population avait entendu manifester sa volonté de voir aboutir rapidement des réformes. Il n'empêche que les électeurs avaient formellement écarté la solution du rattachement au Nigéria. L'Assemblée générale, entérinant ici l'interprétation suggérée par le rapport du Commissaire au plébiscite, a estimé que ces résultats n'étaient pas décisifs et elle n'a pas hésité à organiser quelques mois plus tard dans le même territoire un nouveau plébiscite offrant aux électeurs le seul choix entre le rattachement au Nigéria ou à la République du Cameroun — c'est-à-dire excluant délibérément la solution en faveur de laquelle venait de se prononcer la majorité du corps électoral du Nord Cameroun.

L'Assemblée générale n'est donc pas liée par les résultats du vote — même quand ceux-ci expriment une opinion parfaitement claire. Elle peut faire prévaloir librement sa propre interprétation jusqu'à remettre en question le bien-fondé du choix qu'elle avait elle-même suscité.

3) *Décision finale.*

A plus forte raison, l'Assemblée est-elle seule compétente pour entériner le choix des populations et transformer celui-ci en une décision ayant autorité sur le plan international. Certes le fondement juridique de la décision prise demeure la compétence dont jouit l'Assemblée générale pour déterminer les conditions de la levée de la tutelle. Dans le cas du Togo sous administration française (Résolution 1253 XIII du 14 novembre 1958), l'Assemblée générale a simplement pris acte du fait que les conditions fixées par la Charte se trouvaient réunies et elle a laissé à la puissance administrante et aux autorités locales le soin de décider de la date à laquelle l'accord de tutelle cesserait d'être en vigueur. Mais dans le cas d'union entre un territoire sous tutelle et un Etat voisin, l'Assemblée générale a formellement

approuvé la mutation territoriale et chargé la puissance administrante de prendre les mesures nécessaires à son exécution. C'est ainsi que la Résolution 1044 (XI) en date du 13 décembre 1956 « approuve l'union du Togo sous administration britannique à une Côte de l'Or indépendante et invite en conséquence l'Autorité administrante à prendre les mesures nécessaires à cette fin » avant de statuer sur la levée de la tutelle.

La formule utilisée pour le Cameroun britannique associe expressément les mutations territoriales à la levée de la tutelle puisque l'Assemblée générale, dans sa Résolution 1608 (XV) du 21 avril 1961 :

> « *Décide* que, les plébiscites ayant eu lieu séparément avec des résultats différents, l'Accord de tutelle... prendra fin... dans les conditions suivantes :
> a) en ce qui concerne le Cameroun septentrional le 1er juin 1961, au moment où le Cameroun septentrional s'unira à la Fédération de Nigéria en tant que province séparée de la Région nord de la Nigéria;
> b) en ce qui concerne le Cameroun méridional, 1er octobre 1961, au moment où le Cameroun méridional s'unira à la République du Cameroun. »

On peut donc affirmer que l'Assemblée générale, s'appuyant sur les résultats du plébiscite, a statué souverainement sur le sort des territoires dont elle avait jusqu'ici assuré la gestion sous le régime de la tutelle. Les populations ont bien été conviées à faire connaître leurs préférences. Mais c'est l'Organisation des Nations Unies qui a seule qualité pour provoquer la consultation, en contrôler le déroulement et en interpréter, politiquement et juridiquement, les résultats.

L'Assemblée générale a ainsi affirmé dans ce domaine son pouvoir de décision. Elle procède à un véritable arbitrage politique sans chercher à obtenir le consentement des parties en cause. Elle se considère comme l'autorité qualifiée pour décider souverainement des conditions de cessation de la tutelle.

Dans le cas du plébiscite concernant le Cameroun sous tutelle britannique, la solution adoptée par l'Assemblée a soulevé une vive opposition; lorsque le rapport du Commissaire des Nations Unies fut examiné par le Conseil de tutelle le 10 avril 1961 le représentant de la France a indiqué son intention de demander l'invalidation du plébiscite au Cameroun septentrional. Devant la Quatrième Commission le Ministre des Affaires étrangères de la République du Cameroun a critiqué le comportement du Royaume-Uni qui n'ayant pas, avant la consultation populaire, procédé à la séparation administrative du Cameroun septentrional d'avec le Nigeria qu'avait prescrite l'Assemblée générale, avait, de ce fait affecté les résultats du plébiscite; celui-ci, en effet, s'était déroulé en présence de fonctionnaires et de policiers nigériens.

Cependant par 59 voix contre 2 et 9 abstentions la Commission devait se prononcer pour le projet de résolution entérinant les résultats du référendum. La France, le Cameroun, des Etats africains d'expression française avaient été absents lors du vote pour marquer leur protestation.

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En séance plénière le 21 avril 1961 des protestations solennelles s'élevèrent contre la décision de l'Assemblée générale prise par 64 voix contre 23 avec 10 abstentions et proclamant le rattachement à la Nigeria.

La République du Cameroun a alors décidé de saisir la Cour internationale de Justice sur la base de la clause de juridiction obligatoire contenue dans l'accord de tutelle du 13 décembre 1946 relatif au Cameroun sous administration du Royaume-Uni, avant l'expiration de la validité de celui-ci. Le 31 mai 1961 il a formé une requête contre le Royaume-Uni dans laquelle sont invoqués tout à la fois des manquements à l'accord de tutelle et à la résolution 1473 (XIV) relative à la séparation administrative du Cameroun septentrional et de la Nigeria. Certains griefs se rapportent directement au plébiscite : « les conditions fixées par le paragraphe 4 de la même résolution visant l'établissement des listes électorales ont été interprétées de manière discriminatoire »; « les actes des autorités locales pendant la période précédant le plébiscite et durant les opérations électorales ont modifié le déroulement normal de cette consultation et ont entraîné des suites contraires à l'accord de tutelle ».

La Cour doit donc se prononcer sur la question de savoir si le Royaume-Uni a ou non respecté certaines obligations résultant de l'accord de tutelle. Sans doute la résolution de l'Assemblée générale fixant le sort du territoire sous tutelle n'est elle pas soumise à la censure de la Cour, mais la République du Cameroun, en contestant la légalité du comportement de la puissance administrante peut espérer un arrêt qui déciderait que le plébiscite a eu lieu dans des conditions contraires aux principes posés par l'Assemblée générale elle-même. C'est la première fois que la Cour est appelée à connaître au contentieux d'une affaire qui concerne un domaine dans lequel l'Assemblée générale possède un pouvoir de décision. Si juridiquement la constatation de l'irrégularité du comportement britannique ne peut affecter la décision politique prise par l'Assemblée, elle ne devrait pas manquer de comporter des conséquences sur le plan politique, tout au moins dans les rapports entre les Etats directement intéressés.

***

L'O.N.U. est trop décriée aujourd'hui pour qu'on ne souligne pas les expériences où son action a été bénéfique. Il semble que tel ait été dans l'ensemble le cas pour l'organisation de plébiscites ou la supervision d'élections dans les territoires sous tutelle. Des mutations territoriales ou politiques ont pu être accomplies sans trouble grave. Le fait est d'autant plus remarquable que les populations consultées sur leur sort faisaient pour la plupart l'apprentissage des mécanismes élémentaires de la démocratie.

Mais si les initiatives prises par les Nations Unies ont abouti à des résultats heureux, il ne faut pas oublier les conditions dans lesquelles ces expé-

riences ont eu lieu. Les territoires sous tutelle constituaient un terrain particulièrement favorable : l'Assemblée générale est maîtresse de leur sort, au moins en ce qui concerne les conditions de la levée de la tutelle; les puissances administrantes, soucieuses d'être déchargées de leurs responsabilités, ont coopéré de bonne grâce avec l'O.N.U. pour organiser ces plébiscites; enfin les populations locales se sont vu offrir en général des solutions qui, sous une forme ou sous une autre, constituaient pour elles une promotion conforme au mouvement général vers l'indépendance. Le succès réel des plébiscites s'explique donc bien plus par la technique du régime de tutelle — dont ils constituent la phase ultime — que par la vocation propre des Nations Unies à arbitrer les litiges politiques ou territoriaux qui subsistent à l'heure actuelle dans le monde. Aussi bien l'O.N.U. a-t-elle échoué dans l'entreprise lorsqu'il s'est agi d'organiser des consultations en Hongrie ou au Cachemire, sans avoir obtenu l'accord préalable des Etats ou des forces politiques intéressées. Aucune résolution n'a pu être adoptée pour le Cachemire et la résolution adoptée pour la Hongrie le 9 novembre 1956 est restée lettre morte.

C'est pourquoi il n'est pas possible de tirer de ces expériences isolées des conclusions trop optimistes. L'O.N.U. n'a réussi à mener à bien ces plébiscites que parce qu'elle avait la faculté de les entreprendre et la possibilité de les faire exécuter. Elle ne dispose malheureusement, à l'heure actuelle, ni de l'autorité morale ni de la force matérielle qui lui permettraient d'imposer son concours et son arbitrage à des parties récalcitrantes. Le droit des peuples à disposer d'eux-mêmes est un idéal respectable. Sa mise en œuvre, qui aboutit généralement à remettre en question l'ordre existant, exige cependant un degré de solidarité et une discipline collective qui ne semblent pas encore être atteints au sein de l'Organisation des Nations Unies.

ANNEXE DOCUMENTAIRE

Togo sous administration britannique

Texte de base : Résolution 944 (X) prise par l'Assemblée générale le 15 décembre 1955.

Date du plébiscite : 9 mai 1956.

Questions posées :

1) Voulez-vous l'union du Togo sous administration britannique à une Côte de l'Or indépendante ?
2) Voulez-vous la séparation du Togo sous administration britannique de la Côte de l'Or et le maintien du régime de tutelle en attendant que l'avenir du territoire soit définitivement fixé ?

Résultats du plébiscite :

— pour l'union avec la Côte de l'Or : 93 095 voix.
— pour le maintien du statu quo : 67 492 voix.

Rapport établi par M. Espinosa y Prieto, Commissaire au plébiscite, Document A/3173 du 5 sept. 1956.

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CAMEROUN SOUS ADMINISTRATION BRITANNIQUE

I. Plébiscite au Cameroun septentrional

Texte de base : Résolution 1350 (XIII) adoptée par l'Assemblée générale le 13 mars 1959.

Date du plébiscite : 7 novembre 1959.

Questions posées :
1) Désirez-vous que le Cameroun septentrional fasse partie de la région du Nord de la Nigéria lorsque la Fédération nigérienne accèdera à l'indépendance ?
2) Préférez-vous que l'avenir du Cameroun septentrional soit décidé plus tard ?

Résultats du plébiscite :
— pour le rattachement : 42 788 voix.
— pour le maintien du statu quo : 70 546 voix.

Rapport établi par M. Djalal Abdoh, Commissaire au plébiscite, Document A/4314 du 2 décembre 1959.

II. Plébiscites au Nord et au Sud Cameroun

Textes de base :
— pour le Cameroun méridional : Résolution 1352 (XIV) adoptée par l'Assemblée générale le 16 octobre 1959.
— pour le Cameroun septentrional : Résolution 1473 (XIV) prise par l'Assemblée générale le 12 décembre 1959.

Date du plébiscite : 11 et 12 février 1961.

Questions posées :
1) Désirez-vous accéder à l'indépendance en vous unissant à la République camerounaise indépendante ?
2) Désirez-vous accéder à l'indépendance en vous unissant à la Fédération nigérienne indépendante ?

Résultats du plébiscite :
— Cameroun septentrional :
+ rattachement au Nigéria : 146 296.
+ rattachement à la République camerounaise : 97 659.
— Cameroun méridional :
+ rattachement au Nigéria : 97 741.
+ rattachement à la République camerounaise : 233 571.

Rapport établi pour les deux plébiscites par M. Djalal Abdoh. Commissaire des Nations Unies, Document provisoire T/1556 du 3 avril 1961.

SAMOA OCCIDENTAL

Texte de base : Résolution 1569 (XV) adoptée par l'Assemblée générale le 18 décembre 1960.

Date du plébiscite : 9 mai 1961.

Questions posées :
1) Approuvez-vous la Constitution adoptée le 28 octobre 1960 par la Convention constitutionnelle ?
2) Désirez-vous que, le 1er janvier 1962, le Samoa Occidental devienne un Etat indépendant sur la base de cette Constitution ?

Résultats du plébiscite :
— première question : 28 151 OUI.
4 453 NON.
— deuxième question : 26 766 OUI.
4 666 NON.

Rapport établi par M. Najmuddine Rifai, Commissaire au plébiscite, Document provisoire T/1564, du 23 juin 1961.

TOGO SOUS ADMINISTRATION FRANÇAISE

Texte de base : Résolution 1182 (XII) adoptée par l'Assemblée générale le 29 novembre 1957.

Date des élections : 27 avril 1958.

Résultat des élections : le Comité de l'Union togolaise (C.U.T.) remporte 29 des 46 sièges. Ce parti s'était abstenu de prendre part aux élections de 1955 et au referendum de 1956.

Rapport établi par M. Max H. Dorsinville, Commissaire des Nations Unies. Document A/3957 du 23 octobre 1958.

RUANDA-URUNDI

Textes de base : Résolutions 1579 (XV) et 1605 (XV) adoptées par l'Assemblée générale les 20 décembre 1960 et 21 avril 1961.

Dates de la consultation (élections et referendum) :
— Burundi : 18 septembre 1961.
— Ruanda : 25 septembre 1961.

Questions posées au referendum (Ruanda) :
1) Désirez-vous conserver l'institution du Mwami au Ruanda ?
2) Dans l'affirmative, désirez-vous que Kigeli V reste le Mwami du Ruanda ?

Résultats de la consultation : le rapport du Commissaire des Nations Unies n'a pas encore été publié. Des informations publiées dans la presse, il ressort que la population du Ruanda s'est prononcée à une nette majorité contre le maintien de la monarchie.

AUGMENTATION DU NOMBRE DES MEMBRES DU CONSEIL DE L'O. A. C. I.

R. H. MANKIEWICZ

AMENDEMENT DE L'ARTICLE 50, ALINEA A) DE LA CONVENTION RELATIVE A L'AVIATION CIVILE INTERNATIONALE

Comme nous l'avons relaté dans deux chroniques précédentes (1), les élections du Conseil de l'O.A.C.I. aux dixième et douzième sessions de l'assemblée (1956 et 1959) ont suscité des débats prolongés sur le sens et la portée de l'article 50, alinéa b) de la Convention de Chicago relative à l'aviation civile internationale. Finalement, lors de sa douzième session, l'Assemblée a temporairement modifié son règlement intérieur pour que l'élection

(1) Cet *Annuaire*, 1956, p. 646 ss.; 1959, p. 549 ss.

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Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963)

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THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS

BY

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FOR MY HUSBAND
AND MY PARENTS

practice as shown in the Congo operation, based as it is on Article 40. The matter may be restated as follows:

If a matter is giving rise to apprehension relating to the maintenance of peace and security, but is a potential threat rather than an actual threat, and is causing international friction rather than a breach of the peace, then —in spite of an objection under Article 2(7)—the Security Council may recommend measures under Chapter VI, for the question has become one of international concern; if the question has given rise to a finding under Article 39, then enforcement measures under Chapter VII may be ordered, and Article 2(7) ceases to be operative. If there has been a finding under Article 39, and the Security Council decides to make recommendations or to apply provisional measures under Article 40 rather than to order an enforcement action under Articles 41 and 42, then the situation—being one which is 'ripe for enforcement action', even though such action has not been ordered—also becomes unfettered by the reservation in Article 2(7). However, if there is no finding, implied or express, under Article 39, and there is only a question of international friction, no recommendations under Chapter VII may be made in the face of an objection on grounds of domestic jurisdiction; though in certain circumstances, where the element of international concern becomes pronounced, action may be available to the Council under Chapter VI.

d. That the United Nations may always act where a question of self-determination is involved

In comparatively recent times a new claim is being made by those who support the extension of the influence of the United Nations in certain matters traditionally within the reserved domain. This claim asserts that the right to self-determination is a legal right, backed by a legal obligation, and not merely a 'pious hope, devoid of legal substance'. In the contemporary world situation, where anti-colonialism has assumed vital dimensions, this claim has become exceedingly significant, and merits detailed consideration.

Article 1 of the Charter of the United Nations, which sets out the Purposes and Principles of the Organization, declares as the second of these the development of 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .'. And again, Article 55 considers that friendly relations between nations are 'based on respect for the principle of equal rights and self-determination of peoples'; while in Chapter XI, which is concerned with Non-Self-Governing Territories, Article 73 notes that members assuming responsibility for such territories are 'to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions'.

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The question has therefore arisen of how far these articles may be cited as authority for the taking of action of various kinds by the United Nations in the face of an objection based on Article 2(7). In other words, does the existence of a 'self-determination' element in a situation otherwise internal give that situation the requisite international element to remove it from the domain of questions 'essentially within the domestic jurisdiction'? The answer to this problem must in turn depend on whether the self-determination provisions in the Charter give rise to international legal rights and obligations, or whether they are merely generalized aims.

If such a right does exist, it must be acknowledged to be a fairly new one. The Aaland Islands dispute, though not directly in point,[40] tends to support this; and the report of the Commission of Jurists, dealing with the substance of the dispute, observed that positive international law did not recognize the right of self-determination of peoples to separate themselves from the state to which they belonged.[41] Nor, it would seem, did it recognize the right of self-determination of peoples to free themselves from the rule of those states by whom they were colonized, even if they did not 'belong' to such states.

The practice of the United Nations in this complex area of international affairs is very revealing and its importance can hardly be exaggerated. By resolution 545 (VI) the Assembly requested the Commission on Human Rights to draw up recommendations concerning 'international respect for the self-determination of peoples'. Accordingly, the Commission on Human Rights adopted two resolutions[42] which came before the Assembly for adoption at its seventh session. After a discussion in which objections were raised on the grounds of Article 2(7), the General Assembly agreed to[43] an amended version of the first of these resolutions. The preamble referred to the provisions on self-determination in Articles 1(2) and 55, and paragraph 2 of the operative part stated that:

> 2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and trust territories who are under their administration and shall facilitate the exercise of this right by the peoples of such territories according to the principles and spirit of the Charter of the United Nations in regard to each territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means. . . .[44]

40. This dispute arose between Sweden and Finland over title to the Aaland Islands which were under the *de facto* rule of Finland. The Swedish Govt declared that the peoples of those islands wished to join Sweden, and therefore requested a plebiscite. Finland asserted that as the islands came under its territorial sovereignty, the matter was one of domestic jurisdiction.
41. *LNOJ* (1920), Spec. Suppl. 3, pp. 3–19.
42. *ESCOR*, 14th sess., Suppl. 4 (E/2256), paras. 75–91.
43. By 40 votes to 14, with 6 abstentions.
44. GA res. 637 A (VII).

Thus the argument that the manner in which a state applied the principle of self-determination fell essentially within the domestic jurisdiction failed to hold sway;[45] and the United Nations found that it was not debarred by Article 2(7) from recommending that a member state organize a plebiscite to determine the aspirations of a minority group.[46] Events had already moved far since the report on the Aaland Islands dispute.

Meanwhile the Assembly requested the Commission on Human Rights to continue preparing its recommendations on this topic.[47] The Commission then submitted its recommendations for the examination of the Social Committee of the Economic and Social Council.[48] One of the recommendations urged the Assembly to establish a Special Commission to examine any situation resulting from an alleged denial or inadequate realization of the right of self-determination, 'which falls within the scope of Article 14 of the Charter and to which the Commission's attention is drawn by any ten members . . .'.[49] This proposal met some opposition on the grounds that it would constitute an interference in a matter of domestic jurisdiction, and the matter was referred back to the Commission on Human Rights for consideration in the light of this objection.[50]

During this reconsideration some representatives asserted that the realization of self-determination fell essentially within the domestic jurisdiction of states,[51] being a matter of the political structure of states. It was also observed that both Article 1(2) and Article 55 referred to the 'principle' of self-determination, and not to the 'right' of self-determination.[52] These delegates thought it significant that no Charter article granted the Assembly competence to implement this 'principle' in Article 2(1), although by contrast, implementation of the purpose of Article 1(1) was provided for by Article 11, and implementation of that of Article 1(3) was provided for by Article 13. However, these objections were strongly opposed,[53] and the Commission on Human Rights reaffirmed its previous recommendation,[54] which was duly sent on to the General Assembly by the Economic and Social Council.[55] The General Assembly was also asked to consider a draft resolution of the United States which, noting that differences of opinion had been revealed, requested that the General Assembly set up an Ad Hoc Commission to conduct a study of the concept of self-determination.

The Assembly eventually dealt with the matter at its twelfth session,

45. E/AC. 7/SR.292, p. 5.
46. *GAOR*, 7th sess., 3rd Cttee, 445th mtg, para. 29.
47. By GA res. 637 C (VII).
48. *ESCOR*, 18th sess., no. 7 (E/2573), ann. IV F.
49. Art. 14 allows the Assembly to act not only in situations likely to impair friendly relations between nations, but also in situations likely to impair 'the general welfare'—a much more broad authorization.
50. By ECOSOC res. 545 G (XVIII).
51. E/AC. 7/SR.326, p. 11; E/CN. 4/SR.503, p. 8.
52. E/CN. 4/SR.505, p. 5.
53. E/CN. 4/SR.500, p. 15.
54. *ESCOR*, 20th sess., Suppl. 6 (E/2731 & Corr. 1), pp. 30–31.
55. By ECOSOC res. 586 D (XX).

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where it adopted a resolution repeating the terms of Article 2(1) and stating that disregard for the right of self-determination (the word 'right' was used in preference to 'principle') undermines the basis of friendly relations among nations. Thus the relationship between self-determination and legitimate international concern is spelled out. This relationship is a vital one, because the principle of self-determination and the maintenance of international peace and security are inseparable: people seeking independence from those unwilling to grant it, or in any event unwilling to grant it on the terms demanded, are likely to disturb the peace. This highlights in acute form the difficulty that the Charter fails entirely to provide for the *enforcement* of that peaceful change which justice requires. The operative part of the resolution declares that:

(*a*) Member States shall, in their relations with one another, give due respect to the right of self-determination;

(*b*) Member States having responsibility for the administration of Non-Self-Governing territories shall promote the realization and facilitate the exercise of this right by the peoples of such territories.[56]

For several years the agenda of the General Assembly included an item entitled 'Violation by France in Morocco of the principles of the United Nations Charter and the Declaration of Human Rights'.[57] The representative of France consistently maintained that the **question of Morocco** was a matter of domestic jurisdiction, while certain others contended that Moroccan sovereignty had been recognized by France in signing the Act of Algeciras and the protectorate treaty, and that certain measures of the French Administration in that territory were contrary to the principle of self-determination.[58] Moreover, it was contended that the situation in Morocco was a 'menace to international peace in that part of the world'. The resolution adopted by the General Assembly at its seventh session, on the recommendation of the First Committee, appealed for a continuation of negotiations and referred to Article 1(2) of the Charter, which mentions self-determination, as well as to the Charter provisions for the maintenance of peace.[59] The following year, in spite of objections raised on the grounds

56. GA res. 1188 (XII). Further consideration of this question led to the establishment of a Commission to conduct a survey of rights to permanent sovereignty over natural wealth and resources (GA res. 1314 (XIII)). Discussion of the finding of the Commission that such permanent sovereignty was a concomitant right of self-determination is beyond the scope of this Part.

57. For a useful discussion on legal aspects of this problem see Dejany, 'Competence of the GA in the Tunisian-Moroccan Questions', 47 *Proc. ASIL* (1953), 53. A valuable contribution to the study of the political background has been made by Atyeo, 'Morocco, Tunisia and Algeria before the UN', 6 *Middle Eastern Affairs* (1955), 22.

58. *GAOR*, 7th sess., ann., a. i. 65, pp. 1–5 (A/2175 & Add. 1 & 2).

59. Res. 612 (VII).

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of Article 2(7), the First Committee adopted a draft resolution[60] which stated that:

> The General Assembly, . . . *Recognizing* the right of the people of Morocco to complete self-determination in conformity with the Charter, *Renews* its appeal for the reduction of tension in Morocco and urges that the right of the people of Morocco to free democratic political institutions be ensured.

However, this draft resolution failed to obtain the necessary two-thirds majority in the Assembly, and hence was rejected.[61] The issue was never again clearly posed in this case,[62] as by the next year Franco-Moroccan negotiations were in fact imminent, and at the Assembly's eleventh session Morocco was admitted to membership.

Similar issues were presented by the **Tunisian question**. At its seventh session the General Assembly was presented with a complaint that the French Administration in Tunisia had violated human rights and the principle of self-determination. Again, it was contended that France had undertaken to respect Tunisian sovereignty in signing the protectorate treaties.[63] The French delegation protested on grounds of Article 2(7), and boycotted the discussions of the First Committee.[64] The General Assembly, on the recommendations of that Committee, eventually adopted resolution 611 (VII),[65] which referred to Article 1(2), *inter alios*, and expressed the hope that the parties would continue negotiations 'on an urgent basis with a view to bringing about self-government for Tunisians in the light of the relevant provisions of the Charter of the United Nations . . .'.

The following year the First Committee adopted a draft resolution which referred in unequivocal terms to the right of self-determination.[66] However, this resolution failed to obtain the necessary two-thirds majority in the Assembly.[67] At the ninth session, those states requesting the inclusion of the Tunisian item upon the agenda now categorized it as 'a threat to world peace'.[68] As negotiations between the parties were now in progress, the Assembly postponed consideration of the item.[69] At the eleventh session Tunisia was admitted to membership in the United Nations.

Although in both these cases the strongly worded resolutions of the First Committee citing a right to self-determination failed to be adopted in

60. GAOR, 8th sess. a.i. 57, p. 6 (A/2526), para. 11.
61. Ibid. plen., 455th mtg, 32–22–5.
62. Though two further resolutions were in fact adopted by the Assembly: 812 (IX) & 911 (X).
63. *GAOR*, 7th sess., ann., a.i. 60, p. 1–4 (A/2152).
64. Ibid. p. 5 (A/C.1/737).
65. By 44 votes to 3, with 8 abstentions.
66. *GAOR*, 8th sess., ann., a.i. 56, p. 5 (A/2530, para. 7).
67. Ibid. plen., 457th mtg, para. 152. There were 31 votes in favour, 18 against, and 10 abstentions.
68. Ibid. 9th sess., ann., a.i. 57, pp. 1–3 (A/2683).
69. By res. 813 (IX).

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plenary, it is significant that they only failed through inability to muster a two-thirds majority. Already a simple majority in plenary believed such resolutions to be valid, and the implications of this trend have been sustained.

In 1955 the **question of Algeria**—alleging a threat to the peace and breach of the Charter provisions on self-determination[70]—came before the Assembly, where, after its inclusion upon the agenda,[71] it was decided to proceed no farther.[72] When the question was brought before the Security Council, and violation of human rights was added to the charges,[73] the Council decided, by 7 votes to 2, with 2 abstentions, not to include the matter in its agenda.[74] In both organs France contended that the matter was one of domestic jurisdiction, as Algeria was part of metropolitan France—an argument it has consistently maintained. The failure of the Council to include the matter in its agenda at this stage was partly because of weight given to this argument, and undoubtedly partly for reasons not based on Article 2(7).[75] The points raised on the question of self-determination are very instructive, however. Some claimed that Article 2(7) was an overriding provision, applying to all aspects of the Charter, including that of self-determination.[76] On the other hand certain members felt that a principle which was enunciated in the Charter could not fall essentially within the domestic jurisdiction.[77]

At the eleventh session of the Assembly, a resolution was before the First Committee which requested France to recognize the right of Algeria to self-determination; to negotiate peaceful settlement with the Algerian nationalists; and to accept the aid of the Secretary-General in conducting negotiations. This resolution was defeated,[78] and two more moderate resolutions went before the plenary meeting.[79] When neither of these received a two-thirds majority, the co-sponsors joined in framing a new resolution, which merely expressed the hope that a 'peaceful, democratic and just solution will be found'.[80] Even less was achieved by the twelfth session of the Assembly: the First Committee had been unable to reach agreement on a resolution to present for adoption,[81] and the Assembly

70. *GAOR*, 10th sess., ann., a.i. 64, p. 1 (A/2924 and Add. 1).
71. Against the recommendation of the Gen. Cttee (*GAOR*, 10th sess., plen., 530th mtg, paras. 219 & 223).
72. See res. 909 (X). 73. S/3609, 13 June 1956.
74. *SCOR*, 11th yr, 730th mtg, para. 85.
75. Ibid. paras. 32–34, 43–49, 69–72, 81–84.
76. *GAOR*, 10th sess., 529th mtg, paras. 154–7; & *SCOR*, 11th yr, 730th mtg, para. 61.
77. *GAOR*, 10th sess., 529th mtg, paras. 175–7. 78. A/C.1/L.165.
79. A/C.1/L.166 & A/C.1/L.167. 80. GA res. 1012 (XL).
81. A 17-state draft resolution (A/C.1/L.194) recognizing the principle of self-determination for Algeria and calling for negotiations was modified by amendments (passed very narrowly) which substituted for the principle of self-determination the recognition that 'the people of Algeria were entitled to work out their own future in a democratic way' and proposed 'effective discussion' instead of 'negotiations' (A/C.1/L.196). The modified resolution failed to be carried.

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merely noted that good offices had been offered, and hoped that a solution would be reached.[82] Undeterred, by 1958 the Afro-Asian states were demanding the right of the Algerian people to independence[83]—a stronger term than self-determination. A Haitian amendment having been rejected, the First Committee adopted the resolution. The resolution was rejected by the Assembly, which failed by a single vote to provide the necessary two-thirds majority.

But behind the failure of the Assembly to pass a resolution favouring the right of self-determination for Algeria an interesting trend was taking place. The voting records show that not only was the cause of Algeria gaining in support, but that so was the idea that there might be a legal right to self-determination in these circumstances, even in spite of objections based on domestic jurisdiction.[84]

The year 1959 saw something of a change in the situation, as by the time the Assembly convened, President de Gaulle had already announced proposals for the self-determination of Algeria—without conceding at all the right of the United Nations to consider the matter.[85] Inevitably, many states now decided to abstain on any resolution, feeling that the progress made should not be jeopardized by putting France in a position of pressure.[86] Other countries, such as Portugal and Spain, continued to oppose a resolution on grounds of Article 2(7). Because of these factors the resolution recommended by the Political Committee reverted to the concept of 'self-determination', rather than 'independence'. Although the resolution was carried in Committee, the prospects of success in plenary were negligible, and a new resolution, merely calling for the holding of talks to arrive at 'a peaceful solution on the basis of the right to self-determination' was put to the vote. It failed to be carried.[87] None the less, the principle of self-determination had now been accepted by all parties, and all the resolutions being put forward—which all gained simple majorities in the Assembly—referred to the *right* of self-determination, and ignored argument based on Article 2(7).

The situation was solidified at the fifteenth session of the Assembly, when the General Assembly formally recognized the right of the Algerian people

82. Res. 1184 (XII).
83. A/C.1/L.232.
84. An analysis of the voting trends between 1955 and 1958 may be found in Alwan, *Algeria before the UN* (1959), at 67. He estimates that the number of supporters for Algerian self-determination increased by 15 per cent in this period. This writer, agreeing with the trend, none the less feels that those figures have failed to take into account the increases in membership during this time, and that they consequently fail to reflect accurately the changes of view *within the Organization* on the Algerian question.
85. For a useful discussion see Rossi & Sohn, 'Is France Right about Algeria in the UN?', *For. Pol. B.*, 15 Nov. 1955, pp. 35–37.
86. See A/C.1/PV.1076, espec. per Iceland and Denmark and Italy.
87. Draft res. A/L.276 (*GAOR*, 14th sess., 856th mtg).

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to self-determination.[88] The *basis* of Assembly action, however, remained unclear, for while the right to self-determination was unequivocally recognized, the Assembly classified the situation as one constituting a threat to international peace and security—a position which would grant the Security Council exemption from a reservation of domestic jurisdiction, and which introduced for the Assembly a strong element of 'international concern'.

At the sixteenth Assembly, there were no opposing votes to a similar resolution[89]—similar, and yet extremely significant. This resolution carried no mention of a threat to the peace in the Algerian situation: rather, it referred to the recent Assembly resolution calling for an end to colonialism,[90] and to the recognition of the right of self-determination and independence for Algeria. It declared itself concerned with the 'just implementation' of this right, and asserted that the United Nations had a role to play in securing it. The Assembly called for a resumption of negotiations. Thus the basis of the Assembly resolution, which is addressed to two specific parties, lies squarely on an international legal right to self-determination, and, by implication, the inapplicability of Article 2(7) to any situation concerning this right. At the seventeenth session of the General Assembly Algeria, having gained its independence, was admitted to membership.

In its early stages, those who would have had the General Assembly deal with the **Cyprus question**—'Application, under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the island of Cyprus'[91]—encountered much the same sort of difficulties as those which had arisen in the early stages of the Algerian question. The United Kingdom representative claimed that the matter fell essentially within his country's jurisdiction, as Cyprus was a British possession.[92] This proposition received a certain amount of support, although others thought that a question of self-determination could not be essentially domestic.[93] Interestingly, some representatives draw a distinction between minorities living within the metropolitan boundaries of states, and the peoples of Non-Self-Governing Territories.[94] They claimed that the realization of the rights of the latter—though not of the former—was a matter of international concern governed by the provisions of Chapter XI. They thus acknowledged merit in France's denial of international competence in the Algerian question on the grounds that

88. Res. 1573 (XV). It was adopted 63–8–27. Interestingly, the opposing votes were largely made up of the states of the French Community in Africa, together with S. Africa and Portugal. Spain, Belgium, the UK, and the USA abstained.

89. Res. 1724 (XVI). There were 38 abstentions.

90. Res. 1514 (XV). See below, pp. 100–4.

91. The question was raised by Greece (*GAOR*, 9th sess., ann., a.i. 62, p. 1 (A/2703)).

92. *GAOR*, 9th sess., 477th mtg, para. 119; Gen. Cttee, 93rd mtg, paras. 15–27.

93. *GAOR*, 9th sess., 1st Cttee, 751st mtg, para. 32; 752nd mtg, para. 7; 10th sess., plen., 521st mtg, paras. 112 & 113.

94. *GAOR*, 9th sess., 1st Cttee, 750th mtg, para. 31.

Algeria was a metropolitan territory. In the intervening seven years less and less emphasis has been put on this distinction, and with good reason. For a state to declare an overseas possession, whose population is of a different race and often in highly organized opposition, to be part of the metropolitan area may well be arbitrary and at variation both with the facts and with common sense. The claim has been heard more recently from Portugal about Angola,[95] but, with the exception of South Africa, has received virtually no support. At some time in the past it may well have been an accurate factual description for colonial Powers to describe overseas possessions as part of the metropolitan territory. However, the factual relationship of these overseas possessions to the administering state has undeniably changed, and a claim that Article 2(7) applies to the situation must be rejected as being too much at variance with reality. As facts can make new law, so can they unmake old law.

In any event, when the question of Cyprus first arose, the Assembly was reluctant, both at its ninth and tenth sessions, to consider the problem. At the former, a resolution was adopted[96] deciding not to do anything further at the present time (though there was some unresolved controversy as to whether this decision did or did not prejudice the question of the Assembly's competence),[97] and the following year the Assembly decided not to include the item upon its agenda.[98] The fact that the Greek demand for Cyprus independence was in reality aimed at *enosis* (union) of Cyprus with Greece undoubtedly influenced the voting at this stage. Some representatives agreed that there was a right of self-determination, but thought that the present case involved not the independence of the Cypriot people but a change of sovereignty from British to Greek hands, and hence should not be discussed.[99] Certain other states thought that Article 2(7) was an attribute of sovereignty; that Cyprus was being administered under Article 73; and that the rights flowing from administration were not the same as those flowing from sovereignty. In other words, Article 2(7) was only available to a state in relation to its homeland.[1]

By the following year the situation in Cyprus had deteriorated and the United Kingdom requested that the Greek complaint, together with a complaint of its own charging support for terrorism, should be discussed.[2] The United Kingdom representative took the opportunity to voice the opinion that the question of the circumstances in which the principle of self-

95. S/4993, pp. 134–9. 96. Res. 814 (IX).
97. *GAOR*, 9th sess., 514th mtg, paras. 258, 266, 272, & 286.
98. Ibid. 10th sess., 521st mtg, para. 167. Again, the decision was based on a variety of reasons: some thought the Assembly had no competence, while others thought Art. 2(7) could not apply, but that it was inopportune to discuss the Cyprus question for political reasons.
99. e.g. per Colombia (*GAOR*, 9th sess., Gen. Cttee, 93rd mtg).
1. See statements of representatives of Greece and Ecquador (ibid. 1st Cttee, 751st mtg).
2. Ibid. 11th sess., Gen. Cttee, 107th mtg, & A/3120/Add. 1.

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determination should be applied in any of the territories of a member state was clearly an internal matter for the state itself.[3] Ultimately the General Assembly adopted a resolution calling for the resumption of negotiations and a 'peaceful, democratic and just solution'.[4]

In 1957 the contention was voiced that the phrase 'self-determination of peoples' used in Article 1(2) referred only to the freedom of sovereign peoples to choose a government, and that neither that article nor any other provision in the Charter justified rebellion on the part of Non-Self-Governing Territories.[5] A resolution before the Assembly urging negotiations to be resumed with a view to self-determination failed to obtain a two-thirds majority.[6] In 1959 a resolution expressing confidence in a peaceful, just, and democratic solution was adopted without objection.[7]

It must therefore be conceded that, on the face of it, the practice of the United Nations in the case of Cyprus did little to advance a notion of the *right* of self-determination, and the inapplicability of Article 2(7). However, the motives behind the restrained behaviour of the Assembly rested on a variety of factors, including apprehension at the terrorism on the island of Cyprus, the belief that the Greek interest in the question prevented it from being a matter of self-determination, and the opinion that little progress would be made by condemnation.

The history of the drafting of **International Covenants on Human Rights** is also of interest to our discussion. Some representatives to the Third Committee contended that the inclusion in the Covenants of a provision on the right of self-determination would be incompatible with Article 2(7) of the Charter.[8] Nevertheless, the following text was adopted[9] for both draft Covenants:

> 1. All peoples have the right to self-determination. . . .
>
> 3. All the States Parties to the Covenant, 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 United Nations Charter.[10]

Presentation of the completed Covenants—including this article—to the Assembly, has been postponed from year to year, and the reactions of the Assembly as a whole are still not available. However, the significance of the adoption of such an article by a Committee which has run into so much stormy weather in its work cannot be ignored, and nor can its implications

3. Ibid. 847th mtg. 4. Res. 1013 (XI), by 57–0–1.
5. Per Argentina (*GAOR*, 12th sess., 1st Cttee, 921st mtg) and per Spain (ibid. 927th mtg).
6. *GAOR*, 12th sess., plen., 731st mtg. The voting was 31–23–24.
7. Res. 1287 (XIII).
8. *GAOR*, 10th sess., ann., a.i. 28 (pt 1), p. 11 (A/2910/Add.2). See also *note verbale* of 20 July 1955 from Govt of Australia to the S-G (ibid. 3rd Cttee, 645th mtg, para. 5).
9. By 33–12–13 (*GAOR*, 10th sess., 3rd Cttee, 676th mtg, para. 27).
10. Ibid. ann., a.i. 28 (pt 1), p. 30 (A/3177, para. 77).

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in relation to Article 2(7). By the time the Covenants are ultimately presented to the Assembly, the 'anti-colonial' majority is likely to be firmly entrenched, and it is very probable that these articles will be adopted.

All these cases which we have discussed, then, show a trend towards acknowledging self-determination as a legal right; and, moreover, a legal right based on provisions in an international instrument, and hence beyond the scope of the domestic jurisdiction reservation. The trend towards this position accelerated sharply in 1960, when a Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted by Assembly resolution by 90 votes to none, with 9 abstentions. By this the General Assembly declared that:

> 2. 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.
>
> 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 or all other territories, which have not yet attained independence, 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 and freedom.[11]

How strong the wording of this resolution is needs no underlining. In it the right of self-determination is regarded not as a right enforceable at some future time under indefinite circumstances, but as a legal right enforceable here and now. Paragraph 3 does not overtly state that inadequacy of preparedness shall not be grounds for refusing independence—rather it declares that this inadequacy shall not be used as a 'pretext' for delaying independence. Yet in reality, as the good faith of the colonial Power cannot be proved—and in the present political climate the onus is always on it to do so—the Declaration is widely taken to mean that all territories, no matter how unready, are entitled to independence. That this makes some worrying inroads upon the traditional criteria for statehood has already been mentioned in Chapter II. Even for a commentator favourably disposed towards a liberal interpretation of the right of self-determination this resolution has many undesirable aspects, and the total lack of opposition displayed reflects sadly upon the failure of those governments (such as that of the United Kingdom) who most loudly insist upon Big Power responsi-

11. Res. 1514 (XV).

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bility to vote against resolutions which they do not support when public opinion is mounted against them. (Parenthetically, it may be observed that the United Kingdom has followed a similar course in the Security Council resolutions on the Congo, frequently abstaining on—instead of voting against—resolutions which its later behaviour has revealed it to dislike. Though the grounds for disapproval of the resolutions seem less justified in that case, the principle remains the same.) The decision of the nine abstaining nations not to vote against the resolution rested on a variety of factors, high among them the fact that a large group of newly independent states had just been admitted to the United Nations, and unnecessary alienation of these countries was to be avoided. Moreover, Chairman Khrushchev was in New York conducting a remarkable propaganda campaign, and indeed it was he who had manoeuvred the Western colonial Powers into this position by sponsoring the Declaration. None the less, it must be acknowledged that there *were* no opposing votes, and that the number of abstentions was very low. The resolution must be taken to represent the wishes and beliefs of the full membership of the United Nations.

Nor has it been forgotten since. We have noted above[12] that the Algerian resolution of 1961—which for the first time unequivocally recognizes the Algerian right to self-determination—bases itself on the Declaration of the granting of independence. So does resolution 1650 (XVI) on the status of Algerian prisoners to France. So does the Security Council resolution of 9 June 1961 on Angola.[13] It is significant that in the debates on this last-mentioned question, the representative of the Soviet Union was of the opinion that the reaffirmation by the Security Council of Assembly resolution 1603 (XV) on Angola, which in turn was based on the Granting of Independence resolution, had the effect of making that resolution mandatory. Further evidence that this resolution was not meant as a mere moral declaration is to be found in the decisions of the General Assembly on 27 November 1961[14] to create a seventeen-member committee to make recommendations on the implementation of the 1960 Declaration. All states administering trust and Non-Self-Governing Territories were called upon to 'take action without further delay with a view to the faithful application and implementation of the Declaration'. The resolution was adopted by 97–0, with 4 abstentions (France, South Africa, Spain, and the United Kingdom). In view of the lack of opposition registered both to the 1960 Declaration and to this resolution, it seems academic to argue that as Assembly resolutions are not binding nothing has changed, and that 'self-determination' remains a mere 'principle', and Article 2(7) is an effective defence against its implementation. To insist upon this interpretation is to

12. Above, p. 97 (GA res. 1724 (XVI)).
13. S/4835.
14. Res. 1654 (XVI).

fail to give any weight either to the doctrine of *bona fides*,[15] or to the practice of states as revealed by unanimous and consistent behaviour.

The development of the legal right of self-determination is being clearly shown by the case of **Southern Rhodesia**. There are, it should be said at this stage, two separate, though related, aspects to the Southern Rhodesia problem before the United Nations: the first of these concerns the implementation of Article 73(e) of the Charter, and obligations for the transmission of information by the United Kingdom under that Article; the second is about the right of the territory to independence. In other words, one aspect of the question is about what the United Kingdom can legally be expected to do, and the other is about the wishes of the peoples of Southern Rhodesia. It is the latter aspect which is relevant for our present discussion: the Rhodesian situation in the light of Article 73 will be discussed below. The Special Committee of Seventeen set up a sub-committee to report on Southern Rhodesia,[16] and after talks with United Kingdom officials, this sub-committee presented its report.[17] The report endorsed a three-Power resolution submitted by Ethiopia, Liberia, and Tunisia,[18] which considered that the territory of Southern Rhodesia has not attained self-government, and that the Assembly should take action to urge its conviction that the 1961 Constitution should be revised without delay. An Ethiopian resolution was also forwarded to the Assembly for consideration.[19] These in turn were noted in the report of the Special Committee,[20] and all these documents were put before the Assembly at its resumed and sixteenth session. On 28 June the General Assembly adopted a thirty-eight Power resolution[21] which had been based on the reports of the sub-committee and Committee of Seventeen. This resolution expressly refers to the failure of the United Kingdom to fulfil the requirements of paragraph 5 of the Declaration on the granting of independence (resolution 1515 (XV)), and affirms that Southern Rhodesia is not self-governing. It requests the United Kingdom to convene a constitutional conference to formulate a new Constitution to replace that of 6 December 1961, and urges that the rights of the majority be ensured on the basis of 'one man, one vote'.[22] The Assembly indicates in this resolution what it understands by 'self-deter-

15. The Netherlands Govt has shown both this good faith and the importance which it attributes to the 1960 Declaration by its statement with regard to the granting of independence to West Irian (A/4915, 9 Oct. 1961).

16. Under GA 1754 (XVI) the Committee was asked to consider whether the territory of Southern Rhodesia 'has attained a full measure of self-government'.

17. A/AC.109/L.9.

18. A/AC.109/L.4/rev. 3.

19. A/AC.109/L.12.

20. A/5124.

21. Res. 1747 (XVI). The resolution was passed by 73–1 (S. Africa), with 27 abstentions (including Australia, New Zealand, Belgium and the USA). The UK did not participate in the vote.

22. This provision was adopted at the suggestion of Bulgaria as an amendment to the original draft resolution (A/L.387).

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mination' by underlining that 'the vast majority of the people of Southern Rhodesia have rejected the Constitution' and that there exists a 'denial of equal political rights and liberties to the vast majority of the people of Southern Rhodesia'. At its seventeenth session the Assembly reiterated the right of Southern Rhodesia to self-determination, and urged the release of Mr Nkomo and other political leaders from detention.[23]

These resolutions—though the United Kingdom rejected their validity, and took no part in the vote—clearly indicate that the great majority of states in the United Nations believe that a legal right of self-determination exists, and that neither Article 2(7) nor indeed domestic constitutional issues in general, can impede the implementation of that right and United Nations jurisdiction for that purpose. So irrelevant has Article 2(7) become to the Assembly in this context that it finds it permissible not just to call for negotiations for self-determination, but to make detailed observations on specific national constitutions and recommendations for their improvement. While the sub-committee on Southern Rhodesia had cautiously stated that it was not for it to say what the basis of an agreed Constitution should be,[24] the Assembly unequivocally called for:

> the convening of a constitutional conference in which there shall be full participation of representatives of all political parties, for the purpose of formulating a constitution for Southern Rhodesia . . . which would ensure the rights of the majority of the people, on the basis of 'one man, one vote'.[25]

It therefore seems inescapable that self-determination has developed into an international legal right, and is not an essentially domestic matter. The extent and scope of the right is still open to some debate. We would suggest that at the present stage of development of international law the matter has become an international one within the following conditions: the Assembly may not prescribe an exact time for the granting of independence to a particular territory, though it may urge that this occur speedily. This may be deduced from the rejection by the Assembly of two Soviet proposals, the first of which[26] would have proclaimed 1962 as 'the year of elimination of colonialism', and the second of which[27] would have had the seventeen-member committee make recommendations 'on the immediate application of the Declaration and the completion of its implementation' by the seventeenth session. Until the 1960 Declaration on the granting of independence international jurisdiction in matters of self-determination was never claimed without there being offered an alternative ground of international jurisdiction to rebut any contention of *domaine reservé*. We have seen from the cases discussed above that this most frequently occurred in the form of references to the breach of human rights, or to international friction. While

23. Res. 1755 (XVII). 24. *UNR*, June 1962, p. 8.
25. Res. 1747 (XVI), para. 26. 26. A/L.355. 27. A/L.366 & Addenda.

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several of those resting on a breach of the 1960 Declaration still mention these alternative grounds of jurisdiction, there is a movement away from this tendency—the sixteenth session resolution on Southern Rhodesia being a case in point. Indeed, it would seem that legally this is no longer necessary—not, it must be emphasized, because the 1960 Declaration has binding authority (it has not), but because that Declaration, taken together with seventeen years of evolving practice by United Nations organs, provides ample evidence that there now exists a legal right of self-determination. Moreover, within certain limits, it is a right which does not admit of the reservation of Article 2(7). It should also be added that a denial of self-determination is now widely regarded as a denial of human rights, and as such a fitting subject for the United Nations.

If United Nations practice indicates that such a legal right does exist, does it tell us anything about the nature of the right? Most importantly, to what unit does the concept of self-determination apply? If the international order is not to be reduced to a fragmented chaos, then some answer must be provided to this question. The present stage of development of international law and relations, as exemplified by United Nations practice, does allow certain tentative observations to be made. Self-determination refers to the right of the majority within a generally accepted political unit to the exercise of power. In other words, it is necessary to start with stable boundaries and to permit political change within them. That the right of self-determination operates within generally accepted political units is an essential premise, for several reasons—first, without this qualification, all is in flux, and there is no constant factor at all; second, to withdraw this proviso would encourage impermissible use of force across state boundaries, an outcome which the United Nations can hardly encourage; and third, by and large the emergent states seem content so far to accept the colonial boundaries imposed on them. Indeed, there has been little sympathy shown by the Afro-Asians for those of their own group who have shown reluctance to build within the colonial frontiers which they have inherited. The failure of Morocco to attract any substantial support for her territorial claims in Mauritania, and the isolated position of Iraq in her claims to Kuwait may be cited as cases in point. Katangese aspirations to independence have similarly been repudiated by the Afro-Asians. This is, inevitably, to simplify the matter: the Iraqi and Moroccan claims, no matter what their merit, encroached upon the territory of potential new nations within striking distance of independence from colonialism. If an emergent state attempted to come to statehood with an extension to its colonial boundaries which marked a territorial gain from the colonial Power itself, and not from some other Afro-Asian country, it might well receive widespread support. But, for geographical reasons, this possibility does not arise, and in the event the fixed boundaries are acceptable. As for Katanga, the real basis of Afro-

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Asian objections to its attempted secession lies in the role played by Western financial and mercenary interests, not in the sanctity of frontiers. None the less, the principle remains: for one reason and another, the idea that self-determination is to take place within acknowledged political units is widely accepted. It may be observed in this context that operative paragraph 4 of the Declaration on the granting of independence, after declaring that dependent peoples shall exercise their right to complete independence free from repressive measures and armed attack, goes on to state: 'and the integrity of their national territory shall be respected'.

If, then, the right of self-determination is the right of the majority within an accepted political unit to exercise power, there can be no such thing as self-determination for the Nagas. The Nagas live within the political unit of India, and do not constitute the majority therein. Their interests are to be safeguarded by Indian obligations on human rights and the protection of minorities. There is, however, a right of self-determination for Southern Rhodesia in so far as it refers to the right of the majority of peoples to exercise governmental control proportionate to their numbers.

Reference here to the rights of majorities is to be taken to mean the right of each man to one vote,[28] rather than the *a priori* right of the majority to constitute the government. Self-determination does not necessarily involve the adoption of the Western system of parliamentary democracy, and if the representatives of the majority which constitute the government become impotent, and are replaced by one person (as, for example, in the French Fifth Republic), the continuing opportunity for universal suffrage nevertheless prevents this from being classified as a denial of self-determination.

The term 'self-determination' is at the present time being used to cover several similar, but not identical, situations. Traditionally this term referred to the desire of a race for independence, to the desire to take over the powers of government and remove the foreign ruling groups. So indeed was the desire of Cyprus to be free from British domination. However, it should perhaps be asked whether the same term 'self-determination' is really applicable to situations such as Southern Rhodesia, where the ejection of the foreigner is not paramount but the attainment of power is. Both governing and governed in Southern Rhodesia are Rhodesians; whereas in Cyprus the governed were Greek and Turkish Cypriots while the governing were English, and very much 'foreigners to be ejected'. It would perhaps be preferable to refer to the Cyprus type of situation (as it evolved after insistence on *enosis* was withdrawn) as a claim to independence, and the Rhodesian type as a claim to self-determination: this would represent a departure from the traditional use of the terminology, but would have the merit of greater

28. The Bulgarian amendment to the 16th sess. Assembly resolution on Southern Rhodesia, which introduced a clause to this effect, was adopted by 55 votes to 1 (S. Africa), with 42 abstentions. Portugal and the UK did not participate in the voting.

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descriptive precision. So far United Nations practice, however, refers to both types of situations as 'self-determination': moreover, recently there has been a tendency to use the terms 'self-determination' and 'independence' interchangeably, though it is quite possible for an independent state to deny the right of self-determination to its peoples. An example of this confusion of terminology may be seen by comparing paragraphs 2 and 3 of the Declaration of 1960.

The theory of self-determination represents an important movement away from the old legal view under which international law rights pertain only to states and governments, and not to groups or individuals. Given the present political climate, the right of self-determination is likely to continue to be presented in a racial context; though there is no inherent reason why the principle should not apply in a religious or purely party political situation.

e. That a reservation of domestic jurisdiction is inapplicable where United Nations action is occurring within a country at its own request

Under Articles 41 and 42 the Security Council may order United Nations enforcement measures. Obviously, the permission of the state against which these measures are directed is not required. It has been customary to obtain permission from a non-aggressor for United Nations para-military action in its territory,[29] though the broad wording of Article 39 may make this less legally necessary than is commonly supposed. The rights and duties of both the United Nations and the host country may then be laid down in a Status of Forces Agreement, and this was in fact the case with the United Nations Emergency Force.[30]

So far, so good. However, a new claim has been raised in the **case of the Congo**, where the circumstances with regard to the presence of United Nations troops are similar, but not identical. It has been argued by some that in this case the request for United Nations military action has come from the Congo itself (whereas after Suez it was not specifically requested by Egypt), and that once this general invitation has been made to the United Nations, that body is rendered incapable of contravening the domestic jurisdiction of that state, so long as it acts within the fulfilment of its mandate, and not *ultra vires*. Given the fact that the United Nations is in the Congo at the request of that Government, it is argued, Article 2(7) ceases to be relevant to its actions. This view, it seems, has been widely offered by certain United Nations personnel in Leopoldville.

There seems little to justify this viewpoint, and much to condemn it, both legally and politically. The United Nations is clearly in the Congo at

29. See 2nd Rep. of S-G on the Plan for UNEF (A/3276). 30. A/3526.

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the request of the Government of that country.[31] Domestic jurisdiction therefore becomes irrelevant so far as the presence of United Nations troops on Congo soil is concerned. However, practice shows clearly that *beyond this point* domestic jurisdiction has been in no way considered irrelevant by the United Nations troops in the Congo (ONUC). On the contrary, both ONUC and the Secretary-General have been at great pains to point out that their actions do not constitute an interference in the domestic affairs of the Congo; they have not suggested that they are not bound by considerations of Article 2(7) of the Charter. In so far as ONUC has a mandate to fulfil, it may be performing roles in certain areas normally reserved to the exclusive jurisdiction of the state:

> the United Nations Force under the Resolution is dispatched to the Congo at the request of the Government and will be present in the Congo with its consent . . . it may be considered as serving as an arm of the Government for the maintenance of order and protection of life—tasks which naturally belong to the National authorities and will pass to such authorities as soon as, in the view of the Government, they are sufficiently firmly established. . . .[32]

This does not mean, however, that the sovereign right of domestic jurisdiction can be safely—or legally—ignored by the United Nations at will. Beyond these rights of action expressly or by reasonable implication designated to it for the fulfilment of its mandate, ONUC remains bound by the provisions of Article 2(7). Where a right of action claimed is ambiguous or uncertain, the Security Council will be called upon to clarify the position in a new resolution. Even within the circumscription of fulfilling its mandate,[33] ONUC's freedom of action is tempered by a basic condition—and one that has been made clear from the outset and acknowledged all through—namely, that: 'The Force . . . [cannot] be permitted to become a party to any internal conflict. A departure from this principle would seriously endanger the impartiality of the United Nations and of the operation.'[34]

The question of what action within normally domestic domains can be understood to be essential to ONUC in the fulfilment of its mandate—that is to say, what action has been *requested by implication* by the Congo—is obviously one of interpretation. This interpretation, as has been succinctly and convincingly explained by the late Secretary-General, can ultimately be gauged only by good faith:

> the host government, when exercising its sovereign right with regard to the presence of the force, should be guided by good faith in the interpretation of the purpose of

31. SC res. S/4382.
32. 1st Rep. by S-G on the Implementation of SC res. S/4387 of 14 July 1960 (S/4389, p. 3).
33. In this case, the provision of military and technical assistance until such time as the national security forces are able to fulfil their tasks: (SC res. S/4387); and the evacuation of foreign military and para-military personnel, not in the employment of the Central Govt (SC res. S/4741).
34. S/4389, p. 3.

the Force, [and] the United Nations, on its side, should be understood to be determined by similar good faith in the interpretation of the purpose when it considers the question of the maintenance of the Force in the host country.[35]

Even with good faith on both sides, the precise delimitation of ONUC's mandate in the Congo is hard to ascertain. If the host country and the visiting force disagree as to what is an interference in domestic affairs, is the view of the host country to prevail? Congo practice strongly indicates a negative answer—the United Nations has insisted upon retaining its own right to interpret in the absence of either clear directives or an impartial third-party adjudication. Great confusion has arisen over what is the ONUC's proper role in the Congo. During the period when both Kasavubu and Lumumba were claiming to lead the only legal government, each complained that the United Nations was not acting specifically in support of his own Government;[36] and that United Nations troops were merely standing by when actions detrimental to his own Government occurred. At the same time as being accused of omission, ONUC was also accused of commission in supporting the rival régime.[37] This type of accusation was frequently heard about the radio station and airfield at Leopoldville. The United Nations maintained the position that these were being used by both sides to fan unrest and violence, and that if it were to fulfil its mandate, it was necessary at times to control both of these strategic points. This policy met with opposition not only from the rival Congolese Governments but also from the USSR, which during this period demanded that all airports and radio stations should be placed at the disposal of the Lumumba faction.[38] It will be recalled that eventually the radio station was reopened when a guarantee was received for the curtailment of inflammatory broadcasts; and the airfields were opened for all civilian, humanitarian, and peaceful purposes.[39]

Similar problems arose with regard to United Nations protection of personnel, and insistence upon the observance of the rule of law in these matters. Thus Kasavubu objected that Ghanaian troops had prevented Lumumba, whom he had arrested, from being brought before a magistrate. The lack of a warrant for such action did not deter him from accusing ONUC of interference in the internal affairs of the country.[40] Yet when

35. Ibid.

36. See e.g. S/4417/Add. 6, which contains an analysis of past procedures, and links the role of UNOGIL in the Lebanon as authority for the position that the UN cannot take sides in an internal conflict, but can only aid the state against external interference. This interpretation of the ONUC role was frequently denied by Lumumba (S/4417/Add. 7).

37. 'Whereas, on the pretext that the "Internal Affairs" of the country are involved, the United Nations remains inactive in the face of this situation and moreover the unwarranted occupation of the national airfields is preventing the legal government from accomplishing the task of safe-guarding the unity of the country and restoring order . . .' (A/4518). The UN is thus pincered between objections of omission and commission.

38. S/4497. 39. S/4505/Add. 1 40. S/4520.

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Lumumba voluntarily withdrew from United Nations protection, the Organization was largely held responsible for his murder.[41]

The mutual 'dismissals' of Kasavubu and Lumumba also occasioned grave difficulties over the interpretation of domestic jurisdiction. Whether Kasavubu's dismissal of Lumumba was or was not valid depended upon an interpretation of the *Loi fondémentale*. After an initial suggestion that Kasavubu had the right to dismiss Lumumba,[42] the United Nations then adopted the preferable position that its role was not to interpret the constitutional law of the country, and it refused publicly to pass judgement on the matter. The United Nations has consistently adhered to this position, endeavouring to deal with all the various factions in the Congo; indeed, such a position logically flows from the avowed impartiality of ONUC in the domestic affairs of the Congo. However, the resolution of November 1961 may justify some concern on this point, for operative paragraph 8 states that 'all secessionist activities against the Republic of the Congo are contrary to the *Loi Fondémentale*.'[43] It will be noted that the secession is not declared illegal *because it is fomented by foreign elements* (which is surely the crucial point), but rather because it is contrary to the Basic Law. The United Nations has thus taken it upon itself to pass judgement on the *Loi fondémentale*. The only defence that can be raised in favour of this paragraph is that it must be read in context, and as the rest of the resolution is full of references to the illegal actions of the mercenaries in Katanga, this particular paragraph must be taken to embrace this element. One can only regret that it is necessary to raise such defensive arguments, for inevitably the paragraph gives support to those who insist that the United Nations wants to end the Katanga secession and not merely to expel the foreign elements from influence in Katanga so that the Congolese may negotiate among themselves.

Many of these difficulties in interpreting the scope of the obligation to respect the domestic jurisdiction of the Congo have been resolved by the emergence of a comparatively strong central government which commands legal and effective authority. This in turn has led to the co-operation of the Congo Government with the United Nations, and hence the claim of domestic jurisdiction by that Government had been made less and less frequently.

41. Yet see S/4571, ann. I & II, which contains an appeal by the S-G to Kasavubu to apply the rule of law, emphasizing that he is not interfering in internal affairs Military action by the UN to enforce this would, however, have been regarded as interference by the S-G. With regard to the arrest of certain members of the Kivu Govt who had declined UN protection, it was explained that once they had departed 'voluntarily or not, but while not being under UN protection, ONUC could not pursue and join battle with an ANC unit. That would have constituted a military initiative and an act of intervention, both of which are forbidden by the mandate of the force as laid down by the Security Council' (S/4630).

42. Which caused an objection from Lumumba to the effect that 'It is not for the Secretary-General of the United Nations to interpret the Basic Law, that is the responsibility of the Congolese Parliament' (S/4498).

43. SC res. S/5002.

Moreover, ordinances have been promulgated by the Central Government explicitly giving the United Nations certain powers of arrest which would otherwise have had to be implied. In addition, any conflict over spheres of authority in Katanga has been avoided by the enactment of an ordinance expelling all non-Congolese serving in the Katanga forces not under contract with the Central Government and requesting the assistance of the United Nations in putting this into effect.[44]

The United Nations is under no legal obligation not to interfere in Katangese internal affairs. The right to the reservation of domestic jurisdiction in certain fields is one which is available to the legitimate government of the state, and not to its provincial authorities. Hence the control of radio station and airport of Elisabethville, done with the consent of the Central Government, cannot be said to constitute an infringement of Article 2(7).

f. That the General Assembly has authority to determine the territories to which Chapter XI of the Charter applies

There has been a long-standing controversy in the United Nations as to the point at which United Nations interest in Non-Self-Governing Territories becomes an interference in the domestic affairs of an administering state. The provisions covering Non-Self-Governing Territories are to be found in Chapter XI of the Charter.

In 1946 the Secretary-General invited members to transmit their views on the factors to be taken into account in determining which territories were non-self-governing under Chapter XI, and to enumerate any such territories under their jurisdiction.[45] In reply, certain members thought that the term 'non-self-governing' should be defined, and suggested relevant criteria. Others thought that the determination of the territories to which any definition would apply was a matter solely for the decision of the administering state concerned.[46]

Because much opposition was expressed to any formal definition of 'non-self-governing',[47] the Assembly merely passed a resolution listing 74 Non-Self-Governing Territories in respect of which members had agreed to supply information under Article 73(e).

In 1948, during a discussion in the Special Committee on Information transmitted under Article 73(e), the Soviet representative declared that

44. 'These actions gave the United Nations legal rights within the Congo corresponding to the terms of the aforementioned resolution [i.e. that of 21 Feb. 1961]' (Rep. of Officer-in-Charge, S/4940).

45. By letter of 29 June 1946 (A/74), under GA res. 9(1).

46. *NSGTs: Summaries of Information transmitted to the Secretary-General during 1946* (1947), pp. 132–7. The response to the request for a listing of territories was good.

47. In Sub-Cttee II of the 4th Cttee, in the 4th Cttee, and in plen. (*GAOR*, 1st sess., pt 2, 4th Cttee (pt 3), pp. 8–9).

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information transmitted by the Netherlands in respect of Indonesia was invalid, as Indonesia was an independent state. Though the issue was not decided upon, the Committee feeling it lacked competence, the point was made by some states—and disagreed with by others—that the determination of territories for purposes of Article 73(e) was reserved to the administering Power, and any attempt to perform this right by the Assembly would involve a decision on a constitutional relationship within the domestic jurisdiction of the metropolitan Power concerned.[48]

In 1948 the Assembly adopted an Indian proposal that administering states of Non-Self-Governing Territories should inform the United Nations of any change in the status of such a territory which caused it to consider that the transmitting of information under Article 73(e) was no longer necessary.[49] Objections on grounds of domestic jurisdiction were raised by several administering states;[50] and were reiterated in communications to the Secretary-General.[51] In 1949 the Soviet Union went so far as to assert that information had to be continued until the Assembly formally decreed that Article 73(e) no longer applied to the territory.[52]

The resolution passed at the fourth session of the Assembly clearly indicated the international responsibility of the Organization when it stated that it was for the Assembly:

> to express its opinion on the principles which have guided or which may in future guide the Members concerned in enumerating the territories for which the obligation exists to transmit information under Article 73(e) of the Charter. . . .[53]

It also provided for a Committee to be set up:

> to examine the factors which should be taken into account in deciding whether any territory is or is not a territory whose people have not yet attained a full measure of self-government.

Those supporting the resolution in the face of objections on domestic jurisdiction grounds insisted that under the Charter *all* members of the United Nations had a responsibility towards the Non-Self-Governing Territories. They also asserted that the Assembly must have the right to determine whether 'constitutional considerations' for not transmitting information were valid or not.[54]

48. Rep. of Spec. Cttee (*GAOR*, 3rd sess., Suppl. 12 (A/593), pp. 1–2). A similar objection by the USSR was raised in 1949 (ibid. 4th sess , Suppl. 14 (A/923), pp. 2–3). For discussion on the point see A/AC.28/SR 6 & 8.
49. Res. 222 (III).
50. *GAOR*, 3rd sess., pt 1, 4th Cttee, p. 84 (per Belgium); p. 85 (per Australia); pp. 86–87 (per France); pp. 87–88 (per New Zealand); and ibid. plen., pp. 383–4 (per UK).
51. A/915.
52. Rep of Spec. Cttee (*GAOR*, 4th sess., Suppl. 14 & A/AC 28/SR 2 & 4).
53. Res. 334 (IV).
54. *GAOR*, 4th sess., 4th Cttee, pp. 178 f., 181–5; ibid. plen., pp. 451–3 & 458–9.

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In 1951 the Special Committee on Information did adopt a report on the factors to be taken into account when determining whether a territory was non-self-governing.[55] However, from the discussions it was clear that it was conceded that it was not the task of the Committee to decide whether the inhabitants of any specific territory were non-self-governing, nor to pronounce on who had authority to make that decision.[56] These factors were incorporated into an Assembly resolution,[57] which offered them for comment, and called for further study on them by an Ad Hoc Committee.

The Ad Hoc Committee similarly did not deal with the problem of where the authority lay to determine that a territory was no longer non-self-governing. By resolution 648 (VII) the Assembly provided that the factors could serve as a guide both for the Assembly and for those members administering Non-Self-Governing Territories.

Yet another study was made by an Ad Hoc Committee, and at the eighth session of the General Assembly a resolution was adopted which now stated unequivocally that the annexed list of factors could be used so that 'a decision may be taken *by the Assembly* on the continuation or cessation of the transmission of information required by Chapter XI of the Charter'.[58]

Thus, after full inquiry, study, and discussion, the Assembly gradually resolved by evolution through a series of resolutions the problem of whether the determination of the territories to which Chapter XI applies is a matter of domestic jurisdiction. Both its resolution of 1953 and its consistent practice subsequently indicate that this can no longer be regarded as an exclusively domestic perogative. At its eighth session the Assembly, in agreeing with a communication from the United States that Puerto Rico was non-self-governing, reiterated its right to pass on this point;[59] and this practice was repeated in the cases of Greenland,[60] Netherlands Antilles and Surinam,[61] and Alaska and Hawaii.[62] In each case, the relevant resolution contained the following preambular paragraph: 'Bearing in mind the competence of the General Assembly to decide whether a Non-Self-Governing territory has or has not attained a full measure of self-government as referred to in Chapter XI of the Charter'. Separate voting on this paragraph has consistently prevailed over opposition by a minority of states.[63]

55. Rep. of Spec. Cttee (*GAOR*, 6th sess., Suppl. 14 (A/1836), p. 4).
56. Though some views on this question have been assembled by the Secretariat, in a memo. A/AC.35/L.30 & Add. 1, 10 Apr. 1951.
57. Res. 567 (VI).
58. Res. 742 (VIII). (Itals. added.)
59. Res. 748 (VIII).
60. Res. 849 (IX).
61. Res. 945 (X).
62. Res. 1469 (XIV).
63. For examples of which, see *GAOR*, 8th sess., 4th Cttee, 355th mtg, para. 55; 356th mtg, paras. 10–12, 18 f., 30 (re Puerto Rico); 9th sess., 4th Cttee, 430th mtg, paras. 22, 25 & 28 (re Greenland); 10th sess., 4th Cttee, 523rd mtg, para 42 & 528th mtg, paras. 34, 36, 50 & 59 (re Antilles and Surinam). The states raising such opposition have been limited to Australia, Belgium, France, Netherlands, New Zealand, Sweden, and the UK—the penultimate being the only non-colonial Power.

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The 1960 Declaration on the Granting of Independence to Colonial Countries has consolidated even more the practice of the Assembly on this question. The Special Committee of Seventeen which was set up to examine the progress in the implementation of this Declaration decided in March 1962 to consider whether Southern Rhodesia was in fact self-governing. The Committee noted that it was acting in accordance with the General Assembly resolution of 23 February 1962 which stated that it 'was mindful of the fact that the indigeneous inhabitants have not been adequately represented in the legislature and not represented at all in the government'.[64]

The Committee appointed a sub-committee to examine the question. The United Kingdom has insisted throughout that the Committee's action is *ultra vires*, that Southern Rhodesia has been fully self-governing since 1923, and that the United Kingdom Government is neither bound, nor constitutionally able, to submit information to the Assembly on that territory. The sub-committee found that Southern Rhodesia has not attained self-government.[65] This finding was endorsed by the Special Committee[66] and unequivocally confirmed by the General Assembly in its resolution 1747 (XVI). This resolution 'affirms that the Territory of Southern Rhodesia is a Non-Self-Governing Territory within the meaning of Chapter XI', and based this finding on the view that 'the vast majority of people of Southern Rhodesia have rejected the Constitution of 6 December 1961' and that 'equal political rights and liberties [are denied] to the vast majority of the people of Southern Rhodesia'. It may thus be seen that the Assembly has little doubt that it is authorized to pronounce on the applicability of Chapter XI of the Charter, and to comment on the relevant criteria for decision.

g. That the United Nations is entitled to request political information on Non-Self-Governing Territories under Article 73(e)

In a report of 31 October 1946[67] the Secretary-General submitted to the Assembly[68] a summary of the information submitted to him under Article 73(e),[69] together with the suggestion that an ad hoc committee of experts should be appointed to study the information. The colonial Powers opposed this suggestion on the grounds that the creation of such a committee would infringe their domestic jurisdiction under Article 2(7). The French delegate declared that:

64. Res. 1754 (XVI). 65. A/AC./109/L.9. 66. A/5124.
67. *NSGTs: Summaries of Information transmitted to S-G during 1946*, ch. VI.
68. In accordance with GA res. 9(1).
69. Art. 73(e) provides that members assuming responsibility for the administration of NSGTs shall 'transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible . . . '

Chapter XI was a Declaration involving an obligation but not providing for a medium of implementation. The only definite obligation imposed by the Charter was the transmission of specified information and it was silent as to what was to be done with such information. . . .[70]

This viewpoint hardly seems to be in conformity with the principle of effectiveness in the interpretation of a treaty—a principle of no little importance when the treaty also happens to be an international constitutional instrument. Warning had already been given by the Secretary-General that:

the transmission of such information cannot be regarded as a mere formality. Its purpose and value depend on the contribution which can be made through it to an understanding and to the implementation of the principles . . .[71]

The Philippine viewpoint seems more closely to conform to this aim, for that delegate suggested that a course of action which was not expressly prohibited was to be permitted if it was consistent with the objective in view. He thought:

It would be absurd to require the submission of information on dependent territories unless such information could be utilized for the promotion of the well-being and advancement of their inhabitants . . . [If] there was a lacuna in Chapter XI . . . [it] could be remedied by a reasonable interpretation, in keeping with the principle that any restrictive construction of an international agreement which would nullify or circumvent its manifest purpose should be rejected.[72]

The United Kingdom thought that the information would be better studied by the Secretariat, as the proposed committee would have a political character.[73] Others, however, thought that the Secretariat would be inhibited in making recommendations or pointing out shortcomings.[74] This latter view seems to have prevailed, for by resolution 66 (1), the Assembly decided to create the Ad Hoc Committee on Information.

The Ad Hoc Committee rapidly came face to face with the problem of whether political information was to be submitted under Article 73(e). Paragraph (e) refers to economic, social, and educational conditions, and no explicit mention is made of political conditions. However, several states thought that economic and social factors could not in reality be separated from political factors. The Committee arrived at the conclusion that the voluntary transmission of political information was in conformity with Article 73 and was to be encouraged.[75] When its report was considered by

70. *GAOR*, 1st sess., pt 2, 4th Cttee, pt 3, p. 27.
71. *NSGTs: Summaries of Information, &c, 1946*, pp. 144–5.
72. *GAOR*, 1st sess., pt 2, 4th Cttee, pt 3, pp. 34–55.
73. *GAOR*, 1st sess., pt 2, 64th mtg, p. 1359.
74. Ibid. pp. 1365–6.
75. A/385, p. 18.

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the Fourth Committee of the Assembly, the representative of the USSR contended that voluntary transmission of information was inadequate,[76] and recommendation and criticism on such information could not infringe the sovereign rights of the Administering Power. Others found significance in the fact that the possibility of transmitting political information had been discussed at San Francisco[77] and rejected; though the Indian delegate asserted that the reason for the non-inclusion of this provision in Article 73(e) lay elsewhere.[78] By a majority of one vote a Soviet amendment 'recommending' (in contradistinction to 'encouraging') the transmission of such information was adopted.[79] When the matter arose in plenary session, states were heard to argue that the 'interests of the inhabitants' mentioned in paragraph 1 of Article 73 required that the United Nations demand political information.[80] Pakistan contended that the relations between Non-Self-Governing Territories and colonial Powers went beyond the scope of domestic jurisdiction[81]—a view disputed by Belgium.[82]

The Assembly rejected the revised draft resolution of the Fourth Committee, and adopted the original draft resolution of the Ad Hoc Committee.[83] The transmission of political information was thus to be encouraged, but remained voluntary. It also set up a Special Committee to examine and report on the information, overriding the objection of certain states that this would constitute an interference in their domestic affairs. Of the eight administering authorities, three—Belgium, France, and the United Kingdom—did not act upon the recommendation of the Assembly, and continued to limit the information they sent to subjects listed explicitly in Article 73(e). In 1948 the General Assembly adopted resolution 327 (IV), by which it expressed the hope that those who were not transmitting political information would do so. Significantly, however, an amendment was rejected by which the transmission of political information would have been made obligatory.[84] In 1954, by resolution 848 (IX), the Assembly again urged the voluntary transmission of political information, and went on to state that the principles and objectives of Article 73 'relate to the political as well as the economic, social and educational advancement of the peoples concerned'. And again, in 1959, resolution 1468 (XIV) referred to the 'inextricable relationship between developments in political and functional fields'—though it still fell short of suggesting that the transmission of political information is obligatory. No doubt it was to be expected that this legal

76. *GAOR*, 2nd sess, 4th Cttee, p. 34.
77. See memo. A/C.4/104.
78. Namely, in the fact that the word 'political' has been claimed by the US delegate to have a special meaning in his country, referring to political parties (ibid, p. 11).
79. *GAOR*, 2nd sess., 4th Cttee, ann. 4(h).
80. Per Colombia, ibid. plen. mtgs, vol. ii, ann. 14, pp. 689–92.
81. Ibid. vol. i, p. 701.
82. Ibid. pp. 671–2.
83. GA res 144(II).
84. A/AC /28/W.16 & Rev. 1.

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distinction between what is desirable and what is obligatory would become blurred; and in April 1962 the Committee on Information from Non-Self-Governing Territories for the first time examined information on political and constitutional developments.[85] The United Kingdom, while continuing to maintain that the transmission of political information was not legally required, in September 1961 offered to transmit such information about its dependencies as a gesture of goodwill.[86] Portugal refused to take a similar position, and indeed, has been unco-operative on the transmission of any adequate information on her territories. Resolution 1542 (XV) of the Assembly had reminded Portugal that it was obligated to transmit information, and pending the fulfilment of this obligation, authority was given to a committee of seven members to examine 'such information as is available', and to formulate observations and recommendations. The report of this Committee[87] has not hesitated to examine political matters, though it remains unclear whether its parent body, the Committee on Information, now believes there to be a legal duty on the part of the Administering Authority to transmit developments on constitutional matters. It seems at the present moment that there is no clear duty to do this, no matter how desirable the practice would be; but that the Assembly has in part circumvented this difficulty by authorizing various bodies to examine such information as they themselves can obtain. The authority for this is felt to lie in the 1960 Declaration on colonialism, which expressly refers to political aspirations in Non-Self-Governing Territories.

The United Kingdom, notwithstanding its gesture of goodwill on this question, has insisted that it is unable to supply constitutional information on Southern Rhodesia, as that territory is fully self-governing. It has been emphasized that the United Kingdom is not *unwilling* to provide reports—though it believes it is not legally bound to do so—but rather that it is unable to do so, as it lacks authority over Southern Rhodesia for this purpose. The Assembly adopted the findings of the Committee of Seventeen that this territory is in fact 'a Non-Self-Governing Territory within the meaning of Chapter XI',[88] and, by implication, the United Kingdom is considered to retain the customary obligations of an Administering Authority. It is perhaps significant that in the voting on this particular resolution the other members of the British Commonwealth—including Australia, Canada, and New Zealand—merely abstained, and did not either vote against the resolution or refuse to participate in the voting. Yet such states can hardly be accused of ignorance of the special relationship between the United Kingdom and Southern Rhodesia.

85. See *UNR*, June 1962.
86. See Lord Home's speech to the GA on 27 Sept. 1961, reprinted in *The Times*, 28 Sept. 1961.
87. A/5160.
88. Res. 1747 (XVI).

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Oscar Schachter, "The Relation of Law, Politics and Action in the United Nations", *Recueil des Cours*, Vol. 109 (1963)

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THE RELATION OF LAW, POLITICS AND ACTION IN THE UNITED NATIONS

BY

OSCAR SCHACHTER

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PUBLICATIONS

"The Development of International Law through the Legal Opinions of the United Nations Secretariat", 25 British Yearbook of International Law (1948), p. 91.—"The place of Law in the United Nations", 1950 Annual Review of UN Affairs (New York), p. 205.—"The Charter and the Constitution", 4 Vanderbilt Law Review (1951), p. 643.—"Problems of Law and Justice", 1951, Annual Review of UN Affairs, p. 190—"Law and Flexibility", 1952 Annual Review of UN Affairs, p. 173.—"Legal Aspects of Space Travel", 1 Journal of British Interplanetary Society (January 1952), p. 14. —"Who Owns the Universe?" in Across the Space Frontier (Viking, 1952). —"The Role of International Law in the United Nations", New York Law Forum (January 1957).—"A Legal Order for Outer Space", New York "Bar Bulletin", Vol. 16, no. 1 (June 1958).—"The International Official in a Divided World", Proceedings, American Society of International Law (1959), p. 344.—"Private Foreign Investment and International Organization", Cornell Law Quarterly, Vol. XLV, no. 3 (Spring 1960).—"The Enforcement of International Judicial and Arbitral Decisions against States", 54 American Journal of International Law 1 (January 1960).—"The Question of Treaty Reservations at the 1959 General Assembly", 54 American Journal of International Law 372 (April 1960).—"Promoting the Rule of Law", IV The Hyphen (India) 53 (September 1960).—"Legal Aspects of the United Nations Action in the Congo", 55 American Journal of International Law 1 (January 1961).—"Legal Issues relating to the Congo and the Secretariat", Annual Review of UN Affairs, 1960-1961, p.142.—"Dag Hammarskjold and the Relation of Law to Politics", 56 American Journal of International Law 1 (January 1962).

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II

LAW AND THE PROCESS OF DECISION IN THE POLITICAL ORGANS OF THE UNITED NATIONS (CONTINUED)

In the previous lecture, I endeavoured to show some ways in which the process of decision in the political organs is influenced by, and in turn influences, the normative conceptions of the international community. In the present lecture I shall continue with this theme and consider several problems which arise as a consequence of this interaction of law and politics and which bear especially on the complexities of interpretation and implementation of the Charter.

The Difference between Interpretation and Recommendation

It is perhaps useful at the outset to emphasize the distinction between the interpretation of the Charter and resolutions that are purely recommendatory. Typically, the U.N. political organs, in accordance with the Charter, submit "recommendations" to Governments, but an examination of such recommendations reveals that many of them are accompanied by assertions of legal rights and obligations under the Charter. Such assertions of law are advanced in the process of reaching recommendations; they may be stated in the resolutions or they may be implied from the consensus expressed in the debates. It is evident that these assertions are not themselves recommendatory; they are expressed by States or adopted by the organs as authoritative precepts derived from the Charter or accepted rules of international law. Frequently they set forth limitations on the competence or authority of the organs or procedures which they must follow; in some cases they are legal determinations of a

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substantive character which specify obligations of Members.[1]

The question of primary interest to the international lawyer has generally been the extent to which the interpretations reached by, or within, the political organs are to be regarded as legally authoritative when the organ has not been accorded the competence to make binding decisions. In considering this, one might start with the principle that an "authentic" interpretation of a treaty by the parties is legally binding on them to the same degree as the treaty itself.[2] I believe it is generally accepted that this conclusion would hold for an interpretation of the Charter adopted by all the Members (or even "by the overwhelming majority" except for some abstentions) in the General Assembly; the interpretation would be characterized by international lawyers as having the same legal force and effect as the Charter itself.[3] Moreover, there would seem to be no substantial reason why this conclusion would not be applied in cases where a virtually unanimous consensus in a matter of Charter interpretation is made known through statements and actions expressed separately by Governments either within or outside the United Nations, even though no vote is taken.[4]

1. *The Repertory of Practice of United Nations Organs* (U.N. Secretariat publication No. 1955 V. 2) contains for each article of the Charter the decisions and relevant statements on the meaning of that article. Examples of resolutions that assert substantive obligations based on the Charter may be found, inter alia, in regard to apartheid, colonialism, use of nuclear weapons, outer space, and sovereignty over natural resources. They will also be found in connection with specific disputes and situations involving peace and security. See R. Higgins, The Development of International Law Through the Political Organs of the United Nations (1963); Castaneda, "The Underdeveloped Nations and the Development of International Law", 15 Int. Org. (Winter 1961) 38, 44-48.

2. Oppenheim (Lauterpacht 7th ed.) International law, vol. 1, p. 857. Kelsen, The Law of the United Nations (1950) pp. xiii et seq.

3. See, Lachs "The Law in and of the United Nations" in 1 Indian Journal of International Law (April 1961) p. 429, 439. See Castaneda, op. cit. n. 1.

4. In the oft-quoted statement on the interpretation of the Charter made at the San Francisco Conference, it is said that if an interpretation "is not generally acceptable it will be without binding force", thus in effect recognizing that an interpretation receiving general approval will be authoritative and binding. See Report of the Rapporteur of Committee IV/2, UNCIO Doc. 933, IV/2/42, Vol. 13 p. 710.
It is generally agreed that authentic interpretation does not require a particular procedure. See Oppenheim n. 9 supra, Lachs n. 10 supra, Ehrlich, "L'interprétation des traités", 24 Recueil des Cours (1928) p. 36.

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However, when the proceedings do not reveal a general consensus, and particularly when there is a substantial difference in points of view, the foregoing analysis does not apply. The usual distinction then drawn is that between an interpretation of a treaty which is considered to be binding because it has been accepted by all of the parties and an interpretation which is rejected by some and therefore would be regarded as effective only if the treaty should be amended accordingly.[5] This point is often bolstered by emphasizing that the political organs have not been granted authority to adopt binding decisions except in the limited cases covered by Chapter VII and certain organizational matters such as admission of members and financial assessments.[6]

I do not wish to take issue with this conclusion, but I would observe that it does not entirely settle the question of the authority of such interpretation. There are two qualifications to be considered. In the first place we must take account of generally accepted practice regarding the competence of the organs to decide definitively certain issues. For example, the right of the United Nations General Assembly to determine which territories fall within the scope of Article 73 has received such continuing support that it may now be regarded as fairly well settled.[7] My point here is that when the practice of states in the United Nations has served by general agreement to vest in the organs the competence to deal definitively with certain questions, then the decisions of the organs in regard to those questions acquire an authoritative juridical status even though these decisions had not been taken by unanimous decison or "general approval".[8]

5. See San Francisco statement on interpretation referred to supra n. 4 which states that an interpretation that has not been generally accepted would require a Charter amendment in order to be made binding.

6. I.C.J. Advisory Opinion of July 20, 1962 on "Certain Expenses of the United Nations." I.C.J. Reports 1962 p. 151 and Written Statements, I.C.J. Doc. 62/21.

7. U.N. Repertory of Practice (1955). Vol. IV, Study on Article 73, especially paras. 226 et seq. See also M.K. Nawaz, "Colonies, Self-Government and the United Nations", Indian Year Book of International Affairs (1962) pp. 3-47.

8. I.C.J. "Competence of the General Assembly for the Admission of a State to the United Nations," I.C.J. Reports 1950 pp. 8-9. For what appears

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In this way evolutionary growth in regard to fields of competence has an important positive effect on the law-making potentialities of the organs.[9]

The second qualification relates to the significance of conflicting interpretative positions which have not been resolved by a competent organ or in a clearly evidenced general consensus. It seems plain to me that such positions when taken by governments are not and should not be regarded as irrelevant to the meaning of the Charter norms. Official positions of States announced in the General Assembly or Security Council regarding their understanding of the obligations of the Charter cannot be considered in legal effect as no more than judgments of private persons. They constitute evidence of contemporaneous construction by the parties that is entitled to weight in determining the meaning and effect of a treaty provision. This is in line with accepted doctrine, expressed by the International Court of Justice in several cases recognizing that the views of the parties as to the meaning of an international instrument even if not binding are relevant evidence of the correct legal interpretation of the instrument.[10]

Criteria for Choosing between Conflicting Interpretations

If the interpretative statements of Governments have evidentiary value but are in disagreement, what criteria are available and appropriate for evaluating them and choosing between them? Such choices are of course often made: they are made by Governments in the political organs when faced with conflicting interpretation; they may on occasion be made by judicial tribunals; and they are of course frequently made by legal scholars who scrutinize and appraise positions from a relatively

to be a contrary view, see Separate Opinion of Sir Percy Spender, relating to "Certain Expenses of the United Nations" Opinion. I.C.J. Reports 1962 pp. 186-197.

9. Cf. De Visscher, Theory and Reality in Public International Law (Eng. trans. 1957) p. 253.

10. I.C.J. Advisory Opinions on South West Africa, I.C.J. Reports 1950 p. 128; and on Competence of the General Assembly for the Admission of a State, ibid p. 8; and I.C.J. Judgments in Iranian Oil Company Case, I.C.J. Reports 1952 pp. 106-107.

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"disinterested" point of view. Each of these "decision-makers" will see the problem from a different perspective arising from the difference in their roles but all will be concerned with the criteria that may properly be employed in reaching an "interpretative" decision and justifying it to others. The last point warrants emphasis; for it must be borne in mind that even if a government decides (or thinks it does) for reasons of immediate advantage, it will still be required to justify that decision in terms of criteria and principles acceptable to others in the political organs and in the international community generally.

It is of course impossible to consider criteria and principles of interpretation without examining more closely than we have yet done the various types of norms contained in the Charter and the diverse questions of meaning and specification which they present. As a preliminary observation I would note that the application of all general propositions—whether legal or not—to diverse facts and events has necessarily a substantial degree of uncertainty or ambiguity; such general propositions have what logicians aptly describe as "an open texture". That of course does not imply that they are without any clear meaning; normally there will be some central cases in respect of which everyone may be expected to agree that the proposition applies. But there will also be, inevitably, an outer area of uncertainty—that is, there will be cases in regard to which there exist reasons for both asserting and denying that the general rule applies.[11]

While this is true of many norms of the Charter, it is essential in considering the criteria of interpretation to bear in mind the great differences that exist in these norms in regard to their degree of generality and the nature of the choices they require. To show this, it seems convenient to employ four categories which serve roughly to bring out these differences: they are "rules", "principles", "standards" and "doctrine" (or "general theory").[12] These are not, of course, hard and fast categories or

11. H.L.A. Hart, The Concept of Law (Oxford 1961) p. 119. Cf. Cardozo, The Paradoxes of Legal Science (N.Y. 1928) pp. 4-7.

12. The first three categories are those employed by Hardy Dillard in his various discussions of the normative hierarchy. See Dillard in 91 Recueil des Cours (1957) pp. 477 et seq.

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refined from a logician's standpoint; they are simply terms which are commonly used and which suggest distinctions which are germane to the task of interpretation.

The Specific "Rules"

The first category—the "rules"—refers to the norms which have relatively precise and explicit terms and which are generally intended to be applied without discrimination as to individual characteristics. In the Charter most of such specific rules concern procedure and organizational activities. Typical examples are those relating to composition of the organs: "the General Assembly shall consist of all Members . . . ", "the Economic and Social Council of eighteen Members elected by the General Assembly", or on voting "Each Member shall have one vote." In these rules the terms used have generally accepted definitions in the context of U.N. procedures and other Charter definitions. Much as it may be desired, an increase in membership of the Economic and Social Council is not considered admissible under the existing Charter provisions; the text is regarded as explicit and conclusive on this point.[13]

What is important to bear in mind is that in saying a rule is regarded as "explicit", we mean that in point of fact its meaning is taken for granted at a particular time. It is, so to speak, a given datum, not subject to question at that time. But this does not mean that its "explicit" meaning may not be challenged, or indeed changed in another context. In the history of the United Nations many apparently precise rules have been interpreted anew in new situations.[14] Even a rule as explicit as that providing for a two-year term for non-permanent Members of the Security Council has on occasion been modified in practice; and the express requirement of a "concurring" vote of a Perma-

13. U.N. General Assembly Official Records XIII Session Supp. No. 3, ch. I, Sec. VI. See also General Assembly resolutions 1300 (XIII) and 1404 (XIV) which recognize the necessity of an amendment to increase the size of the Economic and Social Council.

14. Kelsen op. cit. n. 2 at p. 244-5. Also cf. Robinson "Metamorphosis of the United Nations" 94 Recueil des Cours pp. 547-559 (1958).

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nent Member has been interpreted to apply only if the Member actually casts an affirmative or negative vote and not if it abstains. But even in citing these examples, one should observe that in both situations, there was general support for the interpretation.

Other cases can be cited where majorities considered themselves clearly restricted by specific rules and required to reject proposals otherwise desired. My main point in this connection is not that specific "rules" do not require interpretation but rather that they contain key terms and expressions, the meaning of which is taken for granted in almost all cases which arise. (This is perhaps another way of saying their terms are definite and specific but it also suggests that such "precision" is always open to question.) We would be closing our eyes to a significant difference in practical interpretation if we ignored this large category of "specific" rules and treated the problem which they present as essentially no different from that raised by the more general norms.

The General Principles

The category of "principles" includes, of course, the broadly stated precepts of Article 2 of the Charter—such as the obligation to settle disputes by peaceful means, the prohibiton against the use of force, the duty to refrain from assisting a State against which the U.N. is taking preventive or enforcement action. Article 2 is not the only source of authoritative principles; they are found throughout the Charter, although not expressly designated as such. There are also general principles of law accepted as binding; such are the obligation to carry out agreements and the duty to make reparation for breach of obligations. All of these principles are invoked and appealed to as "law" in the same way as "rules", except that they are generally treated as higher in the normative hierachy. However, the significant difference for the decision-maker arises from the much greater "generality" of the principles. Their key terms are often highly abstract—hence, applicable to an indeterminate series of events, which may be viewed as extending outward from a

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"core meaning". Consider the various connotations which concepts like "force" and "political independence" can have in ordinary political usage. There are undoubtedly some core cases which everyone would say fall within those terms but in a large number of other situations there can be arguments for and against inclusion.[15] Does "force" embrace economic boycott or financial support of subversive movements? Is "political independence" interfered with by "force" when an unpopular de jure government facing an insurection receives foreign military support?

Moreover, because principles are general and fundamental, they tend to clash with each other in specific cases—thus every principle in the Charter can be paired off with a contrary or opposing principle in the context of a particular situation. (This, by the way, would not be true of the category of "rules"—there are no contraries in the Charter of specific precepts such as "each member shall have one vote".) Even the salient rule against force is "balanced by" the right of self-defence and collective enforcement measures and the most fervent supporters of the principle of self-determination have recognized the opposing claims of the obligation of peaceful settlement and the principle of "territorial integrity". This characteristic opposition of principles is not, as some have suggested, the result of political confusion or defective drafting; on the contrary, it is a desirable and necessary way of expressing the diverse and competing aims and interests of mankind. An attempt to eliminate such inconsistencies can only result in an artificial emphasis on some abstractions and a suppression of valid and basic human values.[16]

From the standpoint of the "law-applying function", it is

15. See Repertory of U.N. Practice (1955) and Supp. No. 1 (1958) on Article 2 (4); Report of the Secretary-General of the U.N. on "The Question of Defining Aggression" General Assembly Official Records VII Session, Annexes to Agenda Item 54 pp. 17-81 (1952). McDougal and Feliciano, Law and Minimum World Public Order (Yale 1961) pp. 121-206. J. Stone, Aggression and World Order (London, 1958).

16. O. Schachter, "Dag Hammarskjöld and the Relation of Law to Politics" 56 Am. J. Int. Law (1962) pp. 1, 3-5. For a wider conception of "polarity" in a philosophic context, see M. R. Cohen, Reason and Nature (N.Y. 1931) p. 165.

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apparent that the opposition and indeterminancy of the principles of the Charter call for a frame of reference that is quite different from that required in deciding the issues presented by specific rules. The importance of "dictionary" and "ordinary" meaning is greatly reduced, often indeed they have little significance; emphasis necessarily shifts to an assessment of a complex factual situation and a consideration of the consequences of a decision in the light of more basic values that are regarded as implicit in the Charter.

The Category of "Standards" and the Facts of the Case

I have referred to a third category of norms as "standards". In this context, it refers to highly general prescriptions which involve evaluating the individual features of events. By contrast rules (and to some degree principles) assume a relatively uniform application, irrespective of individual characteristics. "Standards" in this sense are common in both public and private domestic law; notable examples are: "due care", "reasonable rates", "unfair competition", "good moral character". They are used to judge conduct of a kind which does not seem susceptible of treatment under more specific criteria and requires that each case be judged largely on its own facts.[17] The Charter of the U.N. contains a number of these concepts: "good faith", "peace-loving", "with due regard to equitable geographical distribution." The organs may also be obliged to apply "standards" which are not expressly stated in the Charter but are necessarily implied by a principle or rule.

A good example of this is presented by the principle or right of self-determination. Neither the Charter nor "logic" provides specific criteria to determine what group or what territorial unit is entitled to exercise that "right" (recall the issues over Katanga, Cyprus, West Irian, Togo).[18] The organs must therefore—if they are to apply the principle of self-determination in specific cases—determine which territorial entity or group of persons is

17. See Dillard op. cit. n. 12.

18. U.N. Repertory of Practice (1955) and Supp. No. 1 (1958), Articles 1 (2) and 55. See also Eagleton, "Self-Determination in the United Nations" 47 Am. J. Int. Law (1953) 88.

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the "appropriate" or "reasonable" unit in that case. The fact that a standard of this kind is used rather than a definition or rule shows that it has not been found possible to stipulate in advance which elements are decisive—in other words, that the judgments of what unit is appropriate for the purpose of self-determination depend so much on the individual and contingent facts of the case that it cannot be expected that a general formula will provide an adequate basis for decision.[19] It is evident that the problem of applying standards of this type to particular circumstances cannot be resolved by appeal to textual meaning or on the basis of legal formulae; it necessarily requires consideration of the basic aims of the Charter and of the "felt necessities of time and place". Obviously this has significance for determining which organ can best apply standards and what frame of reference is appropriate.

The Significance of "Doctrine" and "General Theory" of the Charter

We have not quite exhausted the classes of norms relevant to the interpretation concerning Charter principles. For over and above rules, principles and standards, there is a still more generalized category that may aptly be described as "doctrine" or "general theory" which comes into play particularly in cases of conflict between competing principles and in giving concrete meaning to broad concepts of the Charter. The influence of "general theory", in this sense, has been apparent in some of the great constitutional debates in the U.N.—for example that which took place in 1950 on the Uniting for Peace resolution or that in 1960 and 1961 on the legitimacy of the Congo operation. In the first case, the opposing positions were based in part on broad theoretical conceptions of the Charter which were at odds with each other: one could roughly be described as a collective security position, emphasizing the primacy of the responsibility to take "collective measures", the other treating as essential the unanimity rule of the Security Council and

19. Cf. General Assembly Official Records 12th Session, 3d Committee Meetings 820-825 (1957); 13th Sess., 3d Comm. Meetings 886-893 (1958).

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perhaps described as a type of balance of power conception.[20] Both of these theoretical constructions were justified by their respective advocates in terms of the essentials of Charter doctrine and therefore implicitly presented as governing the choice between competing interpretations.

In the second of the examples mentioned, that relating to the Congo operation, the different doctrinal conceptions of the Charter that seemed pertinent in the context of that debate were emphasized in Mr. Hammarskjöld's last Annual Report.[21] He referred to one as a "static" conception in which the Organization was essentially "conference machinery" for the solution of conflicts of interest and ideology through expanded diplomatic facilities. In the opposing doctrine the Organization was also a "dynamic instrument of Government" through which international executive action would be undertaken on behalf of all Members in implementation of the purposes and principles of the Charter. Mr. Hammarskjöld went on to suggest these two different conceptions would lead to different emphasis and different interpretation of the major precepts of the Charter.

It may perhaps be questioned whether these and other theoretical concepts are appropriately classified as "legal" norms since they are not formulated as such in the Charter. But are not constitutions generally considered to have certain underlying and implicit premises, which are literally extra-constitutional, but which provide a "higher-law" rationale to justify choices between competing principles?[22] (The concepts of popular sovereignty or of inalienable natural rights are obvious exam-

20. General Assembly Official Records, 5th Sess., 279, 280th meetings (Sept. 1950). See also Ruth B. Russell, "The Management of Power and Political Organization" in *International Organization*, vol. XV, No. 4, Autumn 1961, p. 630.

21. "Introduction to the Annual Report of the Secretary-General on the work of the Organization, 16 June 1960-15 June 1961", Gen. Assem. Off. Rec., 16th Sess., Supplement 1 A (1961).

22. There are several references in opinions of the United States Supreme Court to the underlying premises or "inherent limitations" of constitutional provisions. Chief Justice Hughes stated "Behind the words of the constitutional provisions are postulates which limit and control". Principality of Monaco v. Miss. 292 U.S. 313, 322 (1934). See also Marshall, C.J. in Fletcher v. Peck 10 U.S. 87 (1810).

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ples). Concepts of this character play so significant a role that it would be myopic to exclude them from the categories of Charter norms.

The Complexity of the Interpretative Task

No doubt these four categories of legal norms can be refined by further logical and syntactical analysis and replaced by more precise classification. Yet our analysis is sufficient to show that the organs face widely diverse tasks when they are called on to apply the "law of the Charter" to a complicated political situation. Certainly the words of the Charter must be the starting point, but as we have seen, in relatively few cases can the words provide a substantial part of the answer. In most cases the dictionary and the texts themselves can do little to resolve the issues which are presented as a result of generality, indeterminancy, conflicts and inconsistencies of the Charter norms. It is apparent from the various types of norms that the range of relevant considerations will vary considerably from problem to problem, but it is also clear that in a great many cases the organs have to evaluate complex situations in terms of a diversity of factors, including some which clearly involve judgements of "reasonableness", importance, intent, expectations and "necessity". Perhaps most important as we have seen is the requirement that the process of interpretation must include in many cases an assessment of the consequences of a decision on the major purposes of the Charter.[23] For this reason, a constitutional instrument like the Charter should not be subject to the restrictive interpretation appropriate to "bargaining treaties of the traditional type" where the contracting parties acted in terms of precise interests on a basis of reciprocity. As Charles de Visscher has put it, "always of capital importance in the interpretation" of a treaty such as the Charter "is the master idea or fundamental conception" that led to its conclusion, and he cites by way of example of such fundamental conceptions "the

23. ICJ Advisory Opinion on Reparation for Injuries, ICJ Reports, 1949, p. 174; Advisory Opinion on the International Status of South West Africa (July 11, 1950), ICJ Reports, 1950, p. 128.

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Non-Aligned Movement, *Extracts from Selected Non-Aligned Movement Declarations* (1964-2012)

Stacks

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
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29 October 1964
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Nineteenth session

LETTER DATED 28 OCTOBER 1964 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED ARAB REPUBLIC TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to enclose the text of the Declaration entitled "Programme for Peace and International Co-operation", adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held in Cairo from 5 to 10 October 1964.

In view of the fact that the Declaration deals with items of which the United Nations is seized and which also appear on the provisional agenda of the forthcoming regular session of the General Assembly, I should be grateful if you would have the text of this Declaration circulated as a document of the General Assembly.

(Signed) Mohamed Awad EL KONY
Permanent Representative of
the United Arab Republic to
the United Nations

64-22893

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CONFERENCE OF HEADS OF STATE
OR GOVERNMENT OF NON-ALIGNED
COUNTRIES
Cairo — October 1964

NAC-II/HEADS/5
10 October 1964
ORIGINAL: FRENCH/ENGLISH

PROGRAMME FOR PEACE AND
INTERNATIONAL CO-OPERATION

Declaration as Adopted by the
Conference

VIII

MILITARY PACTS, FOREIGN TROOPS & BASES

The Conference reiterates its conviction that the existence of military blocs, Great Power alliances and pacts arising therefrom has accentuated the cold war and heightened international tensions. The Non-Aligned Countries are therefore opposed to taking part in such pacts and alliances.

The Conference considers the maintenance or future establishment of foreign military bases and the stationing of foreign troops on the territories of other countries, against the expressed will of those countries, as a gross violation of the sovereignty of States, and as a threat to freedom and international peace. It furthermore considers as particularly indefensible the existence or future establishment of bases in dependent territories which could be used for the maintenance of colonialism or for other purposes.

Noting with concern that foreign military bases are in practice a means of bringing pressure on nations and retarding their emancipation and development, based on their own ideological, political, economic and cultural ideas, the Conference declares its full support to the countries which are seeking to secure the evacuation of foreign bases on their territory and calls upon all States maintaining troops and bases in other countries to remove them forthwith.

The Conference considers that the maintenance at Guantanamo (Cuba) of a military base of the United States of America, in defiance of the will of the Government and people of Cuba and in defiance of the provisions embodied in the Declaration of the Belgrade Conference, constitutes a violation of Cuba's sovereignty and territorial integrity.

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Noting that the Cuban Government expresses its readiness to settle its dispute over the base of Guantanamo with the United States on an equal footing, the Conference urges the United States Government to negotiate the evacuation of this base with the Cuban Government.

The Conference condemns the expressed intention of imperialist powers to establish bases in the Indian Ocean, as a calculated attempt to intimidate the emerging countries of Africa and Asia and an unwarranted extension of the policy of neo-colonialism and imperialism.

The Conference also recommends the elimination of the foreign bases in Cyprus and the withdrawal of foreign troops from this country, except for those stationed there by virtue of United Nations resolutions.

NAM Summit Declaration, 7-12 March 1983, New Delhi

EXTRACT

IX. MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO, INCLUDING DIEGO GARCIA

81. The Heads of State or Government expressed, in particular, their full support for Mauritian sovereignty over the Chagos archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in contravention of United Nations General Assembly resolutions 1514(XV) and 2066(XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

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NAM Summit Declaration, 1-6 September 1986, Harare, Zimbabwe

EXTRACT

status of the island, as the self-determination referendum held on 22 December 1974 remains the only valid consultation applicable to the entire archipelago.

IX. MALAGASY ISLANDS

136. Regarding the Malagasy Islands - Glorieuses, Juan de Nova, Europa and Bassas da India - the Heads of State or Government reaffirmed the vital need to preserve the unity and territorial integrity of the Democratic Republic of Madagascar. In this connection, they strongly urged all the parties concerned to begin negotiations without delay in accordance with the pertinent resolutions and decisions of the United Nations, the Movement of Non-Aligned Countries and the Organization of African Unity, in particular United Nations General Assembly resolution 34/91 and resolution 794 of the thirty-fifth Ministerial Conference of the Organization of African Unity.

X. MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO, INCLUDING DIEGO GARCIA

137. The Heads of State or Government fully supported Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in violation of United Nations General Assembly resolutions 1514 (XV) and 2066 (XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

/...

NAM Summit Declaration, 4 - 7 September 1989, Belgrade

MAYOTTE, MALAGASY ISLANDS AND CHAGOS ARCHIPELAGOS

Recalling the full support of the Movement of Non-Aligned Countries to the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte, to the sovereignty of the Democratic Republic of Madagascar over the Malagasy islands of Glorieuse, Juan de Nova, Europa and Bassas da India, and to Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia,

Emphasizing their conviction that concrete action with a view to finding a solution to these problems would contribute to reinforcing peace and international security in the region,

The Heads of State or Government of Non-Aligned Countries:

1. - Reaffirmed that the Comorian island of Mayotte, which is still under French occupation, is an integral part of the sovereign territory of the Islamic Federal Republic of the Comoros;

- Took note of the dialogue between the French authorities and the Islamic Federal Republic of the Comoros on this issue;

- Expressed their active solidarity with the people of the Comoros in their legitimate efforts to recover the Comorian island of Mayotte and to preserve the independence, unity and territorial integrity of the Comoros;

- Called on the Government of France to respect the just claim of the Islamic Federal Republic of the Comoros to the Comorian island of Mayotte, in accordance with its undertaking given on the eve of the archipelago's independence, and they categorically rejected any new form of consultation which might be organized by France on the Comorian territory of Mayotte concerning the international juridical status of the island, as the self-determination referendum held on 22 December 1974 remains the only valid consultation applicable to the entire archipelago.

2. - With regard to the Malagasy islands of Glorieuse, Europa, Juan de Nova and Bassas da India - reaffirmed that it is imperative that the unity and territorial integrity of the Democratic Republic of Madagascar be safeguarded. To that end, they strongly urged all parties concerned to begin negotiations without delay in line with the pertinent resolutions and decisions of the United Nations, the Movement of Non-Aligned Countries and the Organization of African Unity, in particular United Nations General Assembly Resolution 34/91 of 12 September 1979 and of Resolution 704 of the Thirty-Fifth Ordinary Session of the Conference of the Organization of African Unity.

3. - Expressed their full support for Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965,

- Expressed their concern over the strengthening of the military base at Diego Garcia, which has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called once again for the return of Diego Garcia to Mauritius without delay.

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NAM Summit Declaration, 1-6 September 1992, Jakarta
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benefit of its long-suffering people. While deploring the present internal hostilities against the legitimate government of Afghanistan and the atrocities inflicted upon the innocent people, they hoped that conditions for holding free and fair elections could be restored as soon as possible, so that a permanent government which reflects the wishes and aspirations of the people and ensures political, economic and social stability, can be formed. The Heads of State or Government called upon the international community to participate actively and generously in the reconstruction of Afghanistan and to increase humanitarian and financial aid for the speedy, voluntary and safe return of Afghan refugees to their homeland.

NEW CALEDONIA

9. The Heads of State or Government recognized that the South Pacific is one of the regions of the world that contains many of the remaining Non-Self-Governing Territories and reiterated the position they adopted at the Ninth Summit Conference concerning the inalienable right of the people of New Caledonia to self-determination in accordance with the United Nations Charter and General Assembly resolutions 1514 (XV) of 14 December 1960 and 1541 (XV) of 15 December1960.

10. They noted the positive measures undertaken by the French authorities in cooperation with the local inhabitants to promote the political, economic and social development of the Territory in order to lay the groundwork for the peaceful transition to independence, and were encouraged by the constructive activities undertaken by all parties involved, including the tireless efforts and support of the South Pacific Forum for the realization of the independence of New Caledonia.

11. They further called on all parties involved to continue their efforts towards providing the necessary framework for the exercise of the right to self-determination and at the same time safeguarding the rights of all New Caledonians.

MAYOTTE, MALAGASY ISLANDS AND CHAGOS ARCHIPELAGO

12. The Heads of State or Government reaffirmed their full support for the sovereignty of the Islamic Federal Republic of the Comoros over the islands of Mayotte and reiterated their solidarity with its people for the protection and preservation of the sovereignty,

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independence, unity and territorial integrity of their country. They noted the ongoing dialogue between the French Government and the Islamic Federal Republic of Comoros. In this context, they urged the Government of France to honour its commitments under the referendum held in the Archipelago on 22 December 1974. They further urged the colonial power to expedite the process of negotiations with a view to ensuring the reintegration of Mayotte into the Islamic Federal Republic of Comoros.

13. The Heads of State or Government reaffirmed their support for the sovereignty of the Democratic Republic of Madagascar over the Malagasy Islands of Glorieuses, Juan de Nova, Europa and Bassas Da India. They took note of the ongoing dialogue between France and the Malagasy authorities. They expressed their solidarity with the Government of the Republic of Madagascar in its efforts to preserve the sovereignty and territorial integrity of the Malagasy Islands.

14. The Heads of State or Government reiterated their full support of the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, and called upon the former colonial power to return the Chagos Archipelago without delay.

INDIAN OCEAN

15. The Heads of State or Government reiterated the position taken at Summit Conferences and Ministerial meetings of the Non-Aligned Countries on the Declaration of the Indian Ocean as a Zone of Peace and the determination to continue their efforts to achieve the goals contained therein and as considered at the Meeting of Litoral and Hinterland States held in 1979. They noted that efforts by the Non-Aligned Countries and others to convene a conference on the Indian Ocean continue to be impeded, although important progress has been made in the Ad Hoc Committee on the Indian Ocean. The recommendations of the Ad Hoc Committee relating to the complex ramifications of the issues involved and differing perceptions on these issues as well as the Ad Hoc Committee's future role should be addressed comprehensively by the 48th session of the UNGA (1993) with a view to convening, as early as possible thereafter, the conference in Colombo with the participation of the permanent members of the United Nations Security Council and the Major Maritime Users of the Indian Ocean.

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NAM Summit Declaration, 18-20 October 1995, Cartagena, Colombia

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Angola

168. They welcomed the positive advances made in the implementation of the provisions of the Lusaka Protocol, with a view to the restoration of peace and stability in Angola. They urged the Security Council to implement what has been agreed upon resolution 976 (1995), which provides for the dispatch of military components of UNAVEM III, since the conditions for their deployment are now propitious. They exhorted Member States to give a positive response to the call made by the Secretary-General to contribute to the full implementation of the Lusaka Protocol. They commended the resolution by the Angolan National Assembly to review the constitution with a view to granting to Mr. Jonas Savimbi, the UNITA's leader, one of the post of the vice-president of the Republic and called upon both parties to honour the compromises subscribed to by them in the Lusaka Protocol so that peace and stability can be instaured in Angola. They commended the Geneva Conference on Humanitarian Assistance to Angola and the Brussels Round Table on the National Programme for Community Rehabilitation and Reconciliation and called upon the international community to provide the pledged funds on a predictable and timely basis.

South Africa

169. The Heads of State or Government extended their heartfelt welcome and congratulations to South Africa on its return to the community of nations when it joined the Movement of Non-Aligned Countries at the Ministerial Conference in Cairo in July 1994. They emphasized the fundamental role that the Movement played from the beginning of the struggle against the racist regime of South Africa. They paid a warm and special tribute to President Mandela for his untiring struggle and capacity to lead his people, and his country peacefully toward democracy under a Government of National Unity. They also commended the people of South Africa for their role in overcoming the legacy of apartheid and in the reconstruction of their nation under new non-racial and politically pluralist realities.

Mayotte

170. They reiterated the unquestionable sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte, as well as the fulfillment of the commitments acquired prior to the referendum of 22 December 1974 regarding respect for the unity and territorial integrity of the Comoros. They urged the Government of France to accelerate the process of negotiations with a view to ensuring the effective and early return of the island of Mayotte to the Comoros, in accordance with United Nations General Assembly resolution 49/18 of 6 December 1994, and other resolutions adopted by the General Assembly on this matter.

→ Chagos Archipelago

171. The Heads of State or Government reiterated the support of the Non-Aligned Movement for the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, and called on the former colonial power to pursue the dialogue with the Government of Mauritius for the early return of the Archipelago. In this respect, they noted with satisfaction the initiation of certain confidence-building measures by the two parties.

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DS/1/Rev.1

FINAL DOCUMENT

of the

XII Summit of the

Non-Aligned Movement

DURBAN

2 - 3 September 1998

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ANGOLA

224. The Heads of State or Government examined the situation prevailing in Angola in the framework of the implementation of the Lusaka Protocol. They commended the Government of Angola for the flexibility and political will demonstrated, aiming at a long and lasting peace in that country.

225. The Heads of State or Government held the leadership of UNITA, and specifically Mr Jonas Savimbi, personally accountable for the resumption of hostilities and deteriorating security situation in Angola, as evidenced by their persistent refusal to conform to the relevant decisions of the United Nations Security Council, regarding the Implementation of the Military and Political Aspects of the Lusaka Protocol, particularly the demobilisation and disarmament of its troops, as well as the extension of State administration. In this regard, they strongly condemned UNITA for its acts of armed aggression and re-occupation of the territory already handed over to the State Administration thus creating an unfortunate outflow of refugees to the neighbouring countries and displaced persons, and called once again on the Leaders of UNITA to undertake the total and unconditional demobilisation of their troops in accordance with the provisions of the Lusaka Protocol.

226. The Heads of State or Government appealed to the international community, in particular the United Nations Security Council to use all its power with a view to obliging UNITA to conform the provisions of the Lusaka Protocol. They also reiterated their appeal to the international community to increase the amount of humanitarian relief provided to the needy population as well as assistance for economic and social rehabilitation of Angola.

CHAGOS ARCHIPELAGO

227. The Heads of State or Government reaffirmed that Chagos Archipelago, including Diego Garcia, is an integral part of the sovereign territory of the Republic of Mauritius. In this regard, they reiterated their call to the former colonial power to pursue constructive dialogue expeditiously with Mauritius for the early return of Chagos Archipelago, including Diego Garcia, to the sovereignty of the Republic of Mauritius.

NAM Summit Declaration, 20-25 February 2003, Kuala Lumpur

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parties, in accordance with the United Nations Charter and relevant United Nations resolutions, or any other political solution agreeable to the parties, in accordance with the United Nations Charter and relevant United Nations resolutions.

Chagos Archipelago

184. The Heads of State or Government reaffirmed that Chagos Archipelago, including Diego Garcia, is an integral part of the sovereign territory of the Republic of Mauritius. In this regard, they again called on the former colonial power to pursue constructive dialogue expeditiously with Mauritius for the early return of Chagos Archipelago, including Diego Garcia, to the sovereignty of the Republic of Mauritius.

Sudan

185. The Heads of State or Government welcomed the signing on 22 July 2002 of the Machakos Protocol between the Government of the Sudan and the Sudan Peoples' Liberation Movement, which represents a significant breakthrough on major issues and a major step towards the realization of a just and lasting peace in the Sudan. In connection with that signing, they paid tribute first of all to the parties, the ongoing efforts by the Intergovernmental Authority on Development (IGAD), led by Kenya, as well as the efforts exerted by other facilitators including the IGAD Partners Forum (IPF) and appealed to the parties to continue to work for a successful conclusion of a comprehensive and lasting peace.

186. Encouraged by those positive developments, the Heads of State or Government urged the international community to support efforts aimed at achieving peace in the Sudan. In this regard, they further urged the international community to provide assistance to meet the economic and developmental needs, including the reconstruction and rehabilitation of areas affected by the conflict, after the realization of peace in the Sudan.

ASIA

Situation between Iraq and Kuwait

187. The Heads of State or Government welcomed the assurances given by the Republic of Iraq to respect the independence, sovereignty and security of the State of Kuwait and to ensure its territorial integrity within its internationally recognised border with a view to steer away from any action that might lead to a recurrence of the 1990 events. They called for the adoption of policies that would set the aforementioned guarantees in an operational framework of good intentions and good neighbourly relations. In this regard, the leaders stressed the significance of halting negative media campaigns and statements toward the creation of a favourable environment that would reassure the two countries of their commitment to the principles of good neighbourliness and non-interference in domestic affairs.

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NAM 2006/Doc.1/Rev.3
Original: English

14th SUMMIT CONFERENCE OF HEADS OF STATE OR GOVERNMENT OF THE NON-ALIGNED MOVEMENT
Havana, Cuba
11th to 16th of September, 2006

FINAL DOCUMENT

Havana, Cuba
16 September 2006

Chagos Archipelago

155. The Heads of State or Government reaffirmed that Chagos Archipelago, including Diego Garcia, is an integral part of the sovereign territory of the Republic of Mauritius. In this regard, they called on once again the former colonial power to pursue constructive dialogue expeditiously with Mauritius with a view to enable Mauritius to exercise its sovereignty over the Chagos Archipelago.

EXTRACT

NAM2009/FD/Doc.1
Original:English

XV SUMMIT OF HEADS OF STATE AND GOVERNMENT OF THE NON-ALIGNED MOVEMENT

Sharm el Sheikh, Egypt
11th to 16th of July 2009

FINAL DOCUMENT

16 July 2009

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206 The Heads of State and Government *welcomed* the deployment of the Lebanese Armed Forces in the region south of the Litani River, such that there will be no weapon or authority other than that of the Lebanese State as stipulated in the Taef National Reconciliation Document, and *called on* States to expedite their contribution to Lebanon as requested by Security Council Resolution 1701 (2006).

207 The Heads of State and Government *expressed* full support for the Seven-Point Plan presented by the Lebanese Government, and *emphasized* the importance of the contribution of the United Nations in settling the issue of the Sheba'a Farms in accordance with the proposal mentioned in the aforementioned Seven-Point Plan and with UNSCR 1701 (2006), and called upon all relevant parties to cooperate with the United Nations to reach a solution to the Sheba'a Farms issue which protects Lebanon's sovereign rights including water rights in that area.

208 The Heads of State and Government called for a generous contribution to the ongoing humanitarian relief efforts, and *urged* the international community to support Lebanon on all levels to assist the Lebanese in facing the tremendous burden resulting from the human, social and economic tragedy, and in enhancing the Lebanese national economy.

209 The Heads of State and Government held Israel responsible for the loss of lives and suffering as well as the destruction of properties and infrastructure in Lebanon, and demanded Israel to compensate the Republic of Lebanon and its people for the losses sustained resulting from Israel's aggression in 2006.

210 The Heads of State and Government welcomed the establishment of diplomatic relations between the Republic of Lebanon and the Syrian Arab Republic in order to strengthen their brotherly relations.

211 The Heads of State and Government, pursuant to the failure of other means, *emphasized* the necessity of resolving the Arab-Israeli conflict based on relevant UN Resolutions leading to the establishment of a just, lasting and comprehensive peace in the Middle East as was called for by the Arab Peace Initiative of Beirut in 2002.

Africa

212 The Heads of State and Government welcomed the decisions by the thirteenth ordinary session of the Heads of State and Government of the Assembly of the African Union held from July 1-3, 2009 in Sirte, Libya and expressed their support for effective implementation of the decisions to promote peace, stability and socio-economic development in Africa

Chagos Archipelago

213 The Heads of State and Government *reaffirmed* that Chagos Archipelago, including Diego Garcia, is an integral part of the sovereign territory of the Republic of Mauritius. They noted that the former colonial power, the United Kingdom, and Mauritius held a first round of talks on the Chagos Archipelago issue in January 2009, and welcomed the initiative to pursue the dialogue through other rounds of talks. They called on the United Kingdom to expedite the process with a view to enable Mauritius to exercise its sovereignty over the Chagos Archipelago.

Lesotho

214 The Heads of State and Government, recalling the principles of the Movement on democracy, condemned the heinous attempt to assassinate the democratically elected Prime Minister of the Kingdom of Lesotho, Mr. Pakalitha Mosisili, on the 22nd April, 2009. And they

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NAM 2011/Doc.1/Rev.1
Original: English

XVI Ministerial Conference and Commemorative Meeting of the Non-Aligned Movement
Bali – Indonesia
23 – 27 May 2011

Final Document

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NAM 2011/Doc.1/Rev.1
Original: English

Chagos Archipelago

260. 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 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.

261. 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 impeding the exercise of the sovereignty and territorial integrity of the Republic of Mauritius over the Chagos Archipelago in accordance with UN General Assembly resolution 2066(XX) as well as the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom.

262. Cognizant that the Government of the Republic of Mauritius is committed to taking all appropriate measures to protect the legitimate rights of the Republic of Mauritius under international law with regard to its sovereignty and territorial integrity over the Chagos Archipelago, the Ministers resolved to fully support such measures including any action that may be taken in this regard at the United Nations General Assembly.

EXTRACT NAM 2012/CoB/Doc.1

Ministerial Meeting
of the Non- Aligned Movement
Coordinating Bureau

Sharm El Sheikh – Egypt
7 – 10 May 2012

SHARM EL SHEIKH
FINAL DOCUMENT

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283. The Ministers supported the efforts of the Lebanese Government to save Lebanon from all threats to its security and stability, and expressed their understanding to the policy the Government pursues vis-a-vis the developments in the Arab region.

Africa

284. The Ministers acknowledged the decisions by the seventeenth ordinary session of the Heads of State and Government of the Assembly of the African Union held from 30 June – 1 July 2011 in Malabo, Equatorial Guinea, and expressed their support for effective implementation of the decisions to promote peace, stability and socio-economic development in Africa. The Ministers also acknowledged the decisions by the Eighteenth ordinary session of the Heads of State and Government of the Assembly of the African Union held from January 29 – 30, 2012 in Addis Ababa, Ethiopia, which was convened under the theme " Boosting Intra-African Trade".

Chagos Archipelago

285. 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.

286. 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 upon 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.

287. 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.

Libya

288. The Ministers expressed their support for the sovereignty, unity, independence and territorial integrity of Libya , and for the efforts made by Libya in cooperation with the United Nations in order to build a state based on the foundations of democracy, pluralism and respect for human rights and fundamental freedoms.

Somalia

289. The Ministers *reaffirmed* their respect for the sovereignty, territorial integrity, political independence and unity of Somalia, consistent with the Charter of the United Nations.

290. The Ministers welcomed the positive political and security developments, and progress made in the Djibouti peace process, including the appointment of H.E. Abdiweli Mohamed Ali as the Prime Minister of the Transitional Federal Government (TFG) of Somalia and assured their commitment and support.

Annex 22

Robert Newton, *Report on the Anglo-American Survey in the Indian Ocean*, C.O. 1036/1332 (1964)

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Mr Watts
418

1964

Sir,

In accordance with Mr. Cumming-Bruce's Secret letter DEF 127/123/05, (17) of the 26th June I was appointed Colonial Office Member of the joint Anglo-U.S. survey party carrying out a survey of certain islands in the Indian Ocean. My duties were –

(a) to accompany the survey party to the islands to be surveyed and to investigate the possibility of resettlement on these or other islands;

(b) to provide liaison between the survey party and the civil governments and to give political advice to the Commanding Officer of H.M.S. DAMPIER and the survey party;

(c) to assess the impact of military plans upon the civil population of Diego Garcia and the other islands surveyed;

(d) in the light of military plans to make proposals –

(i) for the resettlement of any of the civil population who may be required to leave the islands where they now live;

(ii) for the compensation of private interests which may suffer as the result of military development;

(iii) for the further administration of the islands detached from Mauritius and the Seychelles.

(e) to consult as may be necessary with the Governors of Seychelles and Mauritius on the foregoing matters;

(f) to report factually as soon as possible after the conclusion of the survey party's visit to the islands, and thereafter as soon as a definite programme of military development has been prepared by the British and American military authorities to report on compensation and the administrative measures to be taken for the civil population of Chagos, with estimates of the cost thereof.

2. I arrived in London on the 14th July. On the 15th July I attended a meeting at No. 7 North Audley Street where I met the following members of the survey party.

BRITISH

Mr. M. Pollock, Technical Adviser, Store Dept. M.O.D
Mr. A. Kravis, Marconi Company.

UNITED STATES

Commander H.S. Hart, U.S.N.
Commander D.B. Feiman, U.S.N.
Lt. Colonel Gale, U.S.A.A.F.

/Lt. R.R. CARDEN, U.S.N

Copy to:- 1) DEF 127/123/04
2) DEF 127/123/03.
THE RT.HON. DUNCAN SANDYS, M.P.

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Lt. R.R. Cardon, U.S.N.
Master Chief Electronics Technician R.M. Young, U.S.N.
Chief Radioman M.E. James, U.S.N.
Mr. R.L. Clinkenbeard, Communications Engineer.
Mr. G.M. Marks, Communications Engineer.
Mr. W.P. Dayton, Communications Engineer.

3. My itinerary was as follows:

16th July.	Left Mildenhall for Aden by U.S. Aircraft
	Arrived Aden.
17th July.	Arrived Gan. Embarked on H.M.S. DAMPIER, Commander M.J. Baker, R.N.
19th July.	Arrived Diego Garcia.
19th-20th July.	at Diego Garcia.
21st July.	Left Diego Garcia for Gan.
22nd July.	Left Gan for Diego Garcia.
23th-26th July.	at Diego Garcia.
26th July.	Left Diego Garcia. Short visit to Egmont.
27th July.	Peros Banhos.
28th July.	Left Peros Banhos for Salamon. Short visit to Salamon.
	Left Salamon for Diego Garcia.
29th-31st July.	at Diego Garcia.
31st July.	Left Diego Garcia for Gan.
2nd August.	Arrived Gan.
3rd August.	Left Gan for Agalega.
8th August.	Short visit to Agalega.
9th August.	Arrived Coetivy.
10th-11th August.	Des Roches.
13th-15th August.	at Farquhar Island while H.M.S. DAMPIER proceeded to Diego Suarez for refuelling.
15th August.	Left Farquhar Island for Mahe, Seychelles.
17th August.	Arrived Mahe.
17th-25th August.	at Mahe.
25th August.	Left Mahe by U.S. amphibian aircraft for Mombasa.
	Arrived Mombasa.
25th-28th August.	Mombasa.
28th August.	Left Mombasa for Nairobi and London.
29th August.	Arrived London.

3. On arrival at Diego Garcia, on the 19th July, H.M.S. DAMPIER began arrangements to land the United States survey team and also survey parties from the ship. These teams remained on the island until the 31st July. The ship's doctor, Surgeon Lieutenant McClean also stayed on the island during this period to give medical and dental treatment. His interest in the people and his knowledge of French were of great assistance to me as he was able to confirm and supplement my own impressions of life on the island.

4. Mr. Pollock and Mr. Kravis together with six members of the United States survey team were landed at Gan on the 2nd August in order to return by air for Europe. W/Cdr. J.R.C.H. Graves, Air plans 2 and Mr. A. McClaren, M.P.B.W.(W.D.I.), joined the ship on the same day.

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5. On each of the islands visited I had discussions with the Manager, my object not only being to obtain information about the demographic and economic position on the island but also to assess the extent to which the population, particularly in Diego Garcia, was a specialised community that had evolved to meet the conditions of each island, and therefore whether the transfer of labour from one island to another was a practical possibility. I also paid a short visit to the Egmont atoll to form an impression whether the atoll could be reinhabited. All the managers readily gave me the information I required to the best of their ability though on some of the islands it was unfortunate that on account of the exigencies of DAMPIER'S programme my visits were not as long as I should have liked. I do not, however, believe that curtailed visits have led to the ommission of any important information or have affected the validity of impressions formed during the survey. My visit to Farquhar Island was necessitated by a signal from the Colonial Office to the effect that Mr. Paul Moulinié, Managing Director of Chagos Agalega Ltd. was on the island and, since it was unlikely that he would return to Mahé in time, it was suggested that I should visit him on Farquhar.

6. While on Mahé His Excellency the Governor kindly arranged for me to see Mr. André Delhomme, the owner of Cootivy. I also had discussions with Mr. Jeffrey, the acting Colonial Secretary, with the Attorney-General and the acting Financial Secretary.

7. It was impossible to conceal the fact that the survey was a joint Anglo-American operation. By the time we left Diego Garcia there was gossip to the effect that we had come to investigate the possibility of a base on the island. On Mahé, where DAMPIER remained for a short visit from the 17th-19th August, there were suggestions that it was intended to construct an American base for nuclear submarines in that part of the Indian Ocean. This suggestion was not taken amiss by property owners who have expressed concern over events in Zanzibar and fear what, in their view, might happen if there were a withdrawal of British interest in the Indian Ocean. I took the line with island Managers that in a scientific age there was a growing need for accurate scientific surveys, even in the Indian Ocean, and I made vague allusions to developments in radio communications. Since I had to make investigations into the possible cost of acquiring Diego Garcia and Cootivy, and since R.A.F. surveys of Aldabra and Cootivy were matters of common knowledge, I told Mr. Moulinié and Mr.Delhomme that we were investigating possibilities of developing air communications. which might also involve improved radio communications. Mr. Moulinié will certainly be informed by his managers that there were Americans in the party so I told him that we had American experts with us. The American members of the party behaved with admirable discretion and were kept out of sight during DAMPIER'S brief visit to Diego Suarez for refuelling. They were introduced to the island Managers as civilians but before the end of the survey work on Diego Garcia the manager himself had come to learn that some of the Americans were serving officers. This was probably due to some unguarded remark by some member of one of the shore parties.

8. The survey was a practical exercise in Anglo-American co-operation. Cordial and friendly relations were established at the outset and retained throughout the survey. I should like to express my deep appreciation of the helpfulness and courtesy of Commander Baker, and the officers and ship's company of H.M.S. DAMPIER. It cannot have been easy to absorb a comparatively

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large party of strangers on a small ship but we were made welcome and given all the help and guidance we required. I should also record that the manager of Diego Garcia paid a warm and well-deserved tribute to the behaviour of the shore parties from H.M.S. DAMPIER during ten days on the island. The manager himself gave willing assistance to the survey parties. H.M.S. DAMPIER and the American members of the expedition gave in return assistance in the form of repair work, supplies and entertainment.

9. On the 2nd September I submitted a draft report at the Colonial Office in order to give some advance indication of my recommendations.

10. I now have the honour to submit my final report. Broadly, my conclusions are as follows:-

(i) There should be no insurmountable obstacle to the removal, resettlement and re-employment of the civilian population of islands required for military purposes;

(ii) Insofar as the islands have a distinctive social and economic life of their own, this life is Seychellois and not Mauritian;

(iii) None of the islands, whether dependencies of Mauritius or of the Seychelles, is administered in the modern sense. All, including Aldabra, would benefit from closer administration from the Seychelles;

(iv) The Oil Islands should be transferred to the Seychelles and the islands required for military purposes should become direct dependencies of the Crown. All the islands should be administered by a Commissioner responsible to the Governor of the Seychelles as High Commissioner. The opportunity should be taken to include in the duties of the former the administration of the main islands of the Seychelles group other than Mahé.

11. I have also made recommendations regarding the price that might be offered for the acquisition of Coetivy by the Crown. I have made suggestions, which are necessarily tentative, for the financial basis of negotiations for the acquisition of Diego Garcia and Aldabra. Aldabra should not present any special problems other than the protection of the atoll's unique wild life.

12. In conclusion I wish to record my gratitude for the kindness and hospitality of the Governor of the Seychelles and Lady Oxford, and for the trouble taken by Mr. Jeffrey, Acting Colonial Secretary of the Seychelles, and other officers of the Seychelles Government, in giving me information and advice. I am grateful for information supplied by the Governor of Mauritius. My thanks are also due to the American personnel responsible for installations on Mahé and for the kindness with which they arranged my transport from Mahé to Mombasa.

I am, Sir,
Your obedient servant,

(Robert Newton)

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E.65

Report on the Anglo-American Survey in the Indian Ocean, 1964.

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Introductory

1. The Anglo-American survey of Islands in the Indian Ocean was concerned with dependencies of the Governments of Mauritius and the Seychelles. During the first part of the survey, from the 17th - 31st July, investigations were conducted into conditions in the Chagos Archipelago particularly on the island of Diego Garcia which was regarded as the most promising for technical purposes. After disembarking some of the original survey party at Gan, on the 2nd August, and embarking two additional British members, H.M.S. Dampier visited the island of Agalega, a dependency of Mauritius, and Coetivy, Des Roches and Farquhar between the 3rd - 15th August. The last three are dependencies of the Seychelles. All the islands are virtually in private ownership.

2. For the purpose of this report the islands were visited in order to determine the implications on the civilian population of strategic planning, and especially to assess the problems likely to arise out of the acquisition of the islands of Diego Garcia and Coetivy for military purposes. The problem was primarily one of the practicability of providing continued and congenial employment and of evaluating the social and economic consequences of moving island communities. It was also necessary to consider the future administration of the dependencies of Mauritius and, to some extent, of all the smaller islands in the Indian Ocean now administered from Mahe or Mauritius.

3. Following these investigations, including discussions in the Seychelles, certain broad conclusions have been reached. These are:-

(i) There should be no insurmountable obstacle to the removal, resettlement and re-employment of the civilian population of islands required for military purposes;

(ii) In so far as the islands have a distinctive social and economic life of their own, this life is Seychellois and not Mauritian;

(iii) None of the islands, whether dependencies of Mauritius or of the Seychelles, is administered in the modern sense. All, including Aldabra, would benefit from closer administration from the Seychelles;

(iv) The Oil Islands now dependencies of Mauritius should be transferred to the Seychelles and the islands required for military purposes should become direct dependencies of the Crown. All the islands should be administered by a Commissioner responsible to the Governor of the Seychelles as High Commissioner. The opportunity should also be taken to include in the duties of the former the administration of the main islands of the Seychelles group other than Mahe.

4. Recommendations have also been made regarding the price that might be offered for Coetivy, and more tentative suggestions made for the basis of negotiations for the acquisition of Diego Garcia, if these islands are required for military purposes. It is understood that the only islands likely to have a strategic interest are Coetivy, Diego Garcia and Aldabra.

5. For the purposes of this report the islands forming the dependencies of Mauritius are collectively described as the Oil Islands, a convenient term in current use which prevents confusion with other dependencies of Mauritius such as the Saint Brandon Archipelago and Rodrigues.

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PART I

The Oil Islands of Mauritius

6. In 1962 a company known as Chagos Agalega Ltd. was formed in Mahe to acquire the interests of the Mauritian companies which at that time owned the islands of the Chagos Archipelago and Agalega in the Indian Ocean. These islands, collectively known as the Oil Islands, are dependencies of Mauritius. They include:

(1) Diego Garcia

a narrow V-shaped island over 30 miles long from tip to tip, some 11 square miles in area and with some 6,000 acres of coconut plantations. 1,174 miles from Mauritius; 1,010 miles from Mahe. Population: 172 Mauritians, 311 Seychellois.

(2) Peros Banhos

a large atoll of 32 islands enclosing a lagoon of some 120 square miles with administrative headquarters at Ile du Coin. 1,344 miles from Mauritius; 960 miles from Mahe. Population 291, all Mauritians except for about 30 Seychellois.

(3) Salamon

an atoll of 11 islands totalling some 2,000 acres with administrative headquarters on Ile Boddam. 1,384 miles from Mauritius; 990 miles from Mahe. Population; 205 Mauritians; 14 Seychellois.

(4) Egmont or Six Islands

although at one time there were said to be seven islands in this group there are now indeed six. In recent years Takamaka has become joined to South East island by a sand-bank about one hundred yards long on which coconut palms, Veloutier (Tornefortia argentea) and Bois manioc (Scaevola frutescens) have become established. These islands are uninhabited, densely overgrown and are infested by large crabs. The anchorage is bad. 1,250 miles from Mauritius.

(5) Agalega

Agalega consists of two islands, North and South, joined by a sandbank about 1½ miles long which can be crossed on foot at low tide. North Island is seven miles long and between one and 4 miles wide. South Island is four miles long and three miles wide at its broadest part. The two islands contain about 4,000 acres planted with coconut. There are plans to increase the coconut plantations by at least 1,000 acres on North Island. Agalega lies within the cyclone belt and has at times suffered severe damage from storms. Anchorage facilities are poor. Agalega is about 360 miles from Mahe and 580 miles from Mauritius. Population 371, about 90% Seychellois.

Population

7. In 1964 the composition of the population of the Oil Islands was as follows:-

(1) Diego Garcia /(a)

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(a) Mauritians			
Administrative	2 men	2 women	total 4
Meteorological station	6		6
Labourers	48	39	87
Children	41 boys	33 girls	74
Unemployed	1 man		1
	98 males	94 females	172
(b) Seychellois			
Administrative	5 men	3 women	8
	5 boys	5 girls	10
Labourers	156 men	64 women	220
	32 boys	41 girls	73
	198 males	113 females	311

(2) Peros Banhos			
Administrative	1 man	3 women	total 4
Labourers	77 men	62 women	" 139
Children	81 boys	65 girls	" 146
Unemployed	1 man	1 woman	" 2
	160 males	131 females	291

About 30 of the inhabitants were said to be Seychellois. Of the children, 8 boys and 5 girls were employed in light labour.

(3) Salamon			
(a) Mauritians	51 men	52 women	total 103
Children (sexes not differentiated)			102
(b) Seychellois	7 men	2 women	9
Children (sexes not differentiated)			5
			total 219

(4) Agalega			
	165 men	61 women	226
	65 boys	73 girls	138
	7 men unemployed		7
			371

About 90% of the island's population was said to be Seychellois.

Population Summary	1964	1960
Diogo Garcia	483	428
Peros Banhos	291	374
Salamon	219	198
Agalega	371	428
	1,364	1,428

5. At the time of the Anglo-American survey the island managers could not readily provide details of the population in the same form on each

/island.

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island. It was not always possible to undertake special investigation in the time available. The details as given may be regarded as sufficiently accurate.

Exports

9. The exports from the Oil Islands are primarily copra and other coconut products. For this reason the way of life and economy of the inhabitants pertain to the Seychelles rather than to Mauritius. Copra exports are now at the following level:

Diego Garcia	731 tons per annum
Peros Banhos	180 tons per annum
Salamon	360 tons per annum
Agalega	638 tons per annum

Acquisition by Chagos Agalega Ltd.

10. The Oil Islands were purchased by the Chagos Agalega Co., in 1962, for Rs.1,500,000. The previous owners were two closely associated companies in Mauritius. Diego Garcia Ltd. owned Diego Garcia, Peros Banhos and Salamon. Agalega Ltd. owned Agalega. These companies shared a common chairman, board of directors and administrative organisation. Through their subsidiary the Diego-Agalega Shipping Company Ltd. they owned and operated the M.V. 'Sir Jules' of 711 tons. A second subsidiary, Innova Ltd. operated a factory in Port Louis producing rufined oil and soap.

11. By 1958 the Mauritian companies were in debt to the extent of Rs.1,374,873 and were experiencing great difficulty in obtaining further credit. They accordingly sought financial assistance from the Government of Mauritius. It was in consequence of this approach that Mr. Lucie Smith then Director of Agriculture in Mauritius, reported in 1959 on the coconut industry in the island. The islands appear to have been inefficiently administered by the Mauritian Companies. It is also possible that their financial troubles were in great measure due to the cost of operating the "Sir Jules", which is said to have amounted to Rs.700,000 per annum. No help was forthcoming from the Government of Mauritius. It appears that the directors welcomed the opportunity to rid themselves of a financial embarrassment which could otherwise be remedied only by the additional capital and improved business capacity which were not forthcoming. Accordingly they readily accepted an offer of Rs.1,500,000.

12. According to its articles of association, to Chagos Agalega Co. was formed to acquire Agalega, Diego Garcia, Salamon, Peros Banhos and the Egmont Atoll. It has a share capital of Rs.750,000 in Rs.1,000 units. 250 shares are held by the Colonial Steamship Co. of Mauritius and 200 by Mr. Paul Moulinie, of Mahe. Other shares are held as follows:-

Mrs Therese Moulinie	47
Miss Cecile Frichot	3
Mr. Paul Chenard de la Girodias	150
Mrs Alice Frichot	10
Mr. Noel Frichot	10
Mr. Robert Boulle	6
Mr. Ernest Boucherenu	25
Mr. Marc Vaevers-Carter	39
Mr. Maxime Jumeau	10

220 shares are in fact held by members of the family of Mr. Paul Moulinie or his business associates in addition to the 200 shares held by Mr. Moulinie

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Mr. Moulinie himself. According to the Articles of Association no shares shall be offered to the public. Shareholders may dispose of shares to other shareholders or to their own wife, husband or children. They may be sold to members of the public only with the permission of the directors and if the shareholders have refused to buy. The Board consists of seven members, two are Mr. Moulinie and a person appointed by him. Two are appointed by the Colonial Steamship Co. as long as the company shall continue to hold one-third of the share capital.

13. The acquisition of any of the Oil Islands for military purposes, and changes in their administration, will almost certainly involve repercussions in the local politics of Mauritius and the Seychelles. Not everything that Mr. Moulinie said in the course of two days' conversation should be accepted at its face value; but his plans and negotiations in the past two years will certainly be used for bargaining purposes. For this reason Mr. Moulinie's version of his negotiations and plans is set out in paragraphs 14-18 below. It is important to emphasise that there is no evidence that Chagos Agalega Ltd. has yet embarked on the capital expenditure required for the realisation of Mr. Moulinie's plans. It is by no means certain that the capital will be forthcoming. It is also probable that some of Mr. Moulinie's associates would be glad to accept a capital appreciation and to be rid of a possibly embarrassing speculation.

Political and Commercial factors

14. Mr. Moulinie, a member of the Seychelles Legislative and Executive Councils, has recently been canvassing the possibility of administrative and economic union between the Seychelles and Mauritius. He sees in such a union the prospect of commercial profit for himself and his associates because he hopes that it would lead to an increase in the carrying trade and passenger traffic between the islands which would justify the acquisition of a second motor vessel by the Colonial Steamship Co. to supplement the M.V. "Mauritius". This second ship would be available to carry to New Zealand the guano or rock phosphate extracted by Mr. Moulinie in St. Pierre and would enable extraction to be increased from about 5,500 tons to about 7,000 tons per annum. Further, Mr. Moulinie has in mind a scheme by which the Seychelles should obtain rice through Mauritius, thus providing cargoes. In return for this business Mauritius should provide Seychelles with 1,000 tons of sugar a year at the price paid by consumers in Mauritius plus freight at 2 cts. per lb. Plans under consideration include the encouragement of the tourist trade from Reunion, Madagascar, Mauritius and South Africa by the construction of an air strip and a hotel in Ile Farquhar. The development of Diego Garcia would form a major part of the plans for the development of the whole complex of islands. Diego Garcia would be rehabilitated, the population could be increased to about 4,000, and business with the island would spread the cost of more regular transport between the Oil Islands and the main island groups in the Indian Ocean. The plans depend on the economics of improved communications and especially on an increased demand for passages and freight.

15. Schemes on these lines have been discussed recently between Mr. Moulinie, Mr. Paturau (Minister for Trade and Industry in Mauritius, Mr. Maingard (of Rogers & Co.), Mr. Ringadoo (Minister for Education in Mauritius) and with various other people in Mauritius. Mr. Moulinie produced copies of the some of the relevant correspondence on the subject during recent months, together with a copy of a French translation of the paragraph in the Economist of the 4th July about Anglo-American strategic interests in the Indian Ocean. It would have been most useful to have had a conversation with Mr. Rene Maingard. It is possible that the proposals have not been received with the enthusiasm described by Mr. Moulinie himself. According to his account an influential

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and potentially vocal group in the Seychelles and in Mauritius have plans for commercial development in both the Seychelles and Mauritius in which Diego Garcia is expected to play an important part. It has been suggested by Mr. Moulinie that Mr. Ringadoo sees in such plans an opportunity to provide employment and increased trade. It would be in accordance with Mr. Ringadoo's character, and in no way imply criticism of him, if he were vigorously to follow up those suggestions. It is clear that Mr. Moulinie, and possibly his associates in Mauritius, had already by the time of the survey made up their minds to profit from any new interest in the area on the part of H.M.G.

16. There is no evidence that Mr. Moulinie's projects have received any influential support in the Seychelles or that the idea of closer union with Mauritius would be welcome in the ruling circles in Mahe. Proposals to improve trade and business contacts with Mauritius would be examined on their merits as a business proposition.

Mr. Moulinie's Report

17. Mr. Moulinie himself made a careful inspection of all the islands in the Chagos Archipelago in March 1963. His conclusions are as follows:-

(a) Diego Garcia

Very badly neglected and mismanaged. Capable of producing 1,500 tons of copra within the next ten years and of reaching a peak of 3,000 tons a year. Labour should be retained at its present level for the time being but 10 good tractors are required. The island should be divided into eight sections to ensure improved maintenance and supervision. The island contains about 250,000 trees of which about 50% require complete rehabilitation at a cost of about Rs.200,000. 800 head of cattle could be maintained on the existing pasture and three times as many with the introduction of elephant grass. Some 60% of the island is suitable for maize cultivation which should be planted extensively pending replanting with coconuts. In general the soil on Diego Garcia is about the best seen on any coral island. The island could support a population of some 4,000 people. Its copra should be produced for the European market.

(b) Peros Banhos

A labour force of 80 is adequate for the whole atoll if supervision is improved and good overseers placed on the principal islands. Production from the atoll should be at the rate of 850-900 tons of copra a year.

(c) Salomon

Improved cultivation methods and supervision should bring production to 225-250 tons of copra a year and ultimately to about 400 tons. The islands could also grow maize as animal food and perhaps for the labourers. The labour force should be kept at the existing level.

(d) Egmont

The atoll could produce rather more than 150 tons of copra a year. On one of the islands, Cipaille, some 15,000-20,000 tons of guano could be extracted before the coconut plantations are rehabilitated.

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(e) Three Brothers

Perhaps more than 40,000 tons of guano on this island of 20-30 acres.

(f) Eagle Island

Fifteen men under a good overseer could obtain 7-8 tons of copra per month. The cost of rehabilitating the settlement to make it habitable would be about Rs.25,000. More than half this amount would be repaid from the fallen coconuts.

18. Mr. Moulinie's report should not be accepted as an objective appraisal of economic prospects. No serious attempt has been made to estimate costs. It is essentially a prospectus designed to raise capital for a speculation. According to remarks made on Mahe some at least of the shareholders are concerned at the prospect of relatively heavy expenditure before they can expect an adequate return. No balance sheets have been published and no directors' meeting has been held for over a year. Mr. Moulinie himself claimed that Diego Garcia made a net profit of Rs.90,000 in 1963, but this cannot at present be substantiated and in any case it is uncertain what return this represents on the capital employed.

19. Report by Dr. Octave Wiehe C.B.E.

Dr. Wiehe visited the islands in 1961. Estimates made on the basis of his report indicate that within five to twelve years the copra production could be increased to:

Agalega	700 tons	(638)
Diego Garcia	1,400 "	(731)
Peros Banhos	550 "	(180)
Salamon	350 "	(260)

The current production figures are given in brackets.

20. Defence Interest in Diego Garcia

Judging by the comments of the Service officers and technicians taking part in the survey the island is eminently suitable for the various purposes under consideration. These include the construction of an airstrip and its appurtenances covering an area of approximately $2\frac{1}{2}$ miles x $\frac{3}{4}$ miles; the construction of naval storage tanks and jetty requiring 41 acres; receiving and transmitting radio installations; recreational facilities, housing and administration. It would appear that the greater part of the area from Marianne to Eclipse Point will be required for the transmitter, airstrip and ancillary installations. The most suitable site for the receiver will be at, or near, South Point. A strip of land half a mile long from Observatory Point will be required for the storage tanks and jetty. The whole of the main settlement at East Point will be required for the administrative headquarters, living quarters and for recreational facilities. If the impressions of the officers and technicians are confirmed, and if the necessary decisions are taken by the British and American Governments, the whole of Diego Garcia will be required for defence purposes. This will involve the eviction of the existing civilian population.

21. Implications of the acquisition of Diego Garcia for defence purposes

Diego Garcia is still in the state described by Mr. Lucie-Smith when he visited the island in 1959. The hot and humid climate, with an annual rainfall of 95", has created the luxuriant vegetation that is

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characteristic of that island alone among the occupied islands of the Chagos Archipelago. Behind an almost continuous belt of Bois manioc (Scaevola frutescens) and Valoutier (Tornefortia argentea) there is a thick growth of coconuts palms and forest trees, ferns, bushes, lianas and rotting stumps and debris. The area of clean coconut plantations is small and even that compares unfavourably in appearance with the plantations on other islands. Mr. Lucie-Smith commented in paragraph 162 of his report that "the cultivations at Diego are in so deplorable a state that there is hardly a normal palm in the entire island, while the whole matter is complicated by the massive infestation of the Rhinoceros Beetle". In paragraph 163 Mr. Lucie-Smith referred to the possibility that Diego Garcia might be thought "a doubtful proposition in view of the bad condition of the coconuts, the overgrown state of the island and the problematic control of the Rhinoceros Beetle. His suggestion that coconuts in the oil islands, especially in Diego Garcia, represent a natural secondary plant community rather than a cultivated plantation crop is strengthened by comparison with the admirable cultivation and flourishing appearance of the plantations on islands such as Farquhar or Des Roches. Mr. Moulinie's impressions are much the same. Nevertheless, Mr. Lucie-Smith considered that with an expenditure of some Rs.5.1 million over five years, better methods of cultivation and more mechanisation the island could be made into a highly profitable concern. In general the conclusions of Mr. Lucie-Smith Mr. Moulinie and Dr. Octave Wiehe coincide.

22. Diego Garcia is already making some progress as compared with conditions under the former owners. Exports of copra increased from 521 tons in 1962 to 677 tons in 1963. 430 tons were exported to the end of July and were expected, with every justification, of reaching over 700 tons by the end of the year. The exploitation of guano has ceased. Exports are now confined to copra and other coconut products, mainly to Mauritius. The copra is exported to the United Kingdom.

(a)

Exports from Diego Garcia to Mauritius 1963-1964

March 1963	227 tons copra
	62,000 coco barbes
	8,320 brushes
	12,000 brooms
October 1963	425 tons copra
	77,000 tons coco barbes
	13,000 brushes
	1,000 brooms
April 1964	273 tons copra
	80,000 coco barbes
	35 tons coconut oil

(b)

Exports from Diego Garcia to Mahe

February 1963	75 tons copra
July 1963	33 tons copra

Coco barbes are coconuts as sold in grocer's shops. The coconut oil shipped to Mauritius in April 1964 was expressed on the island and was a trial shipment.

23. Today on Diego Garcia an average of 8,000 coconuts is required to produce a ton of copra, as compared with 8,500 in the past - though this is not necessarily a proof of improved cultivation. Some of the younger

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plantations were being properly manured. Young palms are beginning to be productive. There are plans for the introduction of cattle. The net profit in 1963 is said by Mr. Moulinie to have been some Rs.90,000 in contrast to a loss of Rs.53,427 in 1955-56 and Rs.196,356 in 1957-58, and to a small profit of Rs.5,868 in 1956-57. No figures have been made available to confirm or explain the alleged profit in 1963.

24. The total population of Diego Garcia in 1964 was 483, comprising 311 Seychellois and 172 Mauritius or Ilcois. In 1958 the population of the island was 589. In 1960 was 428. In 1963 it had fallen to 422. The decline in 1964 as compared with 1958 was not due to any marked difference in the labour force. Mr. Lucie-Smith recorded a total of 216 male labourers in 1958. In 1964 the total was 205. The present manager, Mr. Pouponneau complained about the great difficulty in recruiting labour. He said that the neglected state of the island, especially the unkept bush area about Marianne and Eclipse Point, was due to lack of labour. In Mr. Moulinie's view what is required is more mechanization and improved supervision. Labour in Diego Garcia is recruited from Mauritius and the Seychelles. All the Seychellois labourers are under contract, married men for two years and bachelors for 18 months. 7 Mauritians were also under contract. It is noteworthy that in the better managed islands belonging to the Seychelles there were no serious complaints about the difficulty of obtaining labour from the Seychelles though there were suggestions, of very doubtful validity, that the American installations were attracting labour at the expense of the islands. Diego Garcia, however, is undoubtedly suffering from rivalry between Mauritians and Seychellois, and from bad management. Mr. Moulinie complained of the campaign directed against his company which was said to be impeding recruitment in Mauritius. Mauritian officers on the island spoke of the deliberate "Seychellisation" of Diego Garcia. There is certainly little trace of the sense of a distinct Diego Garcian community described by Sir Robert Scott in his book "Limuria". Sir Robert Scott holds that "the physical characteristics of the island have made the Diego Garcians more down and hard-headed than the residents in the other islands." They are said to be "more diligent in supplementing their basic rations and their cash resources than the other islanders." In the postcript to his book Sir Robert Scott discusses the impact of change and makes 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."

25. Sir Robert Scott's visits took place nearly ten years ago. It is already apparent that already little is left of the distinctive life of Diego Garcia which he described. Judging by conversations with the manager, and with others on the island, most of the inhabitants of Diego Garcia would gladly work elsewhere if given the opportunity. The doctor on Dampier, Surgeon-Lieutenant Maclean, who spoke French well and spent ten days on the island, endorsed these comments on Sir Robert Scott's observations. At the time of the survey there was little evidence of any real sense of a distinct community evolved by the special local environment. Since four-fifths of the labour force are Seychellois under 2-year or 18-month contracts, the evocation of a distinctive attitude to life from the appearance of a chance-met individual on Diego Garcia is hazardous. Difficulties in establishing the paternity of some children was a further indication of a loose social structure - since it could not be attributed to the evolution of a matriarchal society. There are grounds for the conclusion that life on Diego Garcia evolved to meet the special conditions of the 19th century and that attachment to the island in recent years was fostered by the easy-going ways of the old company rather than to the island itself. The impact of the new company has loosened the old ties, and if there is a distinctive way of life on the islands it is Seychellois rather than Mauritian being African in origin and evolved round the coconut palm.

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26. Of the total population of Diego Garcia, perhaps 42 men and 38 women, with 154 children, might be accepted as Ilecis. According to the manager 32 men and 29 women made relatively frequent visits to relatives in Mauritius and perhaps no more than 3 men and 17 women, including a woman of 62 who had never left Diego Garcia, could really be regarded as having their permanent homes on the island. The problem of the Ilecis and the extent to which they form a distinct community is one of some subtlety and is not within the grasp of the present manager of Diego Garcia. But it may be accepted as a basis for further planning that if it becomes necessary to transfer the whole population there will be no problem resembling, for instance, the Hebridean evictions. Alternative employment on a new domicile under suitable conditions elsewhere should be acceptable.

27. Wages for the ordinary labourer on Diego Garcia amounted to Rs.18 per month and women received Rs.10.50. Bonuses amount to Rs.6.0 per month and Rs.2 per month in addition are paid to newly engaged Mauritians in lieu of the customary issue of bouillon. A day's work is based on an allotted task which can be completed between 10.0 a.m. - 11.0 a.m.

28. The costs of acquisition

It has not been possible to produce informed estimates because the basis of estimates has been either the conditions of bankruptcy revealed by Mr. Lucie-Smith or Mr. Moulinie's plans. In the Seychelles the acquisition of a coconut estate is based on the 10 years purchase of the net profit plus the purchase on valuation of installations and building and compensation for young trees not in bearing. Compulsory acquisition also involves compensation for loss of development potential. Diego Garcia was bought as a speculation from a bankrupt company that had lost interest in the oil islands. It was acquired by Chagos Agalega Ltd. very cheaply. The islands' recent financial history has been a story of losses and its development potential has still to be proved. Mr. Moulinie repeatedly emphasized in conversation that in his view Diego Garcia was the key to the economic development of Chagos. The other islands, especially Agalega, which lies in the cyclone zone, are said to be regarded by new company as marginal. Plans for the development of the Oil Islands by Chagos Agalega Ltd. depend primarily on Diego Garcia which, according to Mr. Lucie-Smith, could achieve an annual production of some 3,400 tons of copra and according to Mr. Moulinie might provide a livelihood for a population of 4,000.

29. To attempt to frame a rough estimate of the cost of the acquisition of Diego Garcia in the present circumstances therefore involves a valuation of what was recently a bankrupt concern with a potential value depending almost wholly on still hypothetical circumstances and on relatively large capital expenditure. Two years after the Chagos Agalega Co. acquired the island there are few signs of improvement as compared with the conditions described by Mr. Lucie-Smith, though there are some. Moreover in Mr. Moulinie's mind the full exploitation of the island is part of a comprehensive plan for the economic development of the Oil Islands and other islands in the Indian Ocean, this development envisages the construction of an air strip and a hotel on Farquhar Island. Some form of union between Mauritius and the Seychelles, and the enlistment of interest on the part of Mauritian Ministers, are also contemplated by Mr. Moulinie.

30. Mr. Moulinie himself gave no indication of any willingness to suggest a possible basis for negotiation. He will undoubtedly consult Mr. Maingard as soon as possible and he will certainly attempt to derive full advantage from H.M.G.'s interest in the island. The company's accounts are not available. In these circumstances it seems that an offer from a potential purchaser must be forthcoming before any progress is made. The price of coconut land in the Seychelles varies

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between Rs.1,000 and Rs.500 an acre according to its situation and accessibility. Accepting 6,000 acres as the area under coconuts in Diego Garcia an offer of Rs.500 an acre would amount to Rs.3,000,000 or £225,000.

31. Any such offer would be generous. If Diego Garcia were to export 800 tons of copra annually at an average price of £65 a ton and allowing 70% as representing fair costs of production, ten years purchase of the profit would be of the order of £156,000. Mr. Moulinie has estimated that the number of coconut palms on Diego Garcia might amount to 250,000 trees of which 2½% might be young trees or 6,250. Many of these trees may never be productive on account of bad planting, disease and pests. A purchase price of Rs.3,000,000 would in practice represent a very adequate offer to include young trees, buildings and loss of development potential, in so far as it is most unlikely that any development will be undertaken in the next few months. It would be optimistic to assume that Diego Garcia is likely to produce 1,000 tons of copra a year in the near future despite Mr. Moulinie's estimate that "Diego could easily bounce to the 1,500 tons per year within the next ten years." A purchase price on the basis of Rs.500 per acre should be regarded as in fact covering the full value of the island including compensation for young trees, buildings and development potential.

32. Mr. Moulinie and his associates, however, are in the position of owning property which, in the eyes of the purchaser, might be regarded as having unique advantages. To acquire the property under the Land Acquisition Ordinance of Mauritius would involve the consent of Mauritian Ministers which would not necessarily be forthcoming, especially if it were represented to them that Mauritius was being deprived of opportunities for improved trade and employment. It is very possible that Mr. Moulinie has over-emphasized the interests of Mauritius in his plans, perhaps to assist him to drive a bargain; but the correspondence he has conducted during the past few months strongly suggests that it would be prudent to foresee the possibility of opposition organised specifically in order to extract better terms or subsidiary advantages. The Governor of Mauritius will be in a position to advise on this point.

33. Re-employment and resettlement of the Labour Force

Acquisition of Diego Garcia for defence purposes will imply the displacement of the whole of the existing population of the island. If the administrative and meteorological staff are disregarded the numbers involved will be approximately

	Men	Women	Children	Total
Mauritius	49	39	74	172
Seychellois	156	64	73	293

All the Seychellois males and 7 Mauritians are under contract.

34. It is assumed that neither the Government of Mauritius nor the Government of the Seychelles should be put to additional expenditure by reason of defence plans in the Indian Ocean which might result in loss of revenue, unemployment or relatively expensive resettlement. Employment for the existing population of Diego Garcia in other islands is a practical possibility, especially if there is more intensive and more diversified development. Further employment, though not necessarily for the existing population, will also be provided if labour from Mauritius and the Seychelles is employed on constructional work. Suggestions were made by members of the survey team that it might

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be necessary to employ Pakistanis, as on Gan. This recourse should be a last resort if the employment of Mauritians and Seychellois proves impracticable, and then only after adequate explanations. There is, however, no reason in principle why the bulk of the labour force from Diego Garcia should not be employed on other islands.

35. H.M.G. should therefore accept in principle responsibility for facilitating re-employment of the Mauritians and Seychellois on other islands and for the re-settlement in Mauritius and the Seychelles of those unwilling or unable to accept re-employment. Settlement schemes would have the additional advantage of retaining the Diego Garcian labourers as a community subject to supervision and guidance. Very few are wholly ignorant of life in the main islands and the conditions of the Black River area of Mauritius might well be suitable for dispossessed Ilecis. Even so, some guidance will be required. The cost will be relatively heavy. In the Seychelles, where it is considered that land settlement should be based on 5-acre plots, the capital cost of the acquisition of land the provision of access and services might amount to Rs.2,000 an acre. The resettlement of the adult Seychellois from Diego Garcia might therefore cost something of the order of Rs.1,500,000 for land to settle about 150 households and perhaps Rs.300,000 for housing at Rs.2,000 per house, some £135,000 in all. The resettlement of Mauritians would involve much smaller numbers, say 50 families; but costs per head would be higher. It would be wise for planning purposes, and subject to the provision of detailed estimates, to envisage a total of £200,000 for resettlement in both islands. This sum would of course be substantially reduced if alternative employment on the other islands can be provided.

36. Resettlement on other islands in the Chagos Archipelago and on Agalega will require further detailed investigation on the spot before the problem can be usefully discussed. Mr. Moulinie has plans for increasing his labour force, especially on Agalega. All labourers are under contract. As far as the Seychellois are concerned there is no reason why they should not accept work either in the islands owned by the Chagos Agalega Ltd. or elsewhere on islands controlled by Mr. Moulinie. A handful of Ilecis might be reluctant to move - this will have to be determined by a detailed survey - but might well accept transport to, and houses on, other islands if they do not wish to return to Mauritius. Mr. Moulinie's plans for the other islands could provide work for all.

37. Those of the dispossessed labourers who are beyond working age should be paid a pension. The present rate in Mauritius is Rs.22 a month. There is no old age pension in the Seychelles.

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PART II

Cootivy

38. An island about 6 miles long and 1½ miles wide under the administration of the Seychelles. It is owned by Mr. Andre Delhomme, of Mahe. The island is almost entirely planted with coconuts. Cootivy has been surveyed by the R.A.F. The island comprises some 2,000 acres of coconut plantations. Its yield over the past ten years is as follows:-

Year	Average price f.o.b.	Tons
1954	£74	319.136
1955	£60	325.416
1956	£62	312.515
1957	£61	295.886
1958	£68	300.657
1959	£88	304.265
1960	£71	328.388
1961	£60	295.216
1962	£59	268.749
1963	£67	277.564

Costs of acquisition

39. Mr. Andre Delhomme has had in mind for some time the possibility of selling the island, particularly after the R.A.F. survey. Mr. Delhomme, like others in the Seychelles, is worried by the recent developments in Zanzibar. He fears that H.M.G. has no serious interest in the future of the Seychelles and he would welcome the assurance to be derived from the British or allied activity in this part of the Indian Ocean. In April 1964 Mr. Delhomme suggested negotiations on the lines that:-

(1) If Cootivy were to become an R.A.F. Base he would not seek compensation for the necessary felling of coconut palms;

(2) He himself should remain the owner of the island which should be leased to the government, either to the Government of the Seychelles or to H.M.G. in London for 30-50 years at a rent based on the local value of 150 tons of copra, after deduction of export duty, and providing that the rent is also free of income tax.

Mr. Delhomme suggested that the exemption from Income Tax would represent the equivalent compensation for compensation normally paid for the felling of coconut palms. He pointed out that such compensation is exempt from Income Tax.

40. Exemption from Income Tax in the manner proposed is clearly undesirable in principle and would be unsatisfactory in practice. This was indicated to Mr. Delhomme at a discussion in Mahe on the 18th August. At this discussion, however, Mr. Delhomme expressed his willingness to sell the island. It also emerged in due course, that he would accept a price of Rs.2,5000,000 or £187,500.

41. The average net profit of Cootivy during the past five years amounts to Rs.145,000 per annum, an income representing a return of 6% on a capital of Rs.2,500,000. These figures are supported by the balance sheets for the past five years which have been checked by the Income Tax authorities in the Seychelles for the purpose of this report and which may be summarised as follows:-

Financial position of Cootivy 1959-64

/Expenditure

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	Expenditure Rs.	Income Rs.	Net Rs.
1959	135,123	354,406	218,983
1960	160,866	811,242	150,376
1961	114,784	221,136	106,352
1962	107,814	199,315	91,501
1963	117,751	259,856	142,105
	1,345,955	636,638	709,317
Average	269,191	127,328	141,863

Good coconut land such as exists at Coetivy would fetch Rs.2,000 an acre in Mahe. But Coetivy is 160 miles from Mahe. The price proposed amounts to Rs.1,250 an acre for 2,000 acres comprising coconut plantation in excellent condition. It appears reasonable in all the circumstances. It is therefore recommended that if it is decided to proceed with defence plans on the island negotiations should begin with an offer of Rs.2,500,000. The Seychelles Government at present derives Rs.11,138 a year from Coetivy in the form of 5% export duty.

42. Labour on Coetivy

Apart from the administrative staff the population of Coetivy consists of a labour force made up as follows:-

married men	25
single men	36
married women	25
boys	15
	91

There are also 47 children.

43. Conditions of employment

Married men are under contract for two years; single men for eighteen months. Labourers' wages are:-

Men	Rs.15	and Rs.1.50 bonus per month
Boys	Rs.7.50 and	and 75 cts. bonus
Women	Rs.7	and Rs.1.50 bonus

Women are employed in cleaning duties, which are not particularly arduous. Carpenters are paid Rs.45 a month and Rs.1.50 a day for overtime after 4 o'clock. The head carpenter is paid Rs.60 per day. Masons are paid Rs.45 a month and Rs.1.75 a day after 4.0 p.m. Foremen are paid Rs.38-Rs.50 a month according to their length of service. Some have worked on the island for 40 years. Rations and rent free houses are provided. As in the other islands under the Government of Seychelles, and in marked contrast to the Mauritian Oil Islands, there were no complaints about the difficulty of obtaining labour.

44. Re-employment and re-settlement

Men such as these are more likely to be readily employed elsewhere than are the labourers on Diego Garcia. Mr. Dolhomme himself owns the neighbouring island of Des Roches, with a population of 91, as well as property elsewhere in the Seychelles islands. If, however, there is any difficulty in obtaining alternative employment the provision of a resettlement scheme is essential. The British Government should not be exposed to charges of adding to local economic difficulties by the removal of some 90 men and women from useful employment without assisting them to find a niche in the main islands. It is, however,

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quite impracticable at this stage to guess at the financial implications. In principle there should be no obstacle to providing alternative employment on other islands for labourers no longer required on Coetivy especially if they are given priority over other Seychellois seeking employment on the islands.

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PART III

Aldabra

Financial

45. Aldabra does not present any serious financial problems in so far as this inquiry is concerned. The island was not visited by H.M.S. Dampier during the Anglo-American survey. Aldabra is leased by the Government of the Seychelles for a term of thirty years renewable at the option of the lessee at a rent of Rs.6,666.67 p.a. The agreement requires South Island to be retained as a nature reserve. According to Clause 21 of the agreement the lessor has a right to secure possession if the islands are required for a public purpose. Public purpose includes Admiralty and W.D. requirements.

Nature conservancy

46. It is unfortunate that Aldabra, as Darwin once pointed out, is the last refuge of the ~~giant~~ turtles of the Indian Ocean which elsewhere have been exterminated in accordance with man's customary methods of exploitation. In this respect the island is unique. The ornithology of the island is also of considerable interest, particularly in view of the abundance of the Sacred Ibis (Threskiornis aethiopica) and the presence of the Flamingo (Phoenicopterus ruber). According to the Smithsonian Institute's "Preliminary Field Guide to the Birds of the Indian Ocean (Washington, 1963)" some species of birds on the islands still retain a primitive tameness which would handicap their survival if the islands were developed on modern lines. It is not intended to imply that the conservation of unique fauna should outweigh essential strategic requirements, still less that the R.A.F. would not take an enlightened view of its responsibilities for the protection of local fauna. If adequate precautions are taken, the use of the atoll for military purposes would facilitate the enforcement of preservation measures attempted or contemplated by the Seychelles Government, including the effective preservation of the green turtle.

47. Adequate nature conservancy on Aldabra requires a detailed study of fauna and avifauna, especially the ecology of the tortoises. It will also require rigid measures against the introduction of dogs, cats and rats on the lines adopted recently for St. Kilda. It is imperative that these measures are taken before large-scale constructional works are begun and that they should be based on a detailed ecological study. The Director General of the Nature Conservancy Trust might be consulted.

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PART IV

Administrative

The administrative future of the Islands

48. The following proposals for the administrative future of the islands are based on the assumption that it is essential to remove them from the unpredictable course of politics that tends to follow independence. The islands should therefore become direct dependencies of the British Crown. Similar action has been taken by the French in the off shore islands of Madagascar, Glorieuse, Tromelin and Juan de Nova which, it appears, are now the property of Metropolitan France.

49. Until recently the Oil Islands of Mauritius have been of little interest to Mauritians except to the commercial companies who were so unsuccessfully exploiting them. This lack of interest was apparent at the time of the examination of the problem undertaken in Mauritius some five years ago. Conditions in Mauritius have obviously changed a great deal in recent years. It appears, as explained in paragraphs 14-15 of this report, that some Ministers and business men in Mauritius are beginning to regard the Oil Islands as potentially valuable assets. Hence there is a risk that to remove the islands from the jurisdiction of Mauritius would give rise to considerable political difficulties. The issue is primarily one of relative advantages and disadvantages in regard to long-term strategy and is not a matter that can be examined in this report. It can be summarised in the question, how far adverse, but doubtless temporary, reactions in Mauritius should outweigh the need for security of tenure in certain of the islands, or at least in Diego Garcia. A further issue is the assessment of the extent to which Mauritius might embarrass H.M.G.'s existing interests in the island before they can be replaced. Stated thus, the problem may appear over-simplified. The final decision cannot be independent of any obligations or commitments that H.M.G. might have towards Mauritius arising out of past history or any beneficial interest of Mauritius in the Oil Islands.

50. The islands under discussion and their population are:-

	Mauritians	Seychellois	Total
Diego Garcia	172	211	483
Poros Banhos	269	14	283
Salomon	205	14	219
Agalega	37	301	371
Egmont	-	-	-
	683	640	1,356

The Egmont atoll is uninhabited. It is capable of rehabilitation and resettlement.

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51. These islands came under the British Crown in 1810 after the conquest of Mauritius. As Sir Robert Scott has pointed out, "it is doubtful whether the French governors had a very clear notion of the number and situations of the islands for which they were assumed to be responsible". Since 1810 the Oil Islands have been administered, more or less, by Mauritius. The Seychelles and the Amirantes group became a separate colony by Letters Patent in 1903. Coetivy and the Farquhar islands were added to the Seychelles by Letters Patent in 1908 and 1921 respectively.

52. The administrative connection of the islands with Mauritius is tenuous. The replies to questions in the Mauritius legislature on the 19th May and 2nd June, 1964, indicate that knowledge of the islands is fragmentary and that effective governmental contact does not exist. Governors visit them from time to time whenever a frigate has been available. Magistrates from Mauritius make visits of inspection about once a year in accordance with the Cours Ordinance of 1945. It is their duty to ensure that the prescribed conditions of employment are observed, to enquire into grievances and generally to ensure that the islands are properly administered. Technical officers pay infrequent visits. The Government of Mauritius maintains meteorological stations in Diego Garcia and Agalega, both of which are in the cyclone zone, and also provides school-teachers, midwives and dispensers on the main islands of each group. Administration in any practical sense is confined to the paternal responsibility of the manager of each island. In general it is adequate for the needs of the islands though too much depends on the personality of each manager. Sir Robert Scott comments that "the general well-being of the communities derives from their own sense of order and capacity to produce and from the ability of their managements to keep them welded together". This comment suggests that the island communities have not yet successfully evolved their own way of life and self-discipline. It is indeed the ability of the management that is the predominant factor in establishing an ordered life and it is probably some lack of managerial ability that is the cause of much of the palpable malaise in Diego Garcia today.

53. The islands are in fact estates organised and administered on much the same principles as were, for example, the German plantations in the Cameroons some thirty years ago. The essential difference between the Oil Islands and the German plantations of thirty years ago is that the former are so inaccessible to the supervisory administration. Apart from the occasional visit of a warship their contacts with Mauritius are confined to the visits of the M.V. "Mauritius" about twice a year. The schooner "Le Perle", which used to form another link between Mauritius and its dependencies, is now Seychelles owned and calls, under the name of "Isle of Farquhar", perhaps once every two and a half months. The only regular link between the islands was the motor vessel "Sir Jules" which was sold because it was too expensive to maintain, an indication that effective control on the islands by means of regular visits is not yet a commercial proposition.

54. The direct interests of Mauritius in the Oil Islands are confined to the livelihood they provide for some 683 Mauritians, men and women and children. They are a source of business and profit to a Mauritian company - the Colonial Steamship Co. They provide some coconut palm

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products for the Mauritian consumers. They are also essential points in the weather reporting system in the Indian Ocean. Their reports are of crucial value in warning Mauritius of the formation and course of cyclones. The islands have not hitherto been a factor in Mauritian politics and until recently no Mauritian has expressed any interest in them. Few Mauritians welcome posting to the islands and there is only one Indian among the Mauritian population, the respected and devoted Mr.Suleiman, dispenser on Diego Garcia.

55. Such Mauritian interests in, and connections with, the Oil Islands as exist are no conclusive reason for the retention of Mauritian administration, especially if it could be guaranteed that the islands would provide a source of employment and supply for Mauritians to the same extent as obtains to-day; and provided that the maintenance of the meteorological stations are ensured.

56. The islands are at present being drawn more closely into the the Seychelles sphere of influence. Only one of the Managers is not a Seychellois. Labour is being brought increasingly from the Seychelles, partly because it is said that Mauritians do not now wish to work on the islands. If this objection exists it is perhaps due in part to dislike of the new company. It is also probable that the amenities of life in Mauritius, with its cinemas and shops, exercise a powerful attractive force. Out of about 505 male labourers in the Oil Islands some 325 are Seychellois and 180 are Mauritians.

57. The pull of the Seychelles is likely to continue with the advent of Chagos-Agalega Ltd. Mr. Mouliné has stated his intention of recruiting 800 additional Seychellois, partly for new development work and partly to replace Mauritian labour. Mr. Mouliné himself has pointed out that at least 50% of the Oil Islands copra is not up to the Seychelles quality. He took the initiative in recommending that to encourage improvement and development, the export duty on copra sent through Mahé should be waived for five years and then should be subject to a maximum of 5% instead of 5%. Recently the duty has been reduced to 5% for the outer islands, including Coetivy. For these reasons, and until recently, Mr. Mouliné has urged that the Seychelles should administer the Oil Islands of Mauritius.

58. The way of life on the Oil Islands and the economy on which that way of life is based are certainly Seychellois rather than Mauritian. For this reason, and because the Seychelles understand coconuts as Mauritius understands sugar, though perhaps not to the same degree of technical excellence, there are good grounds for recommending the transfer of the islands to the Seychelles. The features of island life emphasised by Sir Robert Scott are primarily Seychellois, judging by conditions on the other islands for which the Seychelles Government is responsible. Sir Robert Scott's comment, "the existence of small communities ..... in which a rhythm of life proper to a past age has persisted, by reason of their remoteness and lack of incentive to change" is as applicable to the Seychelles as to Diego Garcia or Agalega. There is nothing in the Oil Islands remotely resembling life in modern Mauritius. Diego Garcia and Farquhar Island, Des Roches and Agalega, are one world with the Seychelles.

59. If the Oil Islands were transferred to the Seychelles the transfer could be justified by the greater security given to any defence interests

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established there and because it would be a transfer of like to like. Personalities and politics in Mauritius do not offer a firm basis for strategic planning. It does not now appear that the Seychelles are likely to be as immune to change and to unpredictable policies as has hitherto been assumed. This comment is not intended to attach undue weight to the views and fears of property owners upset by the fate of Zanzibar. But if there is constitutional advance in the Seychelles, and if direct British control is relaxed, it would be idle to pretend that stability in the islands can be assumed.

Administrative Recommendations

60. It is therefore recommended that the Oil Islands should become direct dependencies of the British Crown and administered under the authority of the Governor of the Seychelles as High Commissioner. The opportunity should be taken to arrange for the closer administration of the smaller island dependencies of the Seychelles in the Amirantes and elsewhere.

61. If Diego Garcia, Cootivy and Aldabra are required for military purposes the two former will have no problems of civilian administration other than the recruitment and employment of labour as at Gan. Aldabra is a large atoll where only one island would be required by the R.A.F. and there would be much advantage in an opportunity to make effective the attempts of the Seychelles Government to preserve wild life, including the Green turtles as well as the tortoises. Both the Governments of Mauritius and the Seychelles will in any case retain an interest in labour recruited from the islands and must be satisfied that the terms of employment are properly observed. This should be one of the duties of the future administration of the islands.

62. The administration of the Oil Islands of Mauritius that is the Chagos Archipelago and Agalega, should be combined with that of the outlying islands of the Seychelles. It also appears that Praslin and La Digue in the main Seychelles Group require closer supervision. If an officer were appointed as Commissioner for the Crown's possessions in the Indian Ocean, Chagos, Aldabra, and Cootivy, he should be stationed at Mahé and in return for suitable information from the Seychelles he should also hold the post of Civil Commissioner for the outlying islands in addition to being Commissioner of the Crown Islands. Transport could be based on existing means, by schooner and the M.V. Mauritius, and on R.A.F. aircraft. Commercial / schooner communications are highly uncertain and slow. There is abundant need in this part of the Indian Ocean for a modern schooner-type vessel to be used for transport of a High Commissioner based on Mahé, as well as for the various technical exports required by the islands. Such a vessel could be used for fisheries control and research and might also be chartered from time to time by private individuals or firms.

63. If administrative proposals on these lines are not adopted Aldabra, Diogo Garcia and Cootivy would have to be administered by a Service Officer in much the same manner as is Gan. The remaining islands would have to be placed directly under the Governor of the Seychelles, as Governor, to be administered or left alone in much the same manner as the Amirantes and Farquhar islands are treated to-day.

64. The Seychelles will in any case require relatively substantial assistance from H.M.G. before they can be regarded as having an economic base, however, insubstantial, for further economic advance and some degree

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of autonomy. Their isolation and the uncertainty of air communications are not only seriously limiting factors but are a reproach in an age when air transport has become the normal means of transport in the interior of Australia or the Far North of Canada. As a subsidiary issue further consideration should be given to the possibility of an air link between Mahé and Coetivy by commercial air lines to enable tourists to reach the Seychelles.

65. The foregoing paragraphs are primarily concerned with the Seychelles connection and are perhaps liable to the criticism that insufficient attention has been paid to the position of Mauritius. Judging by the history of the Mauritian companies in recent years the islands have not been a source of profit to Mauritius. They have also provided more or less unwilling exile for a few Mauritian officers. They have offered livelihood to some Mauritians who might otherwise have been unemployed or under-employed in Mauritius.

Constitutional issues

66. According to precedents, if these are still valid, the transfer of the islands from Mauritius to the Seychelles will require the assent of Mauritian Ministers. In 1906, after some three years of correspondence between Mr. Joseph Chamberlain and the Governor of Mauritius, Lord Elgin enquired whether any serious opposition was to be anticipated if the proposal for the transfer of Coetivy were placed before the Council of Government. Only if Sir Charles Boyle was of the opinion that the Council would receive the suggestion of transfer favourably, or at least without any strong opposition, would the Secretary of State give further consideration to the matter. In 1921 Sir Hesketh Bell reported that the Council of Government had recommended that "the Farquhar Islands should cease to be a dependency of the colony of Mauritius and should be transferred to, and from part of the Seychelles." The Letters Patent of 13th January 1908 expressly cited the fact that the Council of Government of Mauritius had by resolution recommended the transfer of the island of Coetivy. The Letters Patent of the 2nd December 1921 made a similar reference when the Farquhar Atoll was transferred to the Seychelles. Unless the constitutional position has been changed in recent years it appears that the Mauritian Ministers should be formally consulted. These, of course, are problems requiring legal advice and the views of the Governor of Mauritius. They are mentioned merely as an indication of some of the subsidiary problems which the proposal to transfer the islands will inevitably entail.

Compensation for Mauritius

67. In any event it would scarcely be politic to deprive Mauritius of its dependencies without some quid pro quo. In strict terms of compensation it is doubtful whether it would be possible to base any case for Mauritius on the grounds of loss. H.M.G. should assume responsibility for Mauritians evicted from the islands and likely to lose their traditional livelihood. The cost of transfer to other islands and of the construction of houses should be borne by H.M.G. as part of the disturbance element in compensation due to the Company. Otherwise the cost of resettlement in Mauritius should be met. Payments, of this nature however, are obligations towards private persons rather than to the Government of Mauritius.

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Since the Mauritian objections to the transfer may be based on the loss of some economic potential, H.M.G. might well offer a contribution towards capital works likely to be of commercial value to Mauritius; for example, the payment of a capital sum towards the improvement of labour facilities at Port Louis on the improvement of Plaisance Airport. Any such payment should be entirely ex gratia.

Meteorological Services

68. The continued existence of meteorological services on Diego Garcia and Agalega will be essential for Mauritius and for the Mascarene islands generally. It is to be assumed that such services will be retained on Diego Garcia by the British or U.S. authorities. If so there must be a firm undertaking to continue weather reports to Mauritius on at least the present basis. The Government of Mauritius should also be reimbursed the full capital cost of its station on Diego Garcia if this is replaced by British or U.S. government installations.

69. There would appear to be no reason why the Mauritius Government should not retain staff and equipment on Agalega even if that island were transferred to the Seychelles. It is possible that it may be necessary for H.M.G. or the Government of the Seychelles to provide transport for staff in the event of sea communications between Agalega and Port Louis becoming even more tenuous than is the case at present.

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PART V

Procedural

70. As soon as the final decisions have been taken it is essential that negotiations should be opened with Mr. André Delhomme and the Chagos Agalega Company as soon as possible. The management of both groups of islands will require time to reduce and eventually to terminate their operations. Chagos Agalega Ltd., should not be provided with an opportunity to increase their capital commitments as a bargaining factor.

71. Defence plans on Diego Garcia will probably require a year of preliminary works, such as detailed surveys, before constructional work can begin. This should give time for the evacuation of the island and the gradual cessation of the existing labour contracts. It is probable that the full period of evacuation can be extended over two years.

72. It would be advisable to appoint a Commissioner for the islands at the outset in order to supervise the arrangements for evacuation, to act as a liaison officer between the constructional organisations and the governments of the Mauritius and the Seychelles, especially in regard to the employment of labour, and to prepare the figures on which the final costs of resettlement and other forms of compensation should be based. This officer should be based on Mahé and it would be convenient if he were to be the future Commissioner for the Crown Islands and the outlying islands of the Seychelles. The whole project will inevitably give rise to innumerable minor problems and difficulties as well as detailed enquiry on the spot. It is essential that these matters should be handled by a suitable administrative officer with direct contact with the governments of the Seychelles and Mauritius.

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PART VI

Summary

73. This report, while attempting to set out the various problems which the execution of the schemes now under consideration will involve, cannot pretend to attempt any detailed estimate of the costs. The cost of acquiring Diego Garcia certainly cannot be estimated since it depends on the extent to which the owners of the island can use the bargaining strength of their position. Further, the indirect costs, in the form of resettlement and pensions, the costs of future administration and of direct or indirect compensation to Mauritius and the Seychelles can be accurately assessed only after negotiations and discussions with the governments and individuals concerned have been directed specifically to these objectives.

It is clear that expenditure must envisage for planning purposes:

(1) the direct cost of acquisition;

(2) resettlement of dispossessed labour unable or unwilling to find work in other islands;

(3) pensions for islanders beyond active work;

(4) reimbursement to the Seychelles of revenue lost in copra export duty;

(5) the cost of an ex gratia grant to Mauritius in the form of a development grant in return for the transfer of the Oil Islands;

(6) the salary and allowances of a Commissioner of the Islands and the provision of the necessary transport;

(7) the reimbursement to the Government of Mauritius of capital expenditure in installing a meteorological station on Diego Garcia and perhaps on Agalega.

If offers of Rs.2,500,000 for Coetivy and Rs.3,000,000 for Diego Garcia were accepted the cost of the acquisition of the two islands would amount to £412,500. Resettlement costs, subject to detailed estimates, should not cost more than £200,000. Pensions should not exceed £1,000 a year initially. The figures suggested for resettlement and pensions are generous.

74. Resettlement schemes on the scale indicated may not be necessary since there should be no obstacle in principle to the transfer of labour from Diego Garcia and Coetivy to other islands. Chagos Agalega Ltd. have under consideration plans for the development of Egmont, Three Brothers and Eagle Island. According to the manager of Agalega it is at present planned to increase the labour force on Agalega to over 500. Resettlement on Mauritius or Mahé need not therefore involve more than a small residue of the existing population of the islands acquired for defence purposes. It is essentially a question of negotiation and enquiry which should be begun as soon as practicable.

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75. It has not been attempted to do more than set out in general terms the problems involved and to suggest the lines on which further action might be taken. The cost will depend on direct negotiations with the owners of the islands and with the governments of Mauritius and the Seychelles and on further investigations by the appropriate officers of the two governments.

76. It has been possible to suggest the basis of a firm offer for the acquisition of Coetivy. The basis of an offer for Diego Garcia has also been proposed in the absence of any suggestions, however tentative, from the Company and without the benefit of balance sheets. The financial basis for the purchase of Diego Garcia is indeed peculiarly difficult because the island was acquired as a speculative take-over of a bankrupt concern and its economic value is still largely potential.

77. The acquisition of Diego Garcia and Coetivy cannot be regarded as a matter affecting only the present owners of those islands and their employees. Some quid pro quo on the lines suggested in this report, and subject to the views of the Governor, may be required to make the transfer of the Oil Islands acceptable to Mauritius. As regards the Seychelles, this government cannot be expected to absorb any adverse economic and administrative consequences without assistance. Any cessation of recruitment for work on the islands caused by the redistribution of Seychellois now under contract on Diego Garcia and Coetivy must affect the Seychelles. Defence plans for the outlying islands could also be more easily defended and made acceptable if they were to be accompanied by measures for the economic and social advancement of the Seychelles; but any such measures should be regarded as a separate issue.

Robert Newton,
23rd September, 1964.

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Annex 23

United Kingdom, *"British Indian Ocean Territory 1964-1968: Chronological Summary of Events relating to the Establishment of the B.I.O.T. in November 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes"*, FCO 32/484 (1964-1968)

FCO 24/454

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Reference.....

British Indian Ocean Territory 1964-1968

Chronological Summary of Events relating to the Establishment of the B.I.O.T. in November, 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes.

Purpose of the Paper

This paper gives a chronological summary of the history of the B.I.O.T. from the time when it first began to take shape as an idea, up to the end of 1968 approximately. The aim is to provide a convenient reference paper on questions relating to the B.I.O.T. and on the arrangements for joint defence facilities made with the United States. Throughout the paper references are given, where necessary, to the relevant F.O., C.O., and other sources. Annexed is a list of basic documents and reference papers under various headings.

Introductory Historical Note.

The British Indian Ocean Territory was established by Order in Council on 8 November, 1965. It comprises the Chagos Archipelago (the principal island of which is Diego Garcia), formerly administered by the Government of Mauritius; and the Farquhar Islands, Aldabra Group and the Island of Desroches, all formerly administered by the Government of Seychelles.

The B.I.O.T. was established primarily on the prompting of the United States because of its lack of bases or support points between the Mediterranean and the Pacific. The American idea of using British islands in the Indian Ocean for defence purposes goes back at least to 1962. The Chinese attack on India in 1962 had shown a need for facilities in the Indian Ocean area, and the impending British departure from Aden and elsewhere reinforced this need. In 1963 American proposals began to take definite shape.

In creating this new territory the intention was to make available for joint British and U.S. defence purposes islands with few or no permanent inhabitants, under direct British administration. In this way maximum security of tenure and freedom from political pressures could be expected. The U.K./U.S. Exchange of Notes, constituting an Agreement for the availability of the islands for defence purposes by both Governments, was made on 30 December, 1966.

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BRITISH INDIAN OCEAN TERRITORY.

Chronological Summary of Events leading to its creation in November 1965; and subsequent Events relating to the establishment of U.K./U.S. Defence Facilities

1.	1962-63	In October, 1962, the Minister of Defence (Mr. Thorneycroft) in conversation with the U.S. Defence Secretary, Mr. Robert S. McNamara, agreed to study use of British bases in time of war by U.S. forces. In April, 1963, the State Department proposed that the possible strategic use of certain small British-owned islands in the Indian Ocean should be discussed. The F.O. replied in July that they would welcome such talks and proposed that they be held in London. In August the State Department expressed interest in establishing a military communications station on Diego Garcia and asked to be allowed to make a survey. They were put off, since at the time elections were impending in Mauritius, and the time was therefore not suitable.	References to these exchanges is to be found in the brief dated 11 December 1963 prepared by the PUSD for the Foreign Secretary's use with the U.S. Secretary of State, Mr. Dean Rusk at a NATO meeting.
2.	11 December 1963	U.S. Ambassador leaves memorandum with Foreign Office stating that U.S. would like to have further discussions on all "Indian Ocean problems including the Island Base question and communications facilities on Diego Garcia". Memorandum also referred to U.S. intention that a small Naval Carrier Force should pay periodic visits to the Indian Ocean area, beginning early in 1964 (the first visit took place in April 1965).	DEF 355/235/02
3.	19 December 1963	Mr. Rusk, U.S. Secretary of State on visit to London discusses facilities in Indian Ocean with Foreign Secretary. Foreign Secretary again suggests early discussions in London.	DEF 127/123/03 No. 15. FOP. WP2/83 G. Item 3.
4.	30 January 1964	Memorandum received by Foreign Office from U.S. Embassy setting out proposals. These recommend that HMG should acquire certain islands, compensating and resettling the inhabitants as necessary; U.S. first requirement would be "austere" support facilities on Diego Garcia with Aldabra next as a possible staging post.	DEF 127/123/03 No.15. DPW 121/12 encl.

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5.	25/27 February 1964.	Official talks in London. U.S. team led by Mr. J. Kitchen, Deputy Assistant Secretary for Politico-Military Affairs, State Department. Agreement reached on:- (i) an early joint survey of certain islands, to consider their suitability from defence angle and necessary resettlement and administrative arrangements; (ii) U.S. to pay for construction and maintenance of facilities, allowing the U.K. joint use. First requirement was for Diego Garcia. (iii) U.K. to provide the land, and security of tenure, by detaching islands and placing them under direct U.K. administration. Also to be responsible for payment of compensation to Mauritius and Seychelles Governments and to land-owners and displaced inhabitants. (iv) Should the U.K. wish to construct facilities the two Governments would consult each other.	DEF 127/123/03 No. 38 (Agreed U.K-U.S. memorandum) DEF 121/35 Annex.
6.	26 March 1964	B.B.C. express interest in Aldabra as site for a medium wave relay station broadcasting to East and Central Africa, and wish to make exploratory visit. (Note - BBC joined in Survey made in Sept 1966 - See Item 61 below)	INF 108/217/01 - letter from Sir Beresford Clark, B.B.C., to R.H. Young, C.O. of 26 March, 1964.
7.	April 1964	Articles appear in British press on possible development of Anglo-American bases in Indian Ocean.	
8.	2 April 1964	Soviet representative, during discussion on Aden in U.N.Committee of 24, stated that the British were constructing a chain of strategic bases in the Indian Ocean, Gan and Aldabra being specifically mentioned.	U.N. document A/Ac.109/PV 239 of 2.4.64.

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9.	23 April 1964.	In recommendation to Ministers that the proposals resulting from the U.S./U.K. meetings of February 25-27 should be approved, it was emphasized that the cost of defence arrangements in the Far East were out of proportion to the British stake in investment and trade in the area. Our effort was deployed less in defence of British interests than in support of the U.S., the Commonwealth and the free world. By persuading the United States to associate themselves more with Britain by using existing strategic facilities or developing new ones in places where there was no anti-colonial bias, or better still no inhabitants, our burden might be reduced. U.S. initiative in the Indian Ocean should be welcomed.	Z 3/119 G - D.O.(O)(64)23 of 23 April 1964, Memo. by F.O., C.O., and M.O.D.
10.	27 April 1964.	Conversation at State Department between Foreign Secretary and Secretary of State. Mr. Rusk confirmed U.S. agreement to establishing defence facilities in Indian Ocean, and expressed readiness to go ahead on Diego Garcia as soon as British approval received.	Z 3/119/G
11.	6 My 1964	Ministers approved in principle proposals for development of joint facilities on lines set out in memorandum agreed at U.K./U.S. talks in February (see Item 5 above). Further decisions would be taken when the results of the survey were known and an estimate of costs made. Agreed that, after consulting the U.S. Government, Mauritius Ministers and Seychelles Executive Council should at suitable time be informed in general terms about proposed detachment of islands.	Z 3/146/G - D.O.P(64) 20th Meeting. Z 3/160/G. (U.N.Considerations)
12.	29 June 1964	Mauritius Governor on instructions consults Premier and finds him favourably disposed to provision of facilities but with reservations on detachment. Dr. Ramgoolam expressed preference for long-term lease, and right to benefits from any minerals which might be found. He had no objection to the survey.	DEF 127/123/03 No.191 - Mauritius telegram 83 of 1.7.64.
13.	13 July 1964	Governor informs Mauritian Council of Ministers (Mauritius telegram No. of 15 July, 1964) of proposed survey (but does not mention detachment) following U.K./U.S. discussions about facilities in the Indian Ocean. Governments of Mauritius and Seychelles would be consulted after the survey. There was no significant reaction from the Council of Ministers.	DEF 127/123/03 No.233

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14.	13 July 1964	Dr. Ramgoolam, in London for the Commonwealth Prime Ministers' Meeting, informed of this action on 13 July; he told fellow Mauritius Ministers who were in London with him. Similar action was taken in Seychelles with the Executive Council, who raised no objection to the survey.	DEF 127/123/03 No. 231
15.	Mid-July/ mid-August 1964	Survey by joint U.K./U.S. team in H.M.S. Dampier of Chagos Archipelago (includes Diego Garcia) Agalega, Coetivy, Desroches and Farquhar Islands.	
16.		A report (dated 7 September, 1964) on the survey was subsequently submitted by Mr. Robert Newton, a former Colonial Secretary of Mauritius, who had been appointed by the Colonial Office as member of the survey team. Mr Newton concluded, inter alia:- (i) that no insurmountable obstacle existed to the removal, resettlement and re-employment of the civil population of any islands required for military purposes; (ii) that the life of the islands was more orientated socially and economically to Seychelles than to Mauritius; (iii) there was a need for closer administrative control of all the islands, administration in the past having been very tenuous.	DEF 127/123/05 Z 4/134/G - Newton Report.
17.	29 August 1964	News breaks in "Washington Post". Substantially accurate report appears, pinpointing Diego Garcia as site for base. Many reports elsewhere in world press commenting on proposals; some critical comment, particularly in African and Asian papers.	Z 4/112 - Washington telegram 3049 of 29 August 1964. Z 4/116 Z 4/117
18.	8 October 1964	Non-Aligned Conference in Cairo condemns Indian Ocean island bases. Hostile speech by Tanzanian and other representatives.	Z 4/139

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19.	23 November, 1964.	In view of press reports appearing in Britain and Mauritius about defence facilities in the Indian Ocean the Officer Administering the Government in Mauritius informs Ministers on instructions that the results of the survey are still being examined, and that the Premier would be consulted before any announcement was made either in London or Washington.	DEF 127/123/03 No. 303. Z 4/147
20.	3 December 1964	Mr.E.H. Peck (F.O.) visiting Washington tells State Department that it is essential to know soon exactly what are U.S.requirements, since only one bite can be taken at the problem. State Department ascribe delay to the Pentagon.	DEF 127/123/03 No. 325. Z 4/153 - Letter from Mr.D.G.Forster, British Embassy, Washington, to Mr.C.M.Rose, F.O. No. 11911/64 of 4 December 1964.
21	14 January 1965	American proposals for use of islands received by Foreign Office. These comprised:- (i) Definite military plans for Diego Garcia; detachment should include the entire Chagos Archipelago, primarily in the interests of security and in order to have other sites available for future contingencies. (ii) Though nothing specific was yet planned for Aldabra, its obvious potential usefulness and the joint long-term U.S/U.K. interest recommended it for inclusion in any "detachment package". (iii) Coetivy, Agalega, Farquhar, Desroches and Cosmoledos should be included in the order listed on a "precautionary planning" basis.	Z 4/3/G. DEF 127/123/03 No. 328 - Letter from Mr.George Newman, U.S. Embassy, to Mr.G.G.Arthur, F.O.
22.	10 February 1965.	In answer to F.O. request for clarification, U.S. proposals were elaborated. The main points now were:- (i) Diego Garcia was a definite requirement. Detachment of the rest of the Chagos was "not regarded as essential" but considered "highly desirable". (ii) Some potential for Aldabra (in view of previous U.K. interest) as a staging post.	Z 4/11/G DEF 127/123/03 No. 358 E.

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		(iii) "No reason to re-locate population prior to Island coming into use to meet a requirement. This would apply to other islands of the Chagos Archipelago so long as our activity was confined to Diego Garcia."	
23	22 March, 1965	Foreign Secretary meeting with Mr. Rusk at State Department. Mr. Rusk said U.S. would like to go ahead, and detailed talks were needed.	Z 4/22.
24	5 April 1965	P.Q. (Mr. James Johnson) asking what approaches regarding facilities for "Anglo-U.S. bases" have been made to the Mauritius Government. Answer given was that "the Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or Washington."	PAC 93/892/01 No. 24 Hansard Vol. Cols.
25	12 April 1965	Ministers accept general lines of U.S. proposals, but decide to seek an American contribution to the cost of detaching the islands.	Z 4/27 - American proposals set out in OPD(65)68 of 7 April 1965.
26	15 April 1965	Prime Minister tells Mr. Rusk in Washington that HMG wishes to press ahead, despite possible political embarrassment in U.N. and elsewhere. But heavy expenditure was involved not only in compensating local interests, but in compensating Mauritius and Seychelles Governments for detachment; HMG would wish to discuss this and other questions further with the U.S. Government.	PAC 93/892/01 No. 38.
27	30 April 1965	Formal request to U.S. Government to help over cost of detaching the islands (memorandum delivered to State Department by British Embassy). State Department point out that this request was a departure from the understanding reached in February 1964 (see Item 5 above).	Z 4/44/G - F.O. telegram 3582 to Washington and Washington telegram 1166 of 30 April to F.O.

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28	9 May 1965	News leak. "Washington Post" publishes rather accurate report of proposals for "bases in Indian Ocean" including names of islands, amount of compensation, etc.	
29.	14 May 1965	Official U.K./U.S. talks in London. Explanation given to Americans that because of defence review obliged to ask for contribution to cost of detachment. Americans agreed to explore possibility of contributing to this by offsets in U.S./U.K. Research and Development programmes. Great secrecy was essential since Congress would be unlikely to agree to any appropriation of funds.	Z 4/62/G PAC 93/892/01 No. 82 E - Record of conversations headed by Mr. E.H.Peck (FO) and Mr.J.Kitchen. (State Dept.)
30.	24 June 1965	U.S. Government agree to contribute up to half of estimated cost of £10 m. of detaching islands by offsets on R and D. programmes. (See Annex for main references to Secret Financial Agreement with United States).	Z 4/89/G PAC 93/892/01 No. 145 E - Memorandum delivered to F.O. by U.S. Embassy.
31.	5 July 1965	Instructions sent to H.M. Representatives in Commonwealth and certain other countries to approach Governments and inform them of detachment proposals (following securing agreement by Mauritius and Seychelles to detachment).	
32.	19 July 1965	Governors Mauritius and Seychelles instructed to communicate proposals for detachment, full details of compensation, etc., to the Council of Ministers and Executive Council respectively.	Z 4/116/G. PAC 93/892/01 No. 186 - C.O. telegram 198 to Mauritius: 219 to Seychelles.
33.	23 July 1965	Governor Mauritius (Sir J. Rennie) reports first reaction of Ministers to detachment of Chagos. Reaction guarded and time asked to consider further.	Z 4/123 PAC 93/892/01 No. 193
34.	26 July 1965	Seychelles Executive Council response to detachment luke-warm but reasonably satisfactory: would accept if generous terms offered (airfield on Mahé and adequate compensation to land-owners, inhabitants, etc.)	Z 4/12/G PAC 93/892/01 No. 202
35.	26 July 1965	New agreement signed by HMG with Maldives covering Gan.	

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36	30 July 1965	Governor informed that Mauritius Council of Ministers sympathetically disposed to defence facilities proposals, but object in view of likely public opinion, to detachment and prefer long-term lease of islands. Also asked for safeguards for minerals, oil and fishing rights, meteorological, air and navagational facilities and provision for a defence agreement with U.K. as well as British help in obtaining trade (sugar) and other concessions from U.S.	PAC 93/892/01 No. 205 - Mauritius telegram No. 175.
37.	13 August 1965	Governor on instructions explains objections to lease to Mauritius Ministers, who say they would like to pursue discussions in London during the Constitutional Conference.	PAC 93/892/01 No. 225 - Mauritius telegram No. 188.
38	14 August 1965	Indian Government express to High Commission in New Delhi their opposition to foreign military bases in the Indian Ocean as likely to lead to international tension; they would not object to arrangements freely entered into, but object to detachment of islands unilaterally before Mauritius and Seychelles have achieved independence.	Z 4/152
39	7 September 1965	Mauritius Constitutional Conference opens in London. Time-table fixed for independence; question of defence agreement and British aid in internal security problems also discussed.	
40	13 September 1965	Mauritian Premier in conversation with Colonial Secretary (Mr.Greenwood) again expressed preference for lease as against detachment.	PAC 93/892/01 No. 255 - Record of meeting at Colonial Office.
41	16 September 1965	Ministers, receiving report of Colonial Secretary on discussions with Mauritian Ministers, agree that provision might be made for reversion of Chagos islands to Mauritius if at some future time no longer required by the U.K. and the U.S.	Z 4/173/G PAC 93/892/01 No. 260 - OPD(65) 39th Meeting.

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42.	16 September, 1965	American Embassy hand F.O. three draft texts of agreements covering: (1) use of defence facilities in the Indian Ocean; (2) U.S. financial contribution (secret); see Item 30 above); (3) Seychelles Satellite Tracking Station. NOTE: The Seychelles Tracking Station began operations in 1963 under an interim working agreement. British help in obtaining Seychelles acceptance of this station was regarded by the Americans as part of a package deal for U.S. financial assistance towards cost of detaching islands.	PAC 93/892/01 No. 251 E.
43.	23/24 September, 1965	Official U.K./U.S. talks in London. Mr. J. Kitchen made it clear that Americans wanted an "Ascension-type" agreement with once-for-all compensation. Texts of three agreements were considered.	Z 4/190 Final amended record of meeting.
44.	23 September, 1965.	Meeting at Lancaster House between Mauritian Ministers and British representatives led by Colonial Secretary. (At previous meeting on 20 September Mauritians did not give way on question of detachment) Agreement reached, subject to consent of full Council of Ministers being secured on return of Premier to Mauritius, on detachment of Chagos Islands, subject to eight conditions of which the principal were:- (a) a defence agreement with Mauritius; (b) undertaking to consult together in the event of a "difficult internal security situation" arising in Mauritius; (c) compensation up to £3 m. over and above direct compensation to land-owners and cost of re-settlement of others affected; (d) navigational, meteorological, and emergency landing facilities in Chagos Islands "to remain available as far as practicable"; (e) reversion of the islands to Mauritius if need for facilities disappears, and reversion to Mauritius Government of benefits for any minerals or oil discovered "in or near the islands"; /NOTE	Z4/181/G PAC 93/892/01 No. 276 - Final version of record of meeting.

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		NOTE: Mauritian agreement to the record of the meeting of 23 September, with its enumeration of conditions, was not secured until 4 October. Final version incorporated Mauritian amendments and additions.	
45	23 September 1965	Ministers consider terms of the agreement with Mauritius. The Mauritians must be reminded that the decision whether or not to retain the islands (see (e) in item 44 above) was one for the U.K. and U.S. Governments, and that it was not open to Mauritius in any way to raise the matter nor press for their return.	Z 4/173/G PAC 93/892/01 No.266 - OPD(65) 41st Meeting.
46	6 October 1965	Instructions sent to the Governor, Mauritius, to secure formal agreement of the Mauritius Government that they would take the necessary legal steps to detach Chagos on the conditions agreed on 23 September.	Z 4/181/G. PAC 93/892/01 No.278 - C.O. Despatch No. 423 to Mauritius.
47	20 October 1965	Instructions to Governor, Seychelles, to confirm agreement of the Executive Council to detachment of Aldabra, Farquhar and Desroches.	Z 4/189/G. PAC 93/892/01 No.292 - C.O. telegram No. 338 to Seychelles.
48	1 November 1965	Seychelles Executive Council confirm their agreement to detachment of islands, in return for promise of an airfield on Mahé, compensation to land-owners and resettlement of inhabitants.	PAC 93/892/01 No.308 - Seychelles telegram No. 306.
49	5 November 1965	Mauritius Council of Ministers confirm agreement to detachment of Chagos islands.	PAC 93/892/01 No. 314.
		NOTE: On 12 November three Ministers of PMSD (Franco-Mauritians) resigned, not over principle of detachment, but because they considered compensation inadequate.	Z 4/228 - Mauritius telegram No. 229 of 18 November.
50	8 November 1965	The British Indian Ocean Territory Order 1965 promulgated by Order in Council. Establishes the new territory consisting of the Chagos Archipelago, Aldabra, Farquhar and Desroches, and provides for its administration by a Commissioner (presently the Governor of Seychelles) and an Administrator with power to make laws, etc.	British Indian Ocean Territory Order 1965 (1965 No. 1920)

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51.	10 November 1965.	Arrange? Parliamentary Question (Mr. James Johnson) on the use of the Indian Ocean islands for defence. Colonial Secretary replies: "With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by Order in Council made on the 8th November. The Islands ..... will be called the British Indian Ocean Territory. It is intended that the islands will be available for the construction of defence facilities by the British and U.S.Governments, but no plans have yet been made by either Government. Appropriate compensation will be paid".	
52.	17 November 1965	B.I.O.T. question discussed in Fourth Committee of the United Nations.	Z 4/222-UKMIS, New York telegram 2971 of 16 November.
53.	23 December 1965	U.S. Government inform HMG that they see no foreseeable use for Diego Garcia in the calendar year 1966 calling for removal of the inhabitants.	Z 4/236 See letter of 31 December from G.G.Arthur, F.O. to H.P. Hall, C.O.
54.	16 December 1965	U.N. General Assembly, at 20th Session in New York, passes: (a) Resolution 2066(XX) - this included a paragraph inviting the Administering Power to take no action to dismember the territory of Mauritius nor violate its territorial integrity; (b) Resolution 2069(XX) - this included Seychelles in the list of non-self-governing territories but made no reference to detachment of islands. (An attempt to include in the Resolution two short paragraphs calling for removal of bases from the islands and opposing any bases in the future, was defeated.)	
55.	8 March 1966	Mr. Healey in Defence Debate said:- "..... we plan, when confrontation [ended by Indonesia] is brought to an end [Note: ended in July 1966] that it must be a major objective to reduce the level of our forces in the Far East to that once planned by the previous Government before confrontation began; ....."	Hansard Vol.725 8 March, 1966. Cols 2045-6.

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56	10 June 1966	Ministers decide that Aldabra is a suitable site for a staging post in the Western Indian Ocean and that the U.S. Government be approached to share the facilities and pay half the estimated cost of £18 m. Also decided that a further survey be carried out to find the best location for an airfield and make a more accurate costs estimate. Such a staging post was consistent with the Defence Review philosophy of having means of reaching trouble spots in an emergency rather than maintaining large forces in overseas bases. NOTE: A two-months survey of Aldabra had previously been made in 1962 by an RAF/MOD Engineering party.	ZD 4/34/G - Memorandum OPD(66)65 "Defence Facilities in the Western Indian Ocean".
57	15 June 1966	At meeting of Parliamentary Labour Party motion calling for reduction of East of Suez commitments by 1969/70 rejected by 225 to 54 votes.	
58	15 July 1966	United States Government asked to share construction costs on Aldabra and to join in survey of the island likely to take place in September.	ZD 4/45/G. - Letter of 15 July, 1966, from N.C.C. Trench, British Embassy, Washington to Jeffrey C.Kitchen, State Department.
59	22 June 1966	In reply to Parliamentary Question Defence Secretary states that no investigations had been made into a site for a Polaris submarine base in the Indian Ocean. In Supplementaries he said there were no plans to put Polaris boats East of Suez.	
60	12 August 1966	United States Government accept in principle jointly financed staging facilities on Aldabra and agree to participate in survey. At same time U.S.Government request HMG's concurrence and participation in an early survey of Diego Garcia.	ZD 5/57 G. - Letter from J. Kitchen, State Department of 12 August to N.C.C. Trench, British Embassy, Washington.
61	19 September 1966	Aldabra survey begins by joint Ministry of Defence, Ministry of Public Building and Works, B.B.C., and U.S. team. British members include scientific representatives from Royal Society and British Museum in view of interest in preservation of the fauna and flora of Aldabra (home of the Giant Tortoise, Frigate bird, etc.)	

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62	19 September 1966.	HMG agree to American survey of Diego Garcia; party will include two British observers.	
63	30 September 1966	"U.S. position paper" defining American position on the drafts of the three agreements (See item 42 above).	ZD 4/77/G - Letter from J. Kitchen, State Department to G.G.Arthur, F.O.
64	15/16 November 1966.	U.K./U.S. talks between officials in London. Final agreement reached on text of Exchange of Letters re B.I.O.T defence arrangements, finance and Seychelles tracking facility. Americans agreed that while the original intention was to use islands for defence needs free of inhabitants, situations might arise when it was feasible to make use of islands without either partial or total removal of inhabitants. These cases should be decided on their merits at the time. Both sides also agreed to bear in mind the general interest in preservation of wild life in developing defence facilities.	ZD 4/107 - Agreed "negotiating record".
65	16 November 1966	In reply to Parliamentary Question Defence Secretary says: "..... we have no programme for creating bases in the British Indian Ocean Territory. For so long as I have been Secretary of State there has never been a concept of island bases. There has been an idea of establishing certain staging and other military facilities in certain territories in the Indian Ocean".	
66	14 December 1966	Meeting at Ministry of Defence with U.S. Naval C-in-C. Europe, Admiral Thach. Admiral Thach says that U.S. requirement in Diego Garcia is for aircraft stop-over and ship refuelling facilities. Progress with satellite communication had removed the need for a communications station. It was agreed that the American survey party for Diego Garcia in mid-1967 should be transported in HMS Vidal. The Admiral asked whether the Royal Navy were interested in sharing in the construction and use of facilities at Diego Garcia. Chief of Naval Staff, Admiral Sir Varyl Begg, replied that he was unable to say at this stage, but he was interested in the survey.	ZD 4/121/G.

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67	30 December 1966	Following U.K.-U.S. Agreements signed:- (a) U.K./U.S. Exchange of Notes concerning the Availability for Defence Purposes of the British Indian Ocean Territory (b) Secret Exchange of Notes covering agreement on financing (c) Exchange of Notes on Seychelles Satellite Tracking Facility. (Defence and Tracking Station Agreements were published on 25 January, 1967 - see item 74 below.)	ZD 4/128
68	27/28 February 1967.	Defence Statement (Cmnd. 3203) with exposition of East of Suez policy. Following end of "confrontation" "..... We are examining what benefits we would get from a new staging airfield in the B.I.O.T. These arrangements would offer us greater flexibility in our future defence planning, particularly in relation to the Far East ....." (Page 7 of Cmnd. 3203). Followed by Defence Debate in Parliament, in course of which the Minister of Defence referred to the survey of Aldabra "..... to see whether we required it in order to increase the flexibility .... of our airforce. We have found that it will be suitable and the cost of developing it will be very small, although there are certain problems; for example the Royal Society are very concerned to preserve the wild population ....."	Hansard 28 February 1967 Col. 393
69	28 February 1967	Aldabra: Prior to release of a statement to the press on 23 February by the Royal Society and other scientific bodies, the Ministry of Defence assured the Royal Society that the scientific case will be fully considered before any decision is taken on defence work on Aldabra.	QC 10/3 No. 13. ZD 1/2/3 No. 13.
70	20 March 1967	Purchase of freeholds of islands in B.I.O.T. completed. In answer to Written Parliamentary Question Minister of Defence stated on 17 April that after negotiations with the owners, the freeholds have been purchased outright for £1,013,200.	

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71	March 1967	Diego Garcia. U.S. state that if survey by team on H.M.S. Vidal satisfactory, they planned to start work in second half of 1968. Facilities to be constructed included P.O.L. storage, 8,000 ft. airstrip and communications facilities. U.S. Government enquire if HMG. are interested in sharing these facilities. HMG reply that they see "no over-riding U.K. requirement" on Diego Garcia at present.	
72	3 March 1967.	Aldabra. Campaign by scientific bodies and nature preservation organisations in U.K. and U.S.against use of Aldabra gathers strength. Letter received by Commonwealth Office from Royal Society enclosing detailed memoranda giving case for complete conservation; also enclosing report by Dr. Stoddard (one of the members of the 1966 expedition) and other documents.	QC 10/3 No. 27. QC 10/8 No. 5.
73	6 April 1967	Indian Minister for External Affairs reiterates in the Lok Sabha Indian opposition to military bases in the Indian Ocean area. Concern is also expressed at the possibility of nuclear weapons in the area.	
74	24 April 1967	Publication of:- (1) U.K./U.S. Exchange of Notes "concerning the Availability for Defence Purposes of the British Indian Ocean Territory".	Cmnd. 3231 Treaty Series No.15 (1967)
		(2) U.K./U.S. Exchange of Notes on the Seychelles Tracking Station and Telemetry Facilities in the island of Mahe in the Seychelles.	Cmnd. 3232 No. 16 (1967)
75	22 May 1967	President and other representatives of Royal Society meet Minister of Defence to express their opposition to the Aldabra project. Mr. Healey replied that alternatives were being considered, but none seemed practicable.	ZD1/2/3 No 52 QC 10/3 No. 40 and 40 A.

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76	19 June 1967.	U.N. Special Committee ("on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples") at its 533th meeting held at Dar-es-Salaam "deplore the dismemberment of Mauritius and Seychelles and declare that the establishment of military installations in the territories violates U.N. resolutions and constitutes a source of tension."	ZD 1/2/2 No. 143
77	27 July 1967	Supplementary Statement on Defence Policy (Cmnd 3357). Malaysian and Singapore Bases to be wound up by the middle 1970s: "..... however ..... we are therefore planning to maintain a military capability for use, if required, in the area ....."	Cmnd. 3357
78	June/July 1967	Survey (engineering and hydrographic) of Diego Garcia by H.M.S. VIDAL, with U.S./Royal Navy team, as well as four scientists. A continuation of work done by the survey team on H.M.S. DAMPIER in 1964.	
79	28 July 1967	Aldabra. Ministers approve proposals for an airfield on Aldabra subject to satisfactory outcome of negotiations with U.S. on cost sharing.	ZD 1/2/1 No 79 QC 10/3 No. 49.
80	July 1967/ March 1968.	Aldabra. Expedition organised by Royal Society begins work. Includes some American scientists. Some scientists to remain on island until March 1968.	ZD 1/2/2 No. 217 Note dated 18 October 1967 by Commissioner, BIOT. on the expedition.
81	16 August 1967	Aldabra. Letter from Minister of Defence to U.S. Defence Secretary conveying HMG's decision to go ahead with staging post on Aldabra, and asking if U.S. are prepared to participate. Followed by talks with U.S. officials.	QC 10/3 No. 74.
82	19 August 1967	In United Nations, report of Sub-Committee I of Fourth Committee affirms the right of the inhabitants of the British Indian Ocean Territory, "whatever their origin, to choose their own form of government"; U.K. condemned for violating territorial integrity of Mauritius and Seychelles and planning the establishment of bases.	

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83	August/September 1967	Aldabra. Pressure by Royal Society, supported by American Academy of Scientists, Smithsonian Institution and other learned bodies, continues, and uncompromising opposition expressed to military use of Aldabra. It is argued that the ecology of the island has already been disturbed by humans more than was realised, and that the island was a unique natural laboratory.	QC 10/3. No. 134 - Letter to Commonwealth Office from Royal Society.
84	19 September 1967.	Aldabra. Mr. Kitchen of State Department visiting London has talks with officials. U.S. interest in Aldabra project apparently continues, but U.S. authorities wished to know what the British strategic requirement was, and why no other island was considered suitable. He mentioned Farquhar.	QC 10/3 No. 85. ZD1/3/3 No 150
85	29 September 1967	Minister of Defence meets Mr.McNamara at Ankara. Mr. McNamara agreed that though there was no overriding case for constructing facilities on Aldabra, its use would give "a useful additional option" to both Governments at reasonable cost. Mr. Healey undertook to let Mr. McNamara have a note on the latest situation regarding the opposition by scientific bodies. He said that a decision regarding Aldabra would be made about 12 October.	QC 10/3 No.101 - Record of meeting. QC 10/3 No.106 - Note on the attitude of scientific bodies.
86	25 October 1967	Aldabra. Adjournment Debate in House of Commons. The interest by scientific bodies and others was ventilated. The Under-Secretary of State (RAF) said: "As to the 'base' question, there would be no intention of stationing strike or operational forces there. Facilities would not be adequate for this. Therefore it would not be a base any more than Gan. A base is a place where operational forces are resident, and from which the logistic support they need for operations, which is important in the amount of land required, can be provided. Aldabra would not be in this category ....."	Hansard Vol. 751. No. 245 Cols. 1829/1852.
87	18 November 1967	Devaluation of the Pound.	
88	~~28~~ 23 November 1967.	Prime Minister (Mr. Wilson) in Economic Debate announces defence cuts, including decision "not to proceed" with the Aldabra project, the estimated cost of which was £16 m. with completion early in 1971.	

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89	27 November 1967	Defence Secretary states in House of Commons decision not to proceed with Aldabra. He said cost in 1968 would have been about £4 m., and more in later years. Other factors (not mentioned in the House) were apparent wavering of interest on the part of the Americans, partly due to wrangle with Congress about defence expenditure, the mounting scientific opposition in both countries, and evidence of bird strike hazard.	Hansard 27 Nov Cols. 65-66.
90	23 November 1967	Mr. McNamara informed that because of defence economies, HMG were unable to go ahead with Aldabra, which was "a marginal option".	QC 10/3 No. 153 - Letter from Minister of Defence, Mr. Healey, dated 18 November 1967.
91	10 January 1968	Americans request permission to conduct survey of Farquhar to study feasibility for airstrip and small naval facility. British participation welcomed. American interest in Farquhar seems to have developed owing to decision not to go ahead with Aldabra.	ZD 1/2/7 - No.33 and 34 QC 10/16, No. 2.
92	26 January 1968	The British Indian Ocean Territory (Amendment) Order 1968 made (1968 No. 119). This Order corrected certain minor inaccuracies in the description of the Chagos Archipelago (omission of Nelson Island), and the Aldabra Group in the British Indian Ocean Territory Order, 1965.	
93	5 March 1968	Agreement given to U.S. request for survey of Farquhar. HMG would like to participate. Agreed that survey involved no follow-on commitment on either Government.	ZD 1/2/7 No. 42.
94	12 March 1968	Mauritius becomes independent.	
95	29 March 1968	120 'Ilois' (i.e. adults and children of Mauritius origin born in the Chagos Islands) wishing to return to the Chagos find no employment offered on the plantations. Mauritius authorities maintain that they should be resettled in the Chagos at HMG's expense.	

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96	5 & July 1968	Diego Garcia. U.S. Government inform HMG that they wish to proceed with establishment of facilities there and hope, if Congress approves appropriations, to begin work on the site in late Spring 1970.	ZD1/2/8 N°
		The question of removing and re-settling the approximately 400 inhabitants of Diego Garcia and the question of the national status of the 'Ilois' under study in London.	HFN 18/1 N° 9 Note on the problem by East African Dept dated 24 Oct. 1968
97	1 August 1968	Commissioner of BIOT expresses his views on problem of the inhabitants of Diego Garcia and their resettlement.	QC 10/16. No. 46.
98	13 August 1968	United States still interested in survey of Farquhar, but trouble over transport arrangements for the survey group, (which would include British representatives).	ZD1/2/7 N°72.
99	September 1968	HMG agrees to U.S. request to set up geodetic satellite tracking station on Diego Garcia. Equipment due to arrive in November.	
100	25 September 1968	Farquhar. Americans decide to cancel survey. Among reasons given political embarrassment of staging through Mombasa and transport difficulties. Question of reviving project later left open.	ZD 1/2/7 Nos 81-82.
101	3 & September 1968	Formal approval given by HMG to U.S. construction of facilities on Diego Garcia. Reply refers to resettlement problem of Ilois & other matters to be settled & accepts U.S. full right of access on terms to be agreed.	ZD 1/2/8 N°75 Letter from Mr A. Brooke Turner F.O. to Mr R.I. Sievers, American Embassy.
102	2 October 1968	Signal (Australia) Petroleum Co., of Sydney, N.S.W., a subsidiary of Signal Petroleum Co. of Los Angeles, apply to Commissioner, BIOT., for permission to explore for hydro-carbon in the Chagos Archipelago and to undertake preliminary geophysical work, an aerial magneto-meteorological and marine seismic survey.	HFN 12/1

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3 103	September	Mauritius Government make representations on resettlement of Ilois - claim cost of "resettlement" was agreed to by HMG at Lancaster House meeting 23 September 1965 (see Item 44 above).	QC 18/2 No. 32.
104	November 1968	Consideration being given to establishing 100 Ilois and their families from Mauritius to the Chagos to maintain the viability of the copra plantations. U.S. Government told that we saw no objection in the medium term to maintaining and expanding plantations in Peros Banhos, and Salamon Islands, which are 120 miles distant from Diego Garcia.	HPN 18/1 No. 6. Analysis of the problem by Administrator, BIOT, 17.10.68
105	22 November 1968	U.S. "would interpose no objection to use of Peros Banhos and Salamon Islands for resettlement ..... of workers .... on Diego Garcia, with the understanding that any similar persons elsewhere in the Chagos Archipelago can also be transferred to Peros Banhos and Salamon Islands .... the U.S. has no current plans for the use of these two islands..... Currently our planning is limited to a most austere facility on Diego Garcia ....."	HPN 18/1 No. 25
106	25 November to 18 December 1968	Official visit by Foreign Secretary (Mr. M. Stewart) to Pakistan and India.	

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ANNEX 27

List of Useful References

These references are listed under the following headings:-

General papers
United Nations
Secret Financial Agreement with the United States
Diego Garcia
Aldabra
Farquhar
Status of BIOT Inhabitants (Nationality)
Reversion of Chagos Islands
Compensation: Purchase of Islands and Resettlement of Population.
Civil Aviation: Use of BIOT.
Diego Garcia Meteorological Station
Fishing Rights in Chagos Islands.

	General Papers.	File Reference
19 February 1964	DP 24/64 (Final) "Defence Interests in the Indian Ocean" by the Defence Planning Staff. Includes detailed descriptions of each of the islands.	DPW 121/24
23 April 1964	D.O.(O)(64)23 "U.S. Defence Interests in the Indian Ocean". A copy of the paper prepared by the Foreign Office, Colonial Office and Ministry of Defence.	DEF 127/123/03 No. 112
7 September 1964	Newton Report (on the 1964 survey of Chagos Archipelago, Agalega, Coetivy, Desroches and Farquhar Islands). Examines problems of compensation, resettlement, administration, etc.	PAC 93/892/01 No. 1. and Z 4/134/G.
7 April 1965	OPD(65)68. "Defence Facilities in the Indian Ocean". Useful memorandum by Foreign Secretary and Defence Secretary examining U.S. proposals for use of the islands.	PAC 93/892/01 No. 28
16 December 1966	U.K./U.S. Agreements on BIOT - Submission to the Foreign Secretary.	ZD 4/107
14 June 1967	"The BIOT - Links with Mauritius and Seychelles". Paper prepared by Research Department (Africa Section)	QC 10/9. No. 64
	BIOT and the United Nations.	
10 November 1965	Brief for the handling of BIOT in United Nations.	F.O. telegram to UKMIS, New York 4361.

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16 November 1965	Fourth Committee debates of 16 and 25 November 1965.	U.N.Documents A/C4/SR 1558 A/C4/SR 1570
16 December 1965	General Assembly Resolutions 2066(XX) and 2069(XX)	
26 April 1966	U.N. Secretariat Working Paper on"Mauritius, Seychelles and St. Helena".	U.N.Document A/AC.109/L.279.
29 April 1966	F.O. comments on A/AC.109/L. 279.	ZD 4/41
8 September 1966	IOC(66)136.Brief, prepared by Foreign Office with Commonwealth Office and Ministry of Defence on "Presentation of the BIOT in the U.N." A useful basic paper.	IRD 140/458/01 ZD 4/69
7 October 1966	Committee of 24 consider Sub-committee I's report A/AC 109/L 335 dealing with Mauritius and Seychelles.	
19 June 1967	Committee of 24's tour of Africa: Resolution adopted in final form deploring dismemberment of Mauritius and Seychelles.	ZD 1/2/2 No. 143
23 June 1967	U.N. Special Committee: Resolution on Dismemberment of Mauritius and Seychelles.	U.N. Document A/AC 109/L. 191.
30 November 1967	Notes on 1966 Brief [IOC(66)136] up-to-date. (Letter from Mr. N.D. Matthews, Commonwealth Office to Mr. B.L. Barder, UKMIS, New York.	ZD 1/2/2 No. 220
	BIOT Secret Financial Agreement with the United States.	
14 May 1965	U.K./U.S. talks to explore in what way the Americans could contribute.	Z 4/62/G.
24 June 1965	Americans indicate how they might contribute.	Z 4/89/G.
16 December 1966	Submission to Ministers on U.S./U.K. BIOT Agreements. (Annexed to this paper is a very useful list of the main references to the secret financial agreement).	ZD 4/123

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Reference PAPER

14 August 1967	Formula agreed with the Americans about their financial contribution in the event of leakage or disclosure of the arrangement.	ZD 1/2/2 (Letter from Mr.R.A.Sykes, F.O. to Mr.A. Campbell Ministry of Defence)
August 1967	Submission to Ministers on risks of disclosure of the financial agreement.	QC 10/4 No. 3. and following papers.
	Diego Garcia.	
4 September 1964	Report of survey (covering P.O.L. storage facilities) by Mr. Pollock, Department of Supply (Navy)	Z 4/121
11 Sept 1967	Former Post Sec. - Covering Report on [illegible] by National Radio Astron. Observatory [illegible] July 1967 during	ZD1/2/8 Part 1 to 88
11 September 1964	Communications survey (by A. Kravis of Marconi Co. Ltd.) co-opted team by Ministry of Defence.	Z 4/132
8 Aug '68	Wild Life Conservation. Report by Dr. D.R. Stoddart	ZD 1/2/6 No. 81 E
	Aldabra.	
1967	M.P.B.W. feasibility study (based on 1966 Survey)	QC 10/8 No. 1.E.
1967	Aldabra: Report on further studies on construction of facilities.	QC 10/8 No. 81
3 March, 1967	Scientific interest in preservation of wild life. Letter from Royal Society to Commonwealth Office enclosing memorandum stating the case for conservation, report by Dr. D.R. Stoddart (member of 1966 expedition) and other documents.	QC 10/8 No. 5. ZD 1/2/7 No. 1 (Dr. Stoddart's report).
26 July, 1967	OPD(67)57. Aldabra: Plan to develop airfield facilities.	ZD 1/2/3 No. 74
26 July, 1967	OPD(67)58. Memorandum on "Scientific implications of proposed Aldabra development".	QC 10/3 No. 46 B. ZD 1/2/3 No. 75
18 October 1967	Note on Royal Society expedition to Aldabra 1967/1968 (prepared by Commissioner, BIOT, and annexed to his despatch No. BIOT/D/7).	ZD 1/2/2 No. 217
27 September 1967	Draft U.K./U.S. agreement on Aldabra (defence facilities) prepared by Ministry of Defence, in consultation with other Departments. Owing to the decision not to proceed with Aldabra, no agreement has been made.	ZD 1/2/3 No.159

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Farquhar.

10 January 1968	American request for feasibility survey.	ZD 1/2/7 Nos. 33 and 34
4 April 1968	Report by Commissioner, BIOT, (BIOT/SD/18) on facilities etc., on Farquhar, and notes on the islands based on a visit by the Commissioner in March, 1968.	ZD 1/2/7 Nos. 51 and 53
29 July 1968	Informal U.K./U.S. meeting to discuss matters regarding proposed survey, and scientific representation in the team.	ZD 1/2/7 No. 62.
13 August 1968	Survey of Farquhar. Informal U.K./U.S. discussions on political and other problems.	ZD 1/2/7 No. 72

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Reference ANNEX

	Status of BIOT Inhabitants (Nationality)	
February/March 1966	The question of the 'Ilois' (Views of Commissioner, BIOT, telegrams No.2 Saving of 25 February and No. 4 Saving of 28 March).	ZD4/17
29 September 1967	Governor Mauritius (Sir John Rennie) gives his views on the status of the 'Ilois'.	QC 18/3
14 November 1967	Minute by Mr. D.G. Gordon-Smith, Legal Counsellor, C.O. on definition of 'Ilois'.	QC 18/3 No. 8.
5 March 1968	Further Minute by Mr.D.G. Gordon-Smith on status of 'Ilois'.	QC 18/3
4 June 1968 and 19 June 1968.	Commissioner, BIOT, reports on number of Ilois and their status, in Chagos Islands (BIOT/SD/24 and BIOT/SD/26).	QC 18/6
4 September 1968	Minute by Mr. J.H. Lambert (U.N. (Political) Department) on status of inhabitants and presentation in United Nations.	OP 4/580/2
23 October 1968	Minute by Mr. A.I. Aust, Assistant Legal Adviser, on status of inhabitants.	HPN 18/3
	Chagos Islands: Reversion.	
16 September 1965	OPD(65) 39th Meeting	Z 4/173 G PAC 93/892/01: No.260
23 September 1965	OPD(65) 41st Meeting	Z 4/173 G. PAC 93/892/01: No.266
23 September 1965	American views on reversion sought.	PAC 93/892/01: No.272
	Compensation - Purchase of Islands and Resettlement.	
25 February 1965	Letter from Mr. A.J. Fairclough, Colonial Office, to Mr. E.H. Peck, F.O., giving figures and estimates for purchasing islands and resettling population.	PAC 93/892/01: No.7.

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Reference ANNEX

June 1965	Letter from C.P. Lloyd, OAG., Seychelles to Colonial Office, estimates cost of compensation and resettlement of BIOT inhabitants.	PAC 93/892/01. No.11
8 September 1966	IOC(66) 136. Brief on presentation of the BIOT in the U.N. This Brief also covers compensation and resettlement.	
3 June 1968.	Cs Elliot's proposals for Resettlement of Chagos Islanders.	QC 18/2 No 19,20.
	Civil Aviation: Use of BIOT.	
15 December 1965.	Note by Ministry of Aviation on use of BIOT by civil air services.	Z 4/237/G
15 December 1965.	Note of inter-departmental discussions on use of BIOT by civil aircraft.	Z 4/239/G
25 March 1966	OPD(O)(I.O.)(66)6. Note by Ministry of Aviation.	ZD 4/2/G.
10 November 1966	Board of Trade memorandum on legal aspects of use of BIOT airfields by civil aircraft.	ZD 4/104
	Diego Garcia Meteorological Station	
11 February 1965	Views of Governor, Mauritius, on the work of the Meteorological Station.	PAC 93/892/01 No. 2
11 February 1965	Minute by Mr. Terrell, C.O., on the functioning of the Meteorological Station.	PAC 93/892/01 No. 4.
23 February 1965	Inter-departmental meeting to discuss Meteorological Station.	Z 4/13/G
24 May 1965	United States' views on operation of the station (letter from Mr. Barringer, U.S. Embassy to Mr. Morland, F.O.)	Z 4/71
1 November 1965	Note of meeting at Ministry of Defence to discuss work done by station for W.M.O.	Z 4/214

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Reference ANNEX

Fishing Rights in the Chagos Archipelago.

17 November 1965	Views of Governor, Mauritius, on general question of fishing rights.	Z 4/217
March 1966	Ministry of Defence and F.O. views on fishing rights in BIOT.	Z D.4/14/G.
June 1966	Letter from Mr. A.J. Fairclough, C.O., to Governor, Mauritius, on arrangements for access to Chagos Islands by fishing boats.	ZD 4/30

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Mauritius (Constitution) Order, 1964 (26 Feb. 1964)

SCHEDULE 2

Section 83.

APPOINTMENTS REFERABLE TO THE JUDICIAL AND LEGAL SERVICE COMMISSION

SCHEDULE 3

Sections 77 and 89.

EMOLUMENTS OF CERTAIN OFFICERS

THE CONSTITUTION OF MAURITIUS

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual.

1. It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely—

(*a*) the right of the individual to life, liberty, security of the person and the protection of the law ;

(*b*) freedom of conscience, of expression and of assembly and association ; and

(*c*) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property ;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained ;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny ; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

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Concurrent appointments.

24. Subject to the provisions of this Constitution, whenever the substantive holder of any office constituted by or under this Constitution 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 function attaching to that office, be deemed to be the sole holder of that office.

Grant of pardon, etc.

25.—(1) The Governor may, in Her Majesty's name and on Her behalf—

(*a*) grant to any person concerned in the commission of any offence for which he may be tried in Mauritius or to any person convicted of an offence in any court in Mauritius a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person in any court in Mauritius;

(*c*) substitute a less severe form of punishment for that imposed by any sentence of any such court; 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 in respect of which a person has been convicted by any court in Mauritius.

(2) The powers conferred upon the Governor by subsection (1) of this section shall, subject to any Instructions under Her Majesty's Sign Manual and Signet, be exercised by him in his discretion.

Public Seal.

26. The Governor shall keep and use the Public Seal for sealing all things that shall pass such Seal.

CHAPTER III

THE LEGISLATURE

Part I—The Legislative Assembly

Legislative Assembly.

27.—(1) There shall be a Legislative Assembly for Mauritius.

(2) The Legislative Assembly shall consist of—

(*a*) the Speaker;

(*b*) the Chief Secretary ex officio;

(*c*) forty elected members; and

(*d*) such nominated members not exceeding fifteen in number as the Governor may appoint.

The Speaker and the Deputy Speaker.

28.—(1) The Legislative Assembly shall—

(*a*) at its first sitting after a general election and before it proceeds to the despatch of any other business; and

(*b*) if the office of Speaker falls vacant at any time before the next dissolution of the Legislative Assembly, as soon as is practicable,

elect from among its members, other than members who are members of the Council of Ministers or Parliamentary Secretaries, a Speaker of the Legislative Assembly.

(2) A person shall vacate the office of Speaker—

(i) upon ceasing to be a member of the Legislative Assembly otherwise than by reason of a dissolution of the Legislative Assembly; or

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and if, upon any question before the Assembly, the votes of the members are equally divided the motion shall be lost.

(2) (*a*) The Speaker shall have neither an original nor a casting vote ; and

(*b*) any other person, including the Deputy Speaker, shall, when presiding in the Legislative Assembly, have an original vote but no casting vote.

Introduction of Bills.

49.—(1) Subject to the provisions of this Constitution and of the rules and orders of the Legislative Assembly, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Assembly, and the same shall be debated and disposed of according to the rules and orders of the Assembly.

(2) Except on the recommendation of the Governor the Legislative Assembly shall not—

(*a*) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Assembly, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Mauritius or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to Mauritius ;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision should be made for any of the purposes referred to in paragraph (*a*) of this subsection ; or

(*c*) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes referred to in paragraph (*a*) of this subsection.

Governor's reserved power.

50.—(1) If the Governor considers that it is expedient in the interest of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Mauritius as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer) that any Bill introduced, or any motion proposed, in the Legislative Assembly should have effect, then, if the Assembly fail to pass such Bill or to carry such motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Constitution or of any rules and orders of the Assembly, declare that such Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was so introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Assembly, including any committee thereof ; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he makes any declaration under the provisions of this section and the reasons therefor.

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(3) If any Member of the Legislative Assembly objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any declaration made under this section other than a declaration relating to a Bill may be revoked by a Secretary of State and the Governor shall cause notice of such revocation to be published in the Gazette; and from the date of such publication any motion that is deemed to have been carried by virtue of the declaration shall cease to have effect and the provisions of section 38(2) of the Interpretation Act 1889(a) shall apply to such revocation as they apply to the repeal of an Act of Parliament.

(5) The powers conferred on the Governor by this section shall be exercised by him in his discretion.

Assent to Bills.

51.—(1) A Bill shall not become a law until—

(*a*) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent, or

(*b*) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified such assent by Proclamation published in the Gazette.

(2) When a Bill is presented to the Governor for his assent, he shall, acting in his discretion but subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses to assent, to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure—

(*a*) any Bill by which any provision of this Constitution is revoked or amended or which is in any way repugnant to, or inconsistent with, the provisions of this Constitution; and

(*b*) any Bill which determines or regulates the privileges, immunities or powers of the Legislative Assembly or of its members,

unless he has been authorized by a Secretary of State to assent to it.

Disallowance of laws.

52.—(1) Any law to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of the publication of that notice.

(3) The provisions of section 38(2) of the Interpretation Act 1889 shall apply in relation to the annulment of any law under this section as they apply in relation to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Oath of allegiance.

53.—(1) Subject to the provisions of this section, no member of the Legislative Assembly shall be permitted to take part in the proceedings of the Assembly (other than proceedings necessary for the

(a) 52 & 53 Vict. c. 63.

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purposes of this section) until he has made and subscribed before the Assembly the oath of allegiance set out in schedule 1 to this Constitution.

(2) If, between the time when a person becomes a member of the Legislative Assembly and the time when the Assembly next sits thereafter, a meeting takes place of any committee of the Assembly of which such person is a member, such person may, in order to enable him to attend the meeting and take part in the proceedings of the committee, make and subscribe the oath of allegiance set out in schedule 1 to this Constitution before a judge of the Supreme Court and the making and subscribing of the oath in such manner shall suffice for all the purposes of this section.

(3) Where an oath of allegiance is made and subscribed before a judge of the Supreme Court under the provisions of subsection (2) of this section, the judge shall forthwith report to the Assembly through the Speaker or, as occasion may require, through the Deputy Speaker that the person in question has made and subscribed the oath of allegiance before him.

Privileges of Legislative Assembly and members.

54. A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the members thereof.

Sessions.

55.—(1) Subject to the provisions of this Constitution, the sessions of the Legislative Assembly shall be held in such place and begin at such time as the Governor by Proclamation published in the Gazette may appoint.

(2) A session of the Assembly shall be held from time to time so that a period of twelve months shall not intervene between the date when the Assembly last sat in one session and the date appointed for its first sitting in the next session.

Prorogation and dissolution.

56.—(1) The Governor may at any time, after consultation with the Premier, by Proclamation published in the Gazette summon, prorogue or dissolve the Legislative Assembly.

(2) The Governor shall dissolve the Legislative Assembly at the expiration of five years from the date when the Assembly first meets after any general election unless it has been sooner dissolved.

General elections.

57. There shall be a general election at such time within three months after every dissolution of the Legislative Assembly, as the Governor by Proclamation published in the Gazette shall appoint.

CHAPTER IV

THE COUNCIL OF MINISTERS

Council of Ministers.

58.—(1) There shall be a Council of Ministers for Mauritius.

(2) The members of the Council of Ministers shall be—

(*a*) the Premier;

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(*b*) the Chief Secretary ;

(*c*) not less than ten and not more than thirteen appointed members ; and

(*d*) such temporary members as may be appointed under section 65 of this Constitution.

(3) The members of the Council of Ministers shall be styled Ministers.

Exercise of Governor's powers.

59.—(1) Subject to the provisions of this section and save as otherwise provided by any Instructions given under Her Majesty's Sign Manual and Signet, the Governor shall consult with the Council of Ministers in the formulation of policy and in the exercise of all powers conferred on him by this Constitution or by any other law for the time being in force in Mauritius.

(2) The Governor shall not be obliged to consult with the Council of Ministers in any case which is of such a nature that, in his judgment, Her Majesty's service would sustain material prejudice if the Council were consulted thereon.

(3) The Governor may, but shall not be obliged to, consult with the Council of Ministers in the exercise—

(*a*) of any power conferred on him by this Constitution which he is empowered or directed by this Constitution to exercise after consultation with any person or authority other than the Council ;

(*b*) of any power conferred on him by this Constitution or any other law which he is empowered or directed by this Constitution or such law to exercise in his discretion ; or

(*c*) of any power conferred on him by any law other than this Constitution which that other law, either expressly or by implication, empowers him to exercise without consulting the Council.

(4) Subject to subsection (8) of this section the Governor shall act in accordance with the advice of the Council of Ministers in exercising any power in the exercise of which he is obliged by this section to consult with the Council.

(5) Where the Governor is directed by this Constitution to exercise any power after consultation with any person or authority other than the Council of Ministers he shall not be obliged to exercise that power in accordance with the advice of that person or authority.

(6) Where the Governor is directed by this Constitution to exercise any power after consultation with any person or authority, the question whether he has so exercised that power shall not be enquired into by any court.

(7) The Governor shall not be obliged to consult with the Council of Ministers in any case in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted or the question for discussion is too unimportant to require their advice ; but in any such case of urgency he shall, as soon as practicable, communicate to the Council the measures that he has adopted and the reasons therefor.

(8) If, in any case in which he is, in pursuance of this section, obliged to consult with the Council of Ministers, the Governor shall consider it expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Mauritius as a territory within

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the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer) that he should not act in accordance with the advice of the Council, then—

(*a*) he may, with the prior approval of a Secretary of State, act against that advice; or

(*b*) if, in his judgment, urgent necessity so requires, he may act against that advice without such prior approval, but shall, without delay, report the matter to a Secretary of State with the reasons for his action.

The Premier.

60.—(1) The Premier shall be appointed by the Governor, acting in his discretion, by instrument under the Public Seal.

(2) Whenever the Governor has occasion to appoint a Premier he shall appoint to that office a member of the Legislative Assembly who appears to the Governor likely to command the support of the majority of members of that Assembly:

Provided that, if occasion arises for making an appointment to the office of Premier while the Legislative Assembly is dissolved, a person who was a member of the Legislative Assembly immediately before the dissolution may be appointed as Premier.

(3) The Governor, acting in his discretion, may remove the Premier from office if the Legislative Assembly passes a resolution declaring that it has no confidence in the Premier and the Premier does not within three days of the passing of such resolution either resign from his office or advise the Governor to dissolve the Legislative Assembly.

(4) The Premier shall also vacate his office—

(*a*) when, after a dissolution of the Legislative Assembly, he is informed by the Governor that the Governor is about to reappoint him as Premier or to appoint another person as Premier; or

(*b*) if for any reason other than the dissolution of the Legislative Assembly he ceases to be a member of the Legislative Assembly; or

(*c*) if he resigns his office by writing under his hand addressed to the Governor.

Appointed members of Council of Ministers.

61. The appointed members of the Council of Ministers shall be persons who are elected or nominated members of the Legislative Assembly and shall be appointed by the Governor, after consultation with the Premier, by Instrument under the Public Seal:

Provided that, if occasion arises for the appointment of a member of the Council of Ministers while the Legislative Assembly is dissolved, a person who was an elected or nominated member of the Legislative Assembly immediately before the dissolution may be appointed as a member of the Council of Ministers.

Parliamentary Secretaries.

62.—(1) The Governor may, after consultation with the Premier, appoint such persons from among the elected or nominated members of the Legislative Assembly as he may deem expedient, to be Parliamentary Secretaries in relation to any subject or department the administration of which is charged upon, or assigned to, any member of the Council of Ministers, and a Parliamentary Secretary shall perform

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67. The Council of Ministers shall not be summoned except by the authority of the Governor, acting in his discretion: Summoning of Council of Ministers.

Provided that the Governor shall summon the Council if the Premier so recommends.

68.—(1) There shall preside at all meetings of the Council of Ministers— Proceedings in Council of Ministers.

(*a*) the Governor;

(*b*) in the absence of the Governor, the Premier; and

(*c*) in the absence of the Premier, such member of the Council as the Governor may either generally or specially appoint.

(2) No business shall be transacted at any meeting of the Council of Ministers if there are less than five members of the Council present at the meeting and any member present has objected to the transaction of business on that account.

(3) Subject to subsection (2) of this section, the Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy not filled when the Council is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Council shall not be affected by reason only of the fact that some person who was not entitled to do so took part in those proceedings.

69.—(1) The Governor, acting in his discretion, may by directions in writing— Assignment of departments or subjects.

(*a*) charge the Chief Secretary with the administration of any department or subject;

(*b*) declare which departments or subjects may be assigned to appointed members of the Council of Ministers.

(2) The Governor may, after consultation with the Premier, by directions in writing charge any appointed member of the Council of Ministers with the administration of any department or subject during such time as it shall be declared, under paragraph (*b*) of subsection (1) of this section, to be a department or subject which may be assigned to appointed members of the Council of Ministers.

70. The Governor, acting in his discretion, may grant leave of absence from his duties to any member of the Council of Ministers. Leave of absence.

CHAPTER V

The Judicature

71.—(1) There shall be a Supreme Court for Mauritius. Supreme Court.

(2) The judges of the Supreme Court shall be the Chief Justice, the Senior Puisne Judge and so many Puisne Judges as the Governor may subject to the provisions of this Constitution and any law, appoint.

72.—(1) Subject to the provisions of this Chapter, a judge of the Supreme Court shall hold office until he attains the age of sixty-two years: Retirement and resignation of judges.

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defray the cost of those emoluments shall be a charge on the revenues of Mauritius, and shall be paid thereout by the Accountant-General upon warrant directed to him under the hand of the Governor.

(2) Nothing in this section shall prevent the payment to the Governor or any other officer of any additional sums for which provision may be made from time to time.

Inter-pretation

90.—(1) In this Constitution, unless the context otherwise requires—

"the Gazette" means the Government Gazette of Mauritius;

"the Governor" means the Governor and Commander-in-Chief for Mauritius and includes the officer for the time being administering the government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy;

"the island of Mauritius" includes the small islands adjacent thereto but does not include the Dependencies of Mauritius;

"Local Authority" means the Council of a town, district or village;

"Mauritius" means the island of Mauritius and the Dependencies of Mauritius;

"public office" means, subject to the provisions of subsection (3) of this section, an office of emolument under the Crown or an office of emolument under a Local Authority within Mauritius;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"the Public Seal" means the Public Seal of Mauritius;

"the public service" means the service of the Crown in respect of the government of Mauritius;

"session" means the sittings of the Legislative Assembly commencing when the Assembly first meets after being constituted under this Constitution, or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Legislative Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

(2) In this Constitution any reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(3) (*a*) For the purposes of this Constitution a person shall not be deemed to be a public officer by reason of receiving—

(i) any salary or allowance as Speaker, Deputy Speaker, member of the Council of Ministers, a temporary member of the Council of Ministers, a Parliamentary Secretary, or as a member of the Legislative Assembly;

(ii) any salary or allowance as Mayor, Chairman or a member of a Local Authority, or as the Standing Counsel or the Attorney of a Local Authority;

(iii) a pension or other like allowance in respect of service under the Crown or under a Local Authority.

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(b) A provision in any law in force in Mauritius that an office shall be deemed not to be a public office for any of the purposes of this Constitution shall have effect as if it were included in this Constitution.

(4) In this Constitution, any power to make any proclamation or declaration or to give any direction shall include power to vary or revoke any such proclamation, declaration or direction.

(5) For the purposes of this Constitution the resignation of a member of any body or holder of any office established by this Constitution that is required to be addressed to any person shall be deemed to have effect from the time at which it is received by that person:

Provided that a resignation (other than the resignation of the Deputy Speaker) that is required to be addressed to the Speaker shall, if the office of Speaker is vacant, or the Speaker is absent from the island of Mauritius, be deemed to have effect from the time at which it is received by the Deputy Speaker on behalf of the Speaker.

(6) For the avoidance of doubt it is hereby declared that any person who has vacated his seat in any body, or has vacated any office, established by this Constitution may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(7) Save as in this Constitution otherwise provided the Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of Parliament of the United Kingdom.

THE SCHEDULES TO THE CONSTITUTION

Sections 19, 53 and 66.

SCHEDULE 1

OATH (OR AFFIRMATION) OF ALLEGIANCE

I, ..., do swear (*or* do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. (So help me God.)

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF GOVERNOR

I, ..., do swear (*or* do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the Office of Governor. (So help me God.)

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF MEMBER OF THE COUNCIL OF MINISTERS

I, ..., do swear (*or* do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of .... (So help me God.)

(a) 52 & 53 Vict. c. 63.

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Annex 25

U.K. Foreign Office, *U.S. Defence Interests in the Indian Ocean: Memorandum of U.K./U.S. London Discussions*, FCO 31/3437 (27 Feb. 1964)

SECRET

ANNEX I

U.S. Defence Interests in the Indian Ocean
Memorandum of U.K./U.S. London Discussions
February 1964

Official discussions between representatives of the U.K. and U.S. Governments took place in London from February 25-27, 1964. On the U.K. side, the Foreign Office, Commonwealth Relations Office, Colonial Office, Ministry of Defence and Service Departments took part. On the U.S. side, the Departments of State and of Defense and the military commands concerned were represented. A list of both delegations is at Annex A. The following is agreed between the two sides as recording the results of the discussions and recommendations to their respective governmental authorities for future action.

Background

2. The U.S. Government is considering a greater defense presence in the Indian Ocean area to complement (but not in any way to replace) the existing British effort in this area. U.S. participation is likely to mean over a period of time:-

(a) Periodic visits by a U.S. task force into the Indian Ocean area

(b) The installation of military communications and technical facilities on islands under British sovereignty

(c) The development of austere base facilities to support U.S. forces which may be deployed in the area.

H.M.G. in the U.K. have welcomed this American initiative and agree that their joint basic objectives in the Indian Ocean area are first to deter Communist encroachment on countries bordering the Indian Ocean and second to have the capacity to deal firmly and rapidly with local disturbances in the area.

3. It was accepted by both delegations that the U.S. interest in developing a greater defense presence and support facilities in the area was conceived as a complement to the existing U.K. strategic posture, and would provide a valuable joint insurance in case of any loss or limitation of use of existing facilities.

Political reactions by countries on the periphery and presentation by both Governments to third countries of the American initiative

4. The two delegations agreed on a joint assessment (at Annex B) of the probable reactions of countries on the periphery to the American initiative and on the line which should be followed by both Governments in presenting this, as the need arises, to third countries.

5. As regards periodic visits of the task force, the U.S. delegation agreed to keep H.M.G. informed of U.S. general intentions and, in particular, to give as much notice as possible of requests to visit any U.K. bases.

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Annex 25

U.S. Interest in technical and support facilities

6. The U.S. delegation confirmed their positive interest in the development of a communications facility, subject to joint survey, in Diego Garcia in the Chagos Archipelago, which is now under the administration of Mauritius. They also expressed interest in the development of austere support facilities in Diego Garcia, and in a lower order of priorities possibly in Aldabra, the remainder of the Seychelles area, and the Cocos Keeling Islands (under Australian administration). Such facilities might include in the long-term:-

(a) Stockpile area for substantial portion of an Army division plus other pre-stockage facilities.

(b) Air base capable of supporting cargo, troop carrier, and tanker aircraft. Facilities to support antisubmarine patrol operations and air logistic operations. Parking area for two to four squadrons of aircraft.

(c) Naval anchorage and base area to support a carrier task force, amphibious, and support ships.

(d) Communications station.

(e) Amphibious staging area.

(f) Space tracking and communications facilities.

(g) Fuel and ammunition storage.

(h) Secondary support anchorages and logistic air strips.

The U.K. delegation reserved their position about the dimensions of any space tracking facilities which the U.S. might possibly propose to establish on Diego Garcia.

The U.S. delegation recognized that topography might preclude the location of facilities for the above objectives in one single island and, since the entry of their forces into the area in individual instances might be from either East or West, according to circumstances, envisaged the development of some support facilities at both extremes of the Indian Ocean, with, ideally, a principal base area in the center. The U.S. delegation emphasized that they wished to avoid the political problems arising from the development of military facilities in populated areas and to have assured security of tenure for at least 25 years.

Diego Garcia

7. Subject to survey, the U.S. delegation envisaged that if H.M.G. agreed, the most suitable arrangement would be that H.M.G. should be responsible for making available the necessary land, at H.M.G.'s expense. H.M.G. would also be responsible for any resettlement of population and compensation. For their part the U.S. Government would undertake to accept construction and maintenance costs of the facilities they would build and to share the facilities with the U.K. The two Governments would consult as necessary about t...

establishment of any possible U.K. military facilities which might be required in the island.

8. It was agreed however by both delegations that it would be imprudent to undertake any survey until the constitutional future of Diego Garcia (together with the remainder of the Chagos Archipelago) was determined. The U.K. delegation undertook to recommend to H.M.G. that in the light of the joint strategic interest, the feasibility of the transfer of the administration of Diego Garcia (and the remainder of the Chagos Archipelago) and the Agalega Islands from Mauritius should be pursued as rapidly as possible and to inform the U.S. authorities if and when such transfer was effected.

9. When it is agreed that a survey can take place, this should be a joint project, under U.K. auspices, with the U.S. contingent of minimum size necessary. The U.K. would provide one of H.M. ships for the purpose.

Aldabra

10. The U.S. delegation expressed a possible interest in the eventual development of an air staging post in the Western Indian Ocean. Aldabra seemed a likely possible site for this. The U.K. delegation said there might well be a future U.K. requirement of a similar nature in this area and made available to the U.S. side a survey for a possible airfield, which had already been completed of Aldabra. Consideration of such a facility was agreed by both delegations to be a matter for further reference to governmental authorities.

Cocos/Keeling Islands

11. The U.S. delegation explained that they had already been advised informally by Australian authorities of interest in U.S. use of facilities to be developed in the Cocos/Keeling islands. It was agreed by both delegations that since the U.K. also shared a positive interest in facilities there, further approaches to the Australians might best be undertaken in concert by the U.K./U.S. At the same time a general explanation would be given to the Australians of the discussions held between the U.K. and the U.S. It was agreed that the U.K. and U.S. Governments would keep in close touch on this matter.

Summary of agreed recommendations

12. The U.K. delegation agreed to recommend to the U.K. governmental authorities that they should:-

(a) Consider favourably the possibility of the development by the U.S. of such facilities on U.K. island possessions as they may require, on the following general principles:-

(i) H.M.G. should be responsible for acquiring land, resettlement of population and compensation at H.M.G.'s expense.

(ii) U.S. Government should be responsible for all construction and maintenance costs.

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(iii) U.S. Government would share these facilities, during development and subsequently, with the U.K.

(iv) The two governments would consult as necessary about the establishment of any possible U.K. military facilities that might be required.

(b) Pursue as rapidly as possible the feasibility of transfer of the administration of Diego Garcia (and other islands in the Chagos Archipelage) and the Agalega Islands from Mauritius.

(c) As soon as politically practicable, facilitate a joint survey of Diego Garcia and any other islands under British sovereignty in the Indian Ocean area that the U.S. may require.

13. The U.S. delegation agreed:-

(a) To recommend to the U.S. Government Authorities acceptance of the proposals set out in paragraph 12 above.

(b) To consider further the location of a site for an air staging post in the Western Indian Ocean.

(c) To consider further whether jointly to approach the Australian Government regarding possible use of facilities in the Cocos/Keeling Islands.

(d) To communicate further with the U.K. regarding all the above.

London
27th February, 1964.

Annex 26

U.K. Foreign Office, Colonial Office and Ministry of Defence, *U.S. Defence Interests in the Indian Ocean*, D.O. (O)(64)23, FCO 31/3437 (23 Apr. 1964)

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Copy No 2 to Mr Peck
Copy No 26 to Sir B. Burrows & Mr Arthurs

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23 | 19

D.O. (O)(64)23

23rd April, 1964

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CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE

U.S. DEFENCE INTERESTS IN THE INDIAN OCEAN

MEMORANDUM BY THE FOREIGN OFFICE, THE COLONIAL OFFICE AND THE MINISTRY OF DEFENCE

As a result of discussions between United Kingdom and United States officials in London, from February 25 - 27 a Memorandum (Annex I) was agreed for submission to Governments.

Background

2. The Americans have at present no forces or bases between the Pacific and Mediterranean, apart from a few naval vessels in the Persian Gulf. The United States Administration supports our position in Aden and Singapore. Their interest in the Indian Ocean area has gradually developed over the past few years and gained impetus as a result of the Chinese attack on India in 1962. They have, however, been restrained by considerations of finance and, although they showed interest in establishing certain technical facilities on islands in the area, it was not until December 1963 that their strategic interest took the positive and public form of a decision to deploy a naval task force into the Indian Ocean from time to time. Formal notification to Her Majesty's Government of this intention took place on December 11 last and on December 19 the Foreign Secretary told Mr. Rusk in London that Her Majesty's Government welcomed the American decision and also confirmed our readiness to receive a group of United States officials to discuss the development of support facilities on islands under British control.

Strategic Importance of the Indian Ocean

3. British strategy in this area has a three-fold aim:-

(a) To prevent the spread of communism by supporting the Central and South-East Asia Treaty Organisations.

(b) To protect vital British and Commonwealth interests, for instance in the Persian Gulf and Malaysia.

(c) To maintain an effective presence over the whole area so as to prevent the development of a power vacuum.

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Annex 26

This strategy depends at present on our use of the main bases at Aden and Singapore and on our intermediate staging posts at Mesirah and Gan. Should any of these facilities t denied us we should, if we wish to maintain our strategic aims, have to reprovide the lost facilities elsewhere in the area. The possible construction of suitably placed United States facilities across the Indian Ocean which we should be able to use would therefore provide a very valuable insurance policy at a relatively small premium against possible loss or limitation of use of any of these facilities. A map of the area is at Annex II.

Analysis of United Kingdom/United States Discussions

4. The Americans, as shown in the Memorandum, contemplate a greater defence presence in the Indian Ocean to complement (but not in any way to replace) the existing British effort in the area. This is likely to mean over a period of time:-

(a) Periodic visits by a naval task force;

(b) the installation of military communications and technical facilities;

(c) the development of base facilities (together with air staging posts) to support United States forces.

5. It being established that Her Majesty's Government had already welcomed American intentions, the joint aim in the discussions was to find common ground for the development of United States support facilities on British island possessions in such a way that the United Kingdom would also enjoy the strategic benefits. It seems clear that, even if their pace is slow, the Americans will definitely enter the area in one way or another, and it is therefore in the United Kingdom's long term interests to strike the best bargain possible for the benefit of both countries.

6. The principles of such a bargain which the two delegations agreed to recommend were that it would be Her Majesty's Government's responsibility to acquire land, resettle population and pay any necessary compensation. The United States Government would be responsible for all construction and maintenance costs. As regards joint use, the United States Government would share any facilities, during development and subsequently, with the United Kingdom, and the two Governments would consult as necessary about the establishment of any possible United Kingdom military facilities that might be required (i.e. separate facilities from those developed by the United States but in the same area).

7. From the defence point of view such a bargain should be extremely advantageous to the United Kingdom and the joint recommendations in paragraph 12 of the Memorandum have already been strongly endorsed by the Chiefs of Staff, though they point out that United Kingdom interests must be safe-guarded during negotiations. From the international political point of view, the proposals are also attractive. American interest in the area is likely to increase in any event, but as shown in Annex B of the Memorandum the Americans are favourably disposed to consultation with us on the political presentation of their actions. By offering our co-operation we shall be able to influence these in a direction favourable to the policies

of Her Majesty's Government. This influence would, however, be weakened if we introduced unacceptable conditions before attempting to put into effect the recommendations in paragraph 12 of the Memorandum.

8. We must, nevertheless, not overlook the United Kingdom's reputation as a Colonial power. It would be imprudent to expose ourselves to international and local criticism of trafficking in Colonial territory without regard to the reasonable interests of the colonies concerned (Mauritius and Seychelles). On the other hand we must look to our broader responsibilities to our remaining Colonial territories all over the world. As explained above, the United States proposals, if put into effect, would provide a valuable alternative means of maintaining the free world's defence posture in the Indian Ocean and further East, which is essential if we are to continue to be responsible in the last resort for the maintenance of law and order in and defence of our remaining dependent territories in these areas.

Future Action by the United Kingdom

9. There are, however, as the Americans recognised, considerable local political and economic problems to be settled before we can authorise the Americans to make any surveys. The principle difficulty lies in the fact that the most suitable island for development as an American "austere" base is Diego Garcia in the Chagos Archipelago which, though about 1500 miles from Mauritius, is under Mauritius administration. We have to consider how best to arrange matters so that this island, if developed as a base, together with the surrounding Archipelago, can be freed from future political and economic encumbrances, which might nullify its strategic usefulness. We must also consider how best to proceed in order to avoid damaging our future political relations with an independent Mauritius, and, in particular, risking the security of our important Naval Communications station on that island.

10. The course which would best satisfy our major interests would appear to be to decide now to detach Diego Garcia (and other islands in the Chagos Archipelago), and possibly the Agalega Islands from Mauritius, well in advance of Mauritian independence, and to place these under direct United Kingdom administration. This could be done by Order in Council, which could provide for the new territory to be administered by a High Commissioner or Administrator who might be either a Service Officer (cf. the Sovereign Base Areas in Cyprus) or the Governor of the Seychelles or of Mauritius (preferably the former) in his personal capacity (cf. British Antartic territory). When this has been done, or sooner if politically possible, we should be able to tell the Americans that we were in a position to arrange a joint survey. The Americans may however press us to arrange a survey more urgently, before the constitutional action has been taken. We should therefore proceed with that action as quickly as possible.

11. Formally, we have the constitutional power to take action without the consent of the Mauritius Government, although it consists almost entirely of elected Ministers. To do this, however, would expose us to criticism in Parliament and the United Nations and damage our future relations with

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Mauritius. Moreover, in as much as there would still be a local population, albeit very small in number, in the Chagos Islands other than Diego Garcia, we might be criticised for creating for strategic purposes a new Colony with a less advanced constitution than it theoretically enjoys as part of Mauritius, and with no prospect of evolution. But this criticism would lose most of its force if the action were accepted by Mauritian Ministers in advance. It is therefore desirable to secure their positive consent, or failing that, at least their acquiescence.

12. If we are to do this we are bound to take them reasonably fully into our confidence at the outset. We have promised the Americans that we will consult them before this is done and on the terms to be used. The Americans will be reluctant to accept that the Mauritians should be told about the extent of United States participation or about their specific strategic interests. In the short term it might at first sight appear that, if only to avoid the risk of premature leaks, and the consequent raising of the price, it would suit us better to confront the Mauritians with a fait accompli or at most tell them at the last moment what we are doing. But the Colonial Office are convinced, as is the Governor, that this would do lasting damage to our relations with Mauritius and would adversely affect the facilities which our Services now enjoy in Mauritius itself. We have considered whether the Americans' share in the enterprise could be concealed, but since it would eventually become know, we could be charged with duplicity and the damage would be as great and possibly greater. We might, however, be able to frame our explanation to the Mauritians in language which the Americans would accept and which would refer to the United Kingdom/United States joint interest in the Chagos Archipelago for the defence of the free world in which the Mauritians might, as future members of the Commonwealth, be expected to share. Such an explanation would eschew any particular description of the nature of the strategic facilities or their purpose.

13. It must be recognised that there will be a demand for compensation, not only to the private land owners in the Chagos Archipelago (A Seychellois consortium), but to the Mauritius Government as the price of their consent, and possibly to the Seychelles Government for loss of export duty on the copra which is exported through Seychelles. There will also be a sizeable problem of re-settling the inhabitants of Diego Garcia. Consideration of all three might best await the initial consultation with Mauritius and subsequent surveys. We do not envisage asking the Americans to accept any part of this bill.

14. There remains the question of Aldabra Island, which is at present under the administration of the Seychelles. In paragraph 13 of the Memorandum the Americans agreed to consider further the location of a site for a staging post in the Western Indian Ocean, to balance their separate interests in staging facilities, which we share, on the Australian-owned Cocos-Keeling Island in the Eastern Indian Ocean. The Americans considered Aldabra a potential site for the

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rmer purpose and were glad to receive a copy of the survey already made by the Air Force Department. If this idea were pursued, and we could achieve full and unimpeded use of Aldabra, it would be a most useful strategic asset to the United Kingdom on an eventual round Africa route to the Middle and Far East. The strategic importance of a staging post on Aldabra would be greatly increased if, after Mauritius gains independence, we found we could not rely on air staging facilities there in all circumstances. There would therefore be advantage in considering how best to ensure that Aldabra Island be retained indefinitely under Her Majesty's Government's direct control and at the same time encouraging the Americans to pursue their interest in Aldabra as an air staging post, which we would share. There might be advantage in detaching Aldabra from the Seychelles at the same time as we detach Chagos, and possibly Agalega from Mauritius but this needs further examination with the Governor.

Recommendation

15. The Committee is invited to recommend that Ministers:-

(a) Approve the principles of the United Kingdom/United States Memorandum, provided that reasonable financial arrangements can be made;

(b) invite the Foreign Secretary, in consultation with the Colonial Secretary, to seek American agreement to an approach to Mauritius Ministers on the lines of paragraph 12 above;

(c) invite the Colonial Secretary, when this has been done, to consult the Mauritius Government with a view to detaching Diego Garcia (and other islands in the Chagos Archipelago) from the administration of Mauritius and retaining them under Her Majesty's Government's direct control;

(d) invite the Colonial Office to arrange for similar action for the Agalega Islands to be considered;

(e) invite the Foreign Secretary, in consultation with the Secretary of State for Defence, as soon as constitutional action for detachment is completed, or sooner if politically practicable, to arrange for a joint United Kingdom/United States survey of Diego Garcia and any other islands in the Chagos and Agalega Archipelagos which the United States may require;

(f) invite the Colonial Secretary to consider detaching Aldabra also from the Seychelles administration;

(g) invite the Colonial Office to produce as soon as possible an estimate of cost to Her Majesty's Government arising from land acquisition, resettlement of population and payment of compensation.

FOREIGN OFFICE, S.W.1.

April 24, 1964

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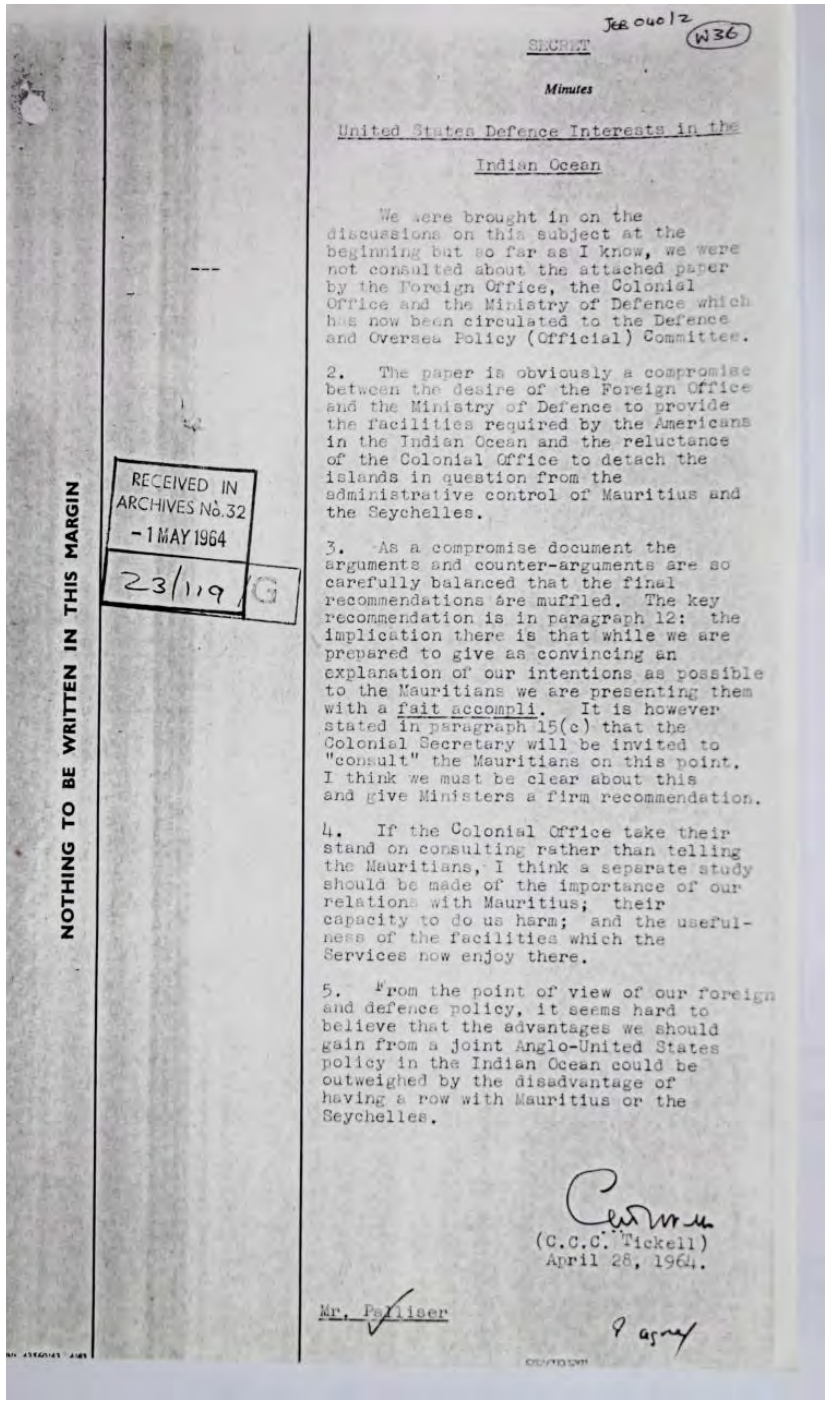
Annex 27

United Kingdom, *Minutes from C. C. C. Tickell to Mr. Palliser: United States Defence Interests in the Indian Ocean*, FCO 31/3437 (28 Apr. 1964)



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Minutes

United States Defence Interests in the Indian Ocean

We were brought in on the discussions on this subject at the beginning but so far as I know, we were not consulted about the attached paper by the Foreign Office, the Colonial Office and the Ministry of Defence which has now been circulated to the Defence and Oversea Policy (Official) Committee.

2. The paper is obviously a compromise between the desire of the Foreign Office and the Ministry of Defence to provide the facilities required by the Americans in the Indian Ocean and the reluctance of the Colonial Office to detach the islands in question from the administrative control of Mauritius and the Seychelles.

3. As a compromise document the arguments and counter-arguments are so carefully balanced that the final recommendations are muffled. The key recommendation is in paragraph 12: the implication there is that while we are prepared to give as convincing an explanation of our intentions as possible to the Mauritians we are presenting them with a fait accompli. It is however stated in paragraph 15(c) that the Colonial Secretary will be invited to "consult" the Mauritians on this point. I think we must be clear about this and give Ministers a firm recommendation.

4. If the Colonial Office take their stand on consulting rather than telling the Mauritians, I think a separate study should be made of the importance of our relations with Mauritius; their capacity to do us harm; and the usefulness of the facilities which the Services now enjoy there.

5. From the point of view of our foreign and defence policy, it seems hard to believe that the advantages we should gain from a joint Anglo-United States policy in the Indian Ocean could be outweighed by the disadvantage of having a row with Mauritius or the Seychelles.

(C.C.C. Tickell)
April 28, 1964.

Mr. Pelliser

9 agree

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NOTHING TO BE WRITTEN IN THIS MARGIN

Annex 28

Letter from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary's Department, U.K. Foreign Office (14 Jan. 1965)

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EMBASSY
OF THE
UNITED STATES OF AMERICA

London, W. 1.

REC'D IN ARCHIVES 32

January 14, 1965

19 JAN 1965

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Dear Geoffrey:

I am writing to advise you of the results of the United States review of the joint U.S./U.K. survey of certain Indian Ocean Islands for military purposes.

After considering the report of the survey group, we have concluded that the areas having the most potential for U.S. military requirements are:

A. Diego Garcia. As you are aware, this site is required for establishment of a communications station and supporting facilities, to include an air strip and improvement of off-loading capability. We consider that detachment proceedings should include the entire Chagos archipelago, primarily in the interest of security, but also to have other sites in this archipelago available for future contingencies.

With respect to the communications station and supporting facilities, we would expect to initiate architectural, engineer and design work as quickly as the site was available for detailed topographical surveys. We anticipate that we will break ground late in calendar year 1966 for the permanent facilities, and have the station operational late in calendar year 1968. In the interim, should circumstances demand, we would wish to establish austere communications on a van-mounted, concrete-pad-supported basis within a period of three to five months, assuming satisfactory arrangements can be made for the support of 40 to 50 operating personnel.

B. Aldabra. Although nothing specific has been planned and no funding requests are scheduled by the U.S. at this time, the obvious potential usefulness of Aldabra as a staging area for air operations impels a strong recommendation, that in joint long-term U.S./U.K. interest, this island be included in any detachment package.

G. G. Arthur, Esquire,
Head, Permanent Under-Secretary's Department,
Foreign Office.

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C. Coetivy, Agalega, Farquahar, Ile des Roches, and Cosmoledos. Since we appreciate your desire to undertake all detachment proceedings at the same time, we strongly urge that your Government consider favorably the inclusion of all, or some of these islands, in the order listed. They too have military potential, and again over the long-term, we consider that our mutual security interests in the Indian Ocean justify detachment on a precautionary planning basis, particularly if the resulting political and financial burden is not disproportionate to the indicated long-range advantages of assuring the availability of these islands.

We recognize the difficulties that Her Majesty's Government will face in undertaking the necessary steps to detach these islands. Accordingly, we will respond as fully and promptly as possible to any questions which you may have in order to facilitate the necessary decisions on your part. More specifically, we are prepared to meet with United Kingdom representatives on relatively the same representational level and basis as the meetings of last February, should your Government consider that this would be helpful in furthering our joint interest in moving this project forward rapidly.

Sincerely,

George S. Newman Jr.
Counselor for Politico-Military Affairs

Annex 29

Letter from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965)

(11[illegible]1/65G

BRITISH EMBASSY,
WASHINGTON.
January 15, 1965

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19 JAN 1965
24/2

Dear Ted,

As foreshadowed in Oliver Forster's letter 119101/65G of January 4 to Graham in P.U.S.D., Jeff Kitchen asked me to call today and read out to me the text of a State Department telegram instructing the American Embassy in London to speak to the Foreign Office about the islands in the Indian Ocean. In case it may be useful to you I enclose a copy of the substantive part of the telegram.

2. When asked to give an idea of your reactions I said that you would be glad that the State Department had finally induced the Pentagon to divulge their ideas in detail, but I thought you might find that the amount of real estate involved was rather formidable. To this Kitchen replied that the United States were only immediately interested in the first two items in the list, but he understood that we were interested in Agalega and it had been thought in the State Department that it might be helpful to us for the American list to include these two islands. From the wider point of view, he believed that in five or ten years' time the United Kingdom and United States might be very glad to have all the islands named available for use in case of need, and, since you had said that we could not take two bites at the cherry of detachment, it had been thought only prudent to include all groups that were likely to be useful in the long run.

3. Kitchen said that if, after all concerned in London had had time to digest the information conveyed by the Embassy, you thought that it would be helpful to have another meeting on the lines of that which you chaired last year, the State Department would be very willing to send a team to the U.K. In reply to a question about the timing for any such meeting, he said he was thinking in terms of talks on the subject before the end of February, should we decide that such talks were required.

4. A member of Kitchen's staff interjected that the State Department's telegram to their Embassy had not made clear that the Department of Defense would like the architectural and engineering design team necessary to undertake the preliminary planning on Diego Garcia, to reach the island before the end of May. Kitchen added in confidence that

E.H. Peck, Esq., C.M.G.,
Foreign Office,
London, S.W.1

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Annex 29

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that as the Department of Defense had taken such an inordinately long time to formulate their requirements properly he did not think that it would matter too much if we said that this deadline was earlier than we could manage.

5. I asked whether the United States were still thinking in terms of "austere" installations and Kitchen said that they were. Something rather better than this would be required for the Communications station, but otherwise the need for austerity was very much in everyone's minds.

6. The question of adverse reactions in the United Nations or Africa did not seem to be worrying either Kitchen or Myers, who was also present. So far as the Committee of Twenty-Four is concerned, I gathered that its mandate would have to be renewed by the General Assembly, which could mean that the Committee would be in suspended animation for some time to come. In any case, Kitchen seems to believe even more strongly than before that a reference to the value of the proposed installations in support of possible future peace-keeping operations will soothe any savage breasts. He admitted, however, that recent events in the Congo might affect this.

Yours ever,

Nigel

(N.C.C. Trench)

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a. Diego Garcia - As Embassy aware this site required for establishment of communications station and supporting facilities, to include air strip and improvement of off-loading capability. Additionally consider that detachment proceedings should include entire Chagos Archipelago, primarily in interest security but also to have available other sites in Archipelago for future contingencies. With respect communications station and supporting facilities, we would expect initiate architect-engineer and design work as quickly as site available for detailed topographical surveys. We would expect break ground late calendar 1966 for permanent facilities, and have station operational late calendar 1968. In the interim, should circumstances demand, austere communications could be established on van-mounted concrete-pad-supported basis within period of 3 to 5 months assuming satisfactory arrangements can be made for support of 40-50 operating personnel.

b. Aldabra - While nothing specific planned and no funding requests scheduled by US at this time, obvious potential usefulness of Aldabra as a staging area for air operations impels strong recommendation that this island be included in any detachment package, in US/UK interest over long term.

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Annex 29

c. Coetivy, Agalega, Farquahar, Ile des Roches and Cosmoledos - Since UK intends quote single-bite unquote detachment proceedings (Deptel 3636), strongly urge Fonoff favorably consider stockpiling all or in order their listing some of these islands. They too have military potential and, again over long term, we consider our mutual security interests in Indian Ocean justify UK detach them on precautionary planning basis, particularly if resulting political and financial burden not disproportionate to indicated long-range advantages their availability.

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Annex 30

Letter from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary's Department, U.K. Foreign Office (10 Feb. 1965)

Annex 30

EMBASSY
OF THE
UNITED STATES OF AMERICA

London, W. 1.

February 10, 1965

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Dear Geoffrey:

In our meeting on January 26 you requested urgent answers, even on a partial or tentative basis, to a number of specific questions regarding proposed facilities in the Indian Ocean islands.

I have now been authorized to provide you the following responses, keyed to corresponding sections of your letter:

(a) The Chagos Archipelago and Diego Garcia

We would not regard the detachment of the entire Chagos Archipelago as essential, but consider it highly desirable. It appears to us that full detachment now might more effectively assure that Mauritian political attention, including any recovery pressure, is diverted from Diego Garcia over the long run. In addition, as indicated in my letter of January 14, full detachment is useful from the military security standpoint, and provides a source for additional land areas should requirements arise which could not be met on Diego Garcia.

(b) Aldabra

Our interest in Aldabra arises in large part from the strong interest initially expressed by the U.K. in the development of an air staging base there, and our conclusion that there is an increasing need for dependable long-term accesses to Africa south of the Sahara. We have no immediate requirement for other facilities on Aldabra, and cannot predict when we will be in a position to fund for the concerted development of the air staging base itself. The requirements for a communication station at Diego Garcia antedates specific interest in Aldabra and, although staging facilities if constructed at these sites would be mutually supporting, the initial mission at Diego Garcia does not depend upon any development at Aldabra.

Geoffrey G. Arthur, Esquire,
Head, Permanent Under-Secretary's Department,
Foreign Office.

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(c) Remaining Islands

(i) The priority order is based on the topographic and hydrographic data gathered in last summer's joint surveys, and the geographical position of the islands.

(ii) Taking the islands as a group, we consider them to have potential usefulness for airstrips, anchorages, Pol supply points, pre-positioning of materiel, and support of space programs. We have not identified particular objectives for individual locations, except in the sense of concluding that certain facilities would be excluded by physical characteristics such as space limitations or poor anchorage.

(iii) We do not have any schedule for facilities at these locations. This would depend upon the development of future military requirements.

(d) General

From our standpoint there would be no reason to relocate population prior to an island's coming into use to meet a requirement. This would apply to the other islands of the Chagos Archipelago so long as our activity was confined to Diego Garcia.

(e) Local Labor

We do not in principle exclude the use of local labor for construction work. As you will recognize, in practice the extent to which local labor can be used depends upon such factors as availability of appropriate skills, possible balance of payments considerations, and the value to the contractor of key personnel from his own staff.

I hope that this information will provide you sufficient basis for requisite political decisions within Her Majesty's Government, and with the governments concerned. Please let us know if you need anything further.

Sincerely,

George S. Newman
Counselor for Politico-Military Affairs

Annex 31

U.K. Foreign Office, Permanent Under-Secretary's Department, *Secretary of State's Visit to Washington and New York, 21 - 24 March: Defence Interests in the Indian Ocean*, Brief No. 14, FO 371/184524 (18 Mar. 1965)

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BRIEF NO. 14

RECEIVED IN ARCHIVES
20 MAY 1965
24/66

SECRETARY OF STATE'S VISIT
TO WASHINGTON AND NEW YORK
21 - 24 March

DEFENCE INTERESTS IN THE INDIAN OCEAN

Discussions with the Americans have been going on for some time at the official level about the proposals for military facilities on one or more of the small island dependencies of Mauritius and the Seychelles. The United States Embassy have warned us that Mr. Rusk may ask the Secretary of State how the matter stands, since the American side are waiting for a reply to their proposals.

2. The background is as follows. Ever since the Chinese attack on India, and possibly even before that, the Americans have been conscious of a gap in their military dispositions in the Indian Ocean area. They have no forces continuously deployed between the Mediterranean and the South China Sea and no bases between the Mediterranean and the Philippines. In December 1963 they announced that a carrier task force would pay periodic visits to the Indian Ocean area. Her Majesty's Government welcomed this move, and two visits have since taken place. In February 1964 it was agreed between United States and British officials that, subject to the results of a survey, a United States military communications station and supporting facilities should be built on the island of Diego Garcia in the Chagos Archipelago, administered by Mauritius but over a thousand miles North-East of the main island. It was further agreed that this might turn out to be the beginning of a project on a wider scale with other facilities in the western part of the Indian Ocean (perhaps on Aldabra, an island administered by the Seychelles), with the possibility of more facilities

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in the eastern part of the Indian Ocean (perhaps in the Cocos-Keeling Islands, which are administered by Australia). The Americans were at pains to emphasise that this initiative was intended to complement, and not to replace, the British military effort in the area. They also made it plain that any islands chosen for military facilities must be free from local pressures which would threaten security of tenure, and that in practice this must mean that the islands would be detached from the administration of Mauritius (soon due for independence) and of the Seychelles (where pressure for independence is beginning to be felt).

3. It was agreed that the United States Government would pay for any facilities constructed, allowing us joint use at all times; while Her Majesty's Government would be responsible for making the chosen islands available and for paying the necessary compensation to local interests. These principles were subsequently approved by Ministers in London.

4. A joint Anglo-American survey of a number of likely islands, including Diego Garcia, was carried out from June to August 1964. The Premier of Mauritius (Dr. Ramgoolam) and the Executive Council of the Seychelles were consulted beforehand and raised no objection to the survey. An approach was also made to Dr. Ramgoolam about the possibility of detaching islands in the Chagos Archipelago from the Mauritius administration. His reaction was guarded. Rumours had for some time been current in the islands that the Americans proposed to build 'bases' in the area. At about this time there appeared a number of speculative stories in the world press. These in turn gave rise to unfavourable reactions from some of the governments of African and Asian countries bordering on the Indian Ocean, as well as from the Soviet Union, the United Nations, and the Cairo Conference of Non-Aligned Countries.

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The public line we took in reply was that certain communications and other facilities were a possibility but that no decision had been taken.

5. The American Embassy have recently produced proposals for the use for defence purposes of seven islands administered by Mauritius and the Seychelles, listed in three categories of priority. First comes Diego Garcia (where it is proposed to make a start as soon as possible on the construction of a communications station, together with an airstrip) and in the interests of security and future expansion, the rest of the Chagos Archipelago; second comes the island of Aldabra as a site for an air staging post, to be constructed at some time unspecified in the future; and thirdly, a list of five islands (Coetivy, Agalega, Farquhar, Ile des Roches, and Cosmoledos) which the Americans considered might be useful for unspecified defence facilities at some future date.

6. This is how the matter rests. Ministers will shortly be asked to reaffirm Her Majesty's Government's general support for this scheme and to agree that the Colonial Office should undertake the necessary constitutional steps in Mauritius and the Seychelles. Meanwhile the Ministry of Defence, in conjunction with other interested Departments, are calculating the cost of the acquisition of the islands chosen and assessing the military potentialities of each island. It is hoped that a paper will be circulated to Ministers within the next two or three weeks.

7. The Secretary of State will not wish to raise the subject, since we are not ready to give a substantive answer. If Mr. Rusk raises it, the Secretary of State can say that we regard the plan as an imaginative and valuable concept, that we are examining the American proposals as a matter of urgency, but that as Mr. Rusk will understand, there are a number of different - and difficult - aspects to be considered, and we are not quite ready to give a reply. If the Secretary

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of State is able to secure the agreement of the Colonial Secretary and the Defence Secretary, before he leaves for Washington, to his giving a more encouraging reply to Mr. Rusk, so much the better.

Permanent Under-Secretary's Department
18 March, 1965

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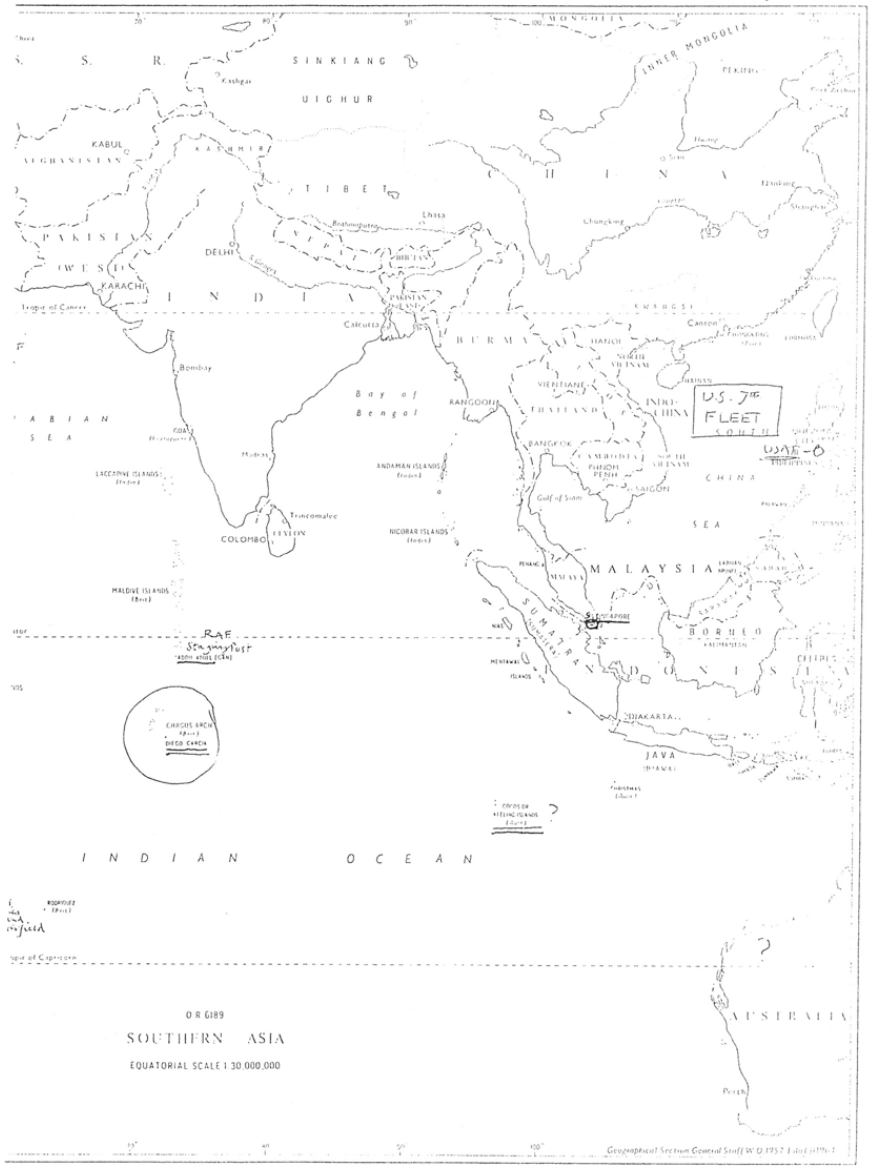

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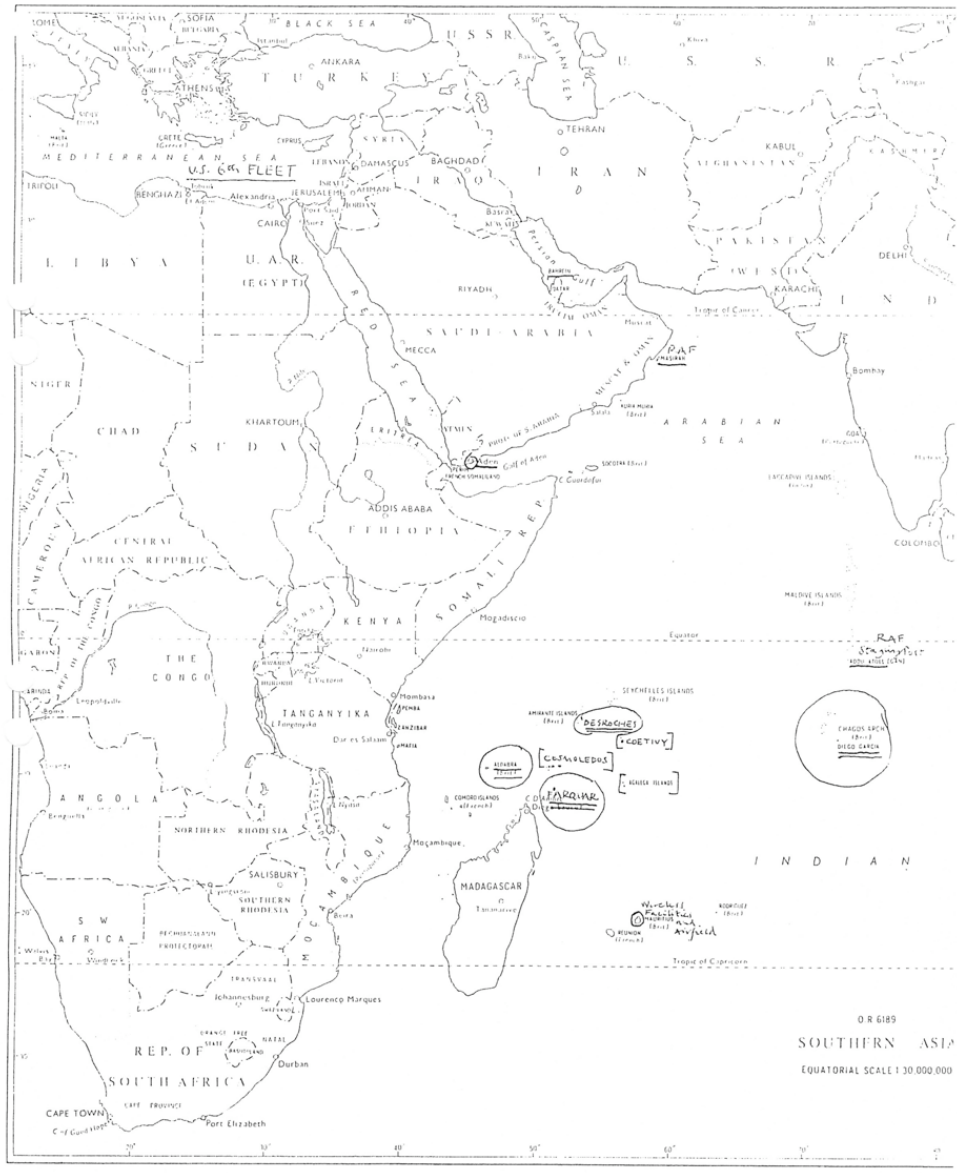

Annex 32

U.K. Defence and Oversea Policy Committee, *Defence Interests in the Indian Ocean: Legal Status of Chagos, Aldabra, Desroches, and Farquhar - Note by the Secretary of State for the Colonies*, O.P.D. (65) 73 (27 Apr. 1965)

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O.P.D. (65) 73
27th April, 1965

COPY NO. 64.

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

DEFENCE INTERESTS IN THE INDIAN OCEAN
Legal Status of Chagos, Aldabra,
Desroches and Farquhar

Note by the Secretary of State for the Colonies

At the meeting of the Committee on the 12th April I was invited to circulate a report on the status of the Indian Ocean islands which it is proposed should be made available for joint U.K./U.S. defence developments. This I now circulate at Annex.

2. The islands in question are the Chagos Archipelago (i.e. Diego Garcia, Six Islands, Peros Banhos, Salamon Islands and Trois Frères, including Danger Island and Eagle Island), the Aldabra Group, Desroches and Farquhar and, as the annexed report makes plain, they are all legally established as being parts of the Colonies of Mauritius or Seychelles. To separate them from Mauritius and Seychelles would require the making of amendments to existing constitutional instruments.

3. To establish the islands as a separate new administration would require a further and separate Order in Council.

A.G.

Colonial Office,
Great Smith Street, S.W.1.
27th April, 1965 SECRET

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Annex 32

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ANNEX

Note on the Legal Status of the Islands of the Chagos Archipelago, the Aldabra Group and the Farquhar Islands

Chagos Archipelago

There can be no legal doubts about the position over the Lesser Dependencies of Mauritius, which include the Chagos Archipelago. Section 90(1) of the Mauritius (Constitution) Order, 1964 defines Mauritius as meaning "the island of Mauritius and the Dependencies of Mauritius". "Dependencies" are defined in section 3(1) of the Mauritius Interpretation and General Clauses Ordinance, 1957, as being "Rodrigues and the Lesser Dependencies" commonly called the "Oil Islands". The "Oil Islands" are defined as including the islands of the Chagos Archipelago.

Aldabra Group, Desroches and the Farquhar Islands

2. There is also no doubt as to the legal status of these islands since they form part of the Colony of Seychelles by virtue of the definition of the boundaries of that Colony in clause 1(1) of the Seychelles Letters Patent of 15th March, 1948.

Separation

3. The separation of the Chagos Islands from Mauritius could best be achieved by an amendment of section 90(1) of the Mauritius Constitution Order in Council, 1964, so as to include a reference to the Dependencies by name; the Mauritius Interpretation and General Clauses Ordinance, 1957, should be amended accordingly. Separation of Aldabra, Desroches and Farquhar from Seychelles would necessitate suitable amendments being made to the Letters Patent.

New Administrative Unit

4. The establishment of a new administrative unit consisting of all these islands would require a prerogative Order in Council, perhaps containing a reference to the Colonial Boundaries Act, 1895, as an enabling power. This would probably best be on the model of the British Antarctic Territory Order in Council, 1962. This would establish the office of e.g. High Commissioner, allowing anyone

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(e.g. the Governor of Seychelles) to be appointed to this post, and would provide that he should exercise such functions as are conferred on him by the Order or assigned by Her Majesty. The High Commissioner could be empowered to make laws for the territory and to constitute offices.

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Annex 33

Telegram from the U.K. Foreign Office to the U.K. Embassy in Washington, No. 3582, FO 371/184523 (30 Apr. 1965)

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FROM FOREIGN OFFICE TO WASHINGTON

Cypher/OTP & By Bag

FO(S)/CRO(S)/WH(S) DISTRIBUTION

No. 3582
30 April, 1965
IMMEDIATE
SECRET

D. 15.17 30 April, 1965

Addressed to Washington telegram No. 3582 of 30 April,
Repeated for information Saving to U.K.Mis. New York No. 789

Defence Facilities in the Indian Ocean.

Please speak to Mr. Rusk or an appropriately senior member of the State Department, on the following lines.

2. As the Prime Minister has already told Mr. Rusk, we are anxious to press ahead with this project as rapidly as possible. We consider that the islands chosen for defence facilities to be developed either immediately or in due course, should be Diego Garcia and the rest of the Chagos Archipelago (Mauritius) and the islands of Aldabra, Farquhar and Des Roches (Seychelles). Agalega (Mauritius) and Coetivy and Cosmeledos (Seychelles) should be dropped.

3. It is now clear that in each case the islands are legally part of the territory of the colony concerned. Generous compensation will, therefore, be necessary to secure the acceptance of the proposals by the local Governments (which we regard as fundamental for the constitutional detachment of the islands concerned) in addition to compensation for the inhabitants and commercial interests which will be displaced. The total may come to as much as £10 million. We should, therefore, like to discuss with the United States Government the possibility of a contribution to these costs from their side.

4. You should add that Her Majesty's Government are not finally committed at this stage. We are, however, ready to approach the Seychelles and Mauritius Authorities with firm proposals for the detachment of the islands listed above. Timing of such an approach is not yet finally decided because of Mauritius political considerations.

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SECRET

Foreign Office telegram No. 3582 to Washington

-2-

5. Before making this approach it would be prudent to discuss what publicity line should be taken if the details should leak, and what approaches should be made in the capitals of the countries bordering the Indian Ocean who will be mainly concerned.

6. I should like to compare ideas with Mr. Rusk on this next week. It would be helpful if he could then give me at least a provisional answer to the suggestion in paragraph 3 above. Once a proposal is put to the Mauritius and Seychelles Authorities, a speedy (and therefore generous) settlement is most likely to be the best way of disarming criticism.

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Annex 34

Telegram from the U.K. Foreign Office to the U.K. Embassy in Washington, No. 3665, FO 371/184523 (3 May 1965)

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FROM FOREIGN OFFICE TO WASHINGTON

Cypher/OTP

FO(S)/CRO(S)/WH(S)/DISTRIBUTION

No. 3665
3 May 1965

B.1740 3 May 1965

IMMEDIATE
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Addressed to Washington telegram No. 3665 of 3 May
Repeated for information to: U.K. Mission New York.

My telegram No. 3644 [of 1 May].

Answers to questions in your telegram No. 1666 are as follows:

Your paragraph 2. Constitutional conference has not been finally arranged but will probably take place in the autumn; Colonial Secretary has proposed September. Outcome is unlikely to take Mauritius further than full internal self-government. It is impossible to estimate when or indeed if Mauritius will achieve full independence. The great debate in Mauritius concerns the ultimate status of the island: both "Independence" and "Association" have strong support.

2. Figure of £10 million is an outside estimate given the need to reach a quick settlement. It consists of:

(a) Resettlement and buying out commercial interests - £1½ million.
(b) Airfield in Mahé (thought necessary to secure Seychellois acceptance) - £2-3 million.
(c) At least equal compensation for Mauritius (population 720,000 as against Seychelles 45,000) - £2-3 million.
(d) Allowance for fact that this is likely to become a bargaining counter in constitutional negotiations in Mauritius unless it is settled speedily (and therefore generously) - say £2½ million.

3. Myers' point is a fair one. But economic difficulties (particularly in defence field) have increased since February 1964, and estimated compensation is much greater than we thought then. United States Embassy (Newman) are more relaxed about financial point and all we would like to propose at present is that a discussion on this might be initiated.

4. No objection to above figures being given to State Department but it must be understood that they are very rough approximations. Please let us know when Mr. Rusk would be ready to discuss what are his plans between last day of S.E.A.T.O. for which we hope he will be present and the opening of the N.A.T.O. Council?

MMMM

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Annex 35

Letter from D. J. Kirkness, PAC.93/892/01 (10 May 1965)

PAC.93/091/01 [redacted] 10th May, 1965.

You know of the proposals to detach certain islands from Mauritius and Seychelles for use for defence purposes. You are aware also that it is our view that willing acceptance in the two Colonies is essential to our object, and that in order to secure this it will be necessary to compensate the two Governments for their loss of territory. The likely form and scale of compensation were suggested in Mauritius telegram Personal No.75, which has been circulated.

2. I am writing now about the attribution to Votes of any expenditure of this kind. We think Ministers should be enabled to see the full financial effects quite clearly when they come to decide on the proposals as a whole. We have all along resisted the suggestion that expenditure on compensation should be met from Colonial Office Votes, or O.D.M. Votes covering expenditure on dependent territories, because we think that this would tend to mask the true cost of obtaining defence facilities by suggesting that compensation is a separate transaction necessary to meet some Colonial Office interest. There is in fact no Colonial Office interest in detaching these islands. If they were not wanted for defence purposes, we should have no reason for proposing either their detachment or these payments to Mauritius and Seychelles, which will be quite outside the normal pattern of our aid. Compensation will be part of the price of obtaining defence facilities which the United Kingdom needs, and it would be wrong, and would set an undesirable precedent, to treat it otherwise.

3. Insofar as it is possible to distinguish departmental interests within the policies of H.M.G. as a whole (and this distinction is of course implicit in the Vote system) the interest here is clearly a Ministry of Defence one. We therefore remain firmly opposed to meeting any part of the costs from Colonial Office or O.D.M. Votes, and hope it can now be accepted that the cost of compensation should be met from Defence Votes.

4. I am copying this letter to Wright, Ministry of Defence, Peck, Foreign Office, Champion, C.R.O., and Burr, O.D.M.

(D.J. Kirkness)

R.L. Sharp, Esq.,
Treasury.

Annex 36

Note from Trafford Smith of the U.K. Colonial Office to J. A. Patterson of the Treasury, FO 371/184524 (13 July 1965)

SECRET

Enter

PAC 93/892/05

13th July, 1965

24/66

You wrote on 17th June about defence interests in the Indian Ocean. Since then we have, as you know, during the Oxford Conference, discussed with the Governors of Mauritius and Seychelles the implications of detaching the various Islands from Mauritius and Seychelles. We know from the memorandum which they submitted to the Foreign Office on the 24th June (see Arthur's letter to Wright of the 25th June) that the Americans wished to discuss with H.M.G. as soon as possible "the principles on which access to the Islands, following their detachment, would be available to the United States". Finally as you know we hope, subject to the views of my Secretary of State, to ask the Governor of Mauritius and the Acting Governor, Seychelles to begin discussions with their Governments in the week beginning the 19th July on the defence proposals as a whole (in fact the matter would be put to unofficials on 22nd July in Seychelles and on 23rd July in Mauritius when regular meetings of the Executive Council and of the Council of Ministers would take place). Before this is done we ought to try to provide some guidance on the implications of detachment and, so far as we can see them at this stage, on the sort of arrangements we envisage for the Islands concerned after detachment; in particular we ought to try to provide as full an answer as possible to the questions raised in Seychelles telegram No. 143. From several points of view therefore there is some urgency in clarifying our views on these matters.

2. As we see it questions arise under the following main heads:-

(1) Legal
(2) Administrative
(3) Financial.

The views jointly agreed between the Colonial Office and the two Governors on the points arising under these heads are set out below.

3. We are all agreed that the Islands must be constitutionally separate from the Colonies of which at present they form part. As I think you know our idea is that the High Commissioner for the detached Islands should be the Governor of Seychelles wearing a separate hat. We are advised that the following action would be necessary:-

(a) Chagos would be separated from Mauritius by an amendmend of section 90(1) of the Mauritius Constitution Order in Council, 1964 so as to include a reference to the dependencies by name;

J.A.Patterson, Esq.,
Treasury.

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name; the Mauritius Interpretation and General Clauses Ordinance, 1957 would be amended accordingly. Separation of Aldabra, Desroches and Farquhar from Seychelles would necessitate suitable amendments to the Letters Patent.

(b) An Order in Council, similar in form to the British Antarctic Territory Order in Council, 1962 - copy attached - would be made to establish a separate territory.

As regards the law which would apply in the detached Islands you will see that the British Antarctic Territory Order in Council provided for the previously existing law to continue to apply after the appointed day and gave the High Commissioner power to make laws. We could not follow this pattern precisely in the present case since we are advised that it would not be legally practicable for there to be two codes of law applicable in the detached islands - namely, Seychelles law in Aldabra, Desroches and Farquhar and Mauritius law in the Chagos archipelago. We therefore consider that the Order in Council should provide that the Seychelles law will apply throughout the detached Islands from the appointed day.

As regards Diego Garcia we should have to work out in consultation with the Ministry of Defence, the Americans and the Governor how cases arising, once British and American service personnel started moving in, should be dealt with. In the interim, however, (as far as Diego Garcia is concerned) and indefinitely (as regards detached islands not at once required for defence purposes) the island managers at present possess magisterial powers and the High Commissioner could, whether by law or by administrative arrangement, make provision for this to continue and for cases requiring it to be handled by the Courts of Seychelles. Some of the islands in the Chagos Archipelago are at present visited by Mauritius magistrates and the High Commissioner would no doubt have to ensure that this continued, by arrangement with the Mauritius Government, at any rate until alternative arrangements were made.

4. As regards administration the present position is that the islands to be detached, and also those which will remain with Seychelles and Agalega which will remain with Mauritius, are barely administered. Broadly speaking such limited services as are provided, are provided by the island owners, though the Mauritius Government does we believe provide teachers and nurses in at any rate Diego Garcia and possibly in other islands of the Chagos Archipelago. Apart from this, however, the two Governments at present scarcely do more than arranging infrequent visits by the Governor and officials including medical officers and (in the Mauritius islands) magistrates. Seychelles has been actively considering improving matters (and they clearly should be improved - nurses and teachers on more of the islands are obvious needs) and Mauritius has been considering improving the administration of justice, but even so nothing very elaborate would be involved. As regards the detached islands our view is that, particularly as any or all of them may have to be evacuated at any time, there is no sense in setting up an elaborate administrative machine; we presume that the Ministry of Defence, who would no doubt have to finance whatever administration was established, would concur in this. Our suggestion would be that in the detached islands the level of services provided should, in the short term, remain precisely as it is at present and that, as regards any improvements to be made in the longer term, the detached islands should keep in step with what is done in the remaining

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remaining Seychelles islands; neither more nor less should be provided. This might involve the continued secondment of e.g. Mauritius teachers and nurses to certain of the detached islands, but the High Commissioner could no doubt make the necessary arrangments for this. As Seychelles improved its administration of its remaining islands some increase in costs in the detached islands would be involved; but the costs arising would in fact be negligible and any additional staff needed could be recruited in Seychelles by the High Commissioner. Similarly staff (e.g. medical staff) needed for periodic visits could be provided from Seychelles on loan; whether visiting magistrates were still borrowed from Mauritius or whether arrangements were made for Seychelles to find them is a matter the High Commissioner could sort out.

5. By far the most difficult administrative problem arising from detachment however will clearly be the resettlement problem which at present of course arises only in connection with Diego Garcia, involving about 480 people. We and the two Governors are agreed that our aims in this operation should be as follows:-

(i) to resettle these people in other out-islands rather than in Mauritius or Seychelles themselves; this should cause a great deal less difficulty, making it easier for unofficials to accept our proposals as a whole, be more likely to be acceptable to the individuals concerned and finally be cheaper;

(ii) not to resettle them on other detached islands if this can be avoided; this is obviously desirable so as to avoid increasing our problem in these islands if and when they are needed for defence purposes;

(iii) to aim at resettling as many as possible (and certainly the Mauritians who are "ilecis") in Agalega. This is owned by the Chagos/Agalega Company which also owns Chagos; Mr. Moulinie, the main shareholder, also owns Farquhar.

(iv) to secure American agreement to providing employment on Diego Garcia for as many as possible of those to be resettled, for as long as possible, during the construction phase. This would have the effect of spreading out the resettlement operation and thus facilitating its smooth progress; it would also ease the difficulties of Seychelles in taking back any Seychellois who could not be resettled in Agalega since the longer they could stay on working in Diego Garcia the nearer would be the time when work on airfield construction in Mahe (assuming that this is agreed as part of the compensation to secure Seychelles acquiescence in the defence project) would be available for them (the Governor estimates that work on the ground might start 18-24 months after a decision to build an airfield were taken).

Why so long

6. We have considered the staff and other requirements of the resettlement operation. As far as we can judge at present these would in the main consist of:-

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(i) staff - the High Commissioner would need one good expatriate administrative officer, together with a local assistant (who could be recruited in Seychelles) and supporting local staff for himself and the administrative officer;

(ii) a ship to enable the detached islands to be administered (and which might also help with the resettlement operation); this would have to be large enough to cover over 2000 miles of open sea (from Mahe to Diego Garcia and back) and might cost as much as £150,000 (unless the Ministry of Defence could provide something suitable) though we have no firm figures yet; it could be crewed by Seychellois and serviced in Seychelles with major overhauls in Mombasa; there might however be some difficulty about finding a master mariner in Seychelles to command it.

We can foresee no need for separate buildings, telegraph facilities etc. for the High Commissioner and his staff. Existing facilities in Seychelles could be made use of and paid for. Per contra Seychelles might well wish to make some use of the ship in connection with their intention of improving services to their own remaining out-islands; it would no doubt be possible for this to be arranged in conjunction with the resettlement operation and the High Commissioner could make a suitable charge to Seychelles for this assistance.

7. As regards financial matters the revenue deriving from these islands consists essentially of export duty on their copra shipped out through Seychelles and company tax on the profits of Moulinie's Seychelles-registered company. It would be impossible in practical terms to separate this revenue out, and we think we should allow Seychelles to keep this revenue as an offset against the cost of services they will be providing for the detached islands. The cost of such services as the High Commissioner has to provide direct would be met from U.K. funds. It is relevant that all the detached islands, apart from Aldabra which is Crown land, are owned either by the Chagos/Agalega Company, which is registered in Seychelles, or by individuals resident in Seychelles. Against this background we have, in consultation with the two Governors, considered the financial problems with particular reference to the questions asked by Lloyd in the fourth paragraph of his telegram No. 143. These are:-

(a) whether we propose to settle the compensation figure at the time when an island is actually required for defence purposes or now, in advance?

(b) whether islands now forming part of Seychelles may benefit from facilities provided by the Seychelles Government (e.g. agricultural bank loans, fertilizer subsidies etc., and will pay Seychelles taxes).

8. The first question to consider is whether it is in our interest that development of detached islands not immediately required, should be encouraged. It is, of course, obvious that if the islands were developed this would mean that compensation, if paid when they were later required for defence purposes, would be higher than if they had been neglected; and this applies a fortiori if Government had actually encouraged development. The continued active encouragement of long term development would therefore be a short sighted policy. On the other hand, it may well be that the Americans will not require the islands, other

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than Diego Garcia, for some years to come, and some limited development which might result in increased employment opportunities, could facilitate the smooth solution of the resettlement problem.

9. Against this background our conclusions were:-

(i) no taxes should be levied by the High Commissioner in the detached islands; correspondingly no development incentives should be provided by the High Commissioner;

(ii) the Government of Seychelles should be free to continue to raise revenue in relation to commercial activities which continue in those of the detached islands which are not at once needed for defence purposes; it would continue, e.g. to levy export duties on the products of the islands which were exported through Seychelles and to tax the island owners; one consequence of this would be that the budgetary deficit position of Seychelles would not be adversely affected at this stage by the detachment operation;

(iii) no long-term development incentives (e.g. tax remission for replanting) would be given to the owners of the detached islands which were not immediately needed.

(iv) short-term development incentives (e.g. temporary tax holidays and fertilizer subsidies) would be given in relation to the detached islands which were not immediately needed. Full scale incentives both short and long-term would be given to the Chagos/Agalega Company in relation to Agalega; if necessary, amendments to Seychelles law to make this possible would have to be made. We are advised that despite the fact that Agalega is Mauritius territory arrangements of this sort would not be ultra vires.

(v) the points covered in (iii) and (iv) above would have to be covered in agreements over compensation negotiated with the Island owners. Bearing in mind (ii) above one of the conditions of the agreements would have to be that the Company would continue to be registered in Seychelles and that the produce would continue to be exported through either Seychelles or Mauritius as in the past;

(vi) if conditions on these lines were imposed we might have to recognise that compensation for the Island owners might have to be paid over at the time of detachment, rather than when the islands were actually taken for defence use. In negotiation with the Island owners we should at least have to leave this possibility open. In these circumstances the former owners might continue to run the detached islands not immediately required as agents for the High Commissioner.

10. Two further points remain. In the first place, particularly as we could want help from Mr. Moulinie and the Chagos/Agalega Company in resettlement on Agalega and bearing in mind that a good deal of development has already gone into some of the detached islands which they own, and that further long-term development plans which they have would have to be given up

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(except in Agalega), we should have to recognise that these factors would have to be taken into account in fixing compensation and we should have to authorise the Acting Governor when he consults his unofficials about the defence proposals as a whole to make plain to Mr. Moulinie that these factors would be taken into account.

11. The second point concerns the position of Agalega. Newton in his report recommended that, in any case, this should be detached from Mauritius and attached to Seychelles. This would make sense, particularly as we would press the Chagos/Agalega Company to resettle labour from Diego Garcia there. Sir John Rennie thinks that it could well be raised in Mauritius and the Mauritius Government might well think that to disembarrass themselves of the problem of administering a single remaining out-island would make sense. If this were proposed from Mauritius there would be no objection to going ahead with this change as a separate exercise from the detachment operation.

12. For the reasons given at the beginning of this letter there is great urgency about reaching at least provisional conclusions on these matters. I hope that you and Harris (O.H.M.), Walsh Atkins (C.R.O.), Peck (P.O.) and Wright (M.O.D.) to whom this letter has been copied can let me know by noon on Friday, 16th July that you agree to what is proposed. If there are any difficulties I suggest that we should meet at 3 p.m. on Friday to try and sort them out so that we may decide what guidance to telegraph to, in particular, the Acting Governor Seychelles.

(Trafford Smith)

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STATUTORY INSTRUMENTS

1962 No. 400

SOUTH ATLANTIC TERRITORIES

The British Antarctic Territory Order in Council, 1962

Made - - - - 26th *February*, 1962
Laid before Parliament 2nd *March*, 1962
Coming into Operation 3rd *March*, 1962

At the Court at Buckingham Palace, the 26th day of February, 1962

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), the Colonial Boundaries Act, 1895(b), 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.—(1) This Order may be cited as the British Antarctic Territory Order in Council, 1962.

(2) This Order shall come into operation on the third day of March, 1962, and shall be published in the Falkland Islands Government Gazette.

Interpretation.

2.—(1) In this Order—

"the British Antarctic Territory" means all islands and territories whatsoever between the 20th degree of west longitude and the 80th degree of west longitude which are situated south of the 60th parallel of south latitude;

"the Territory" means the British Antarctic Territory.

(2) The Interpretation Act, 1889(c), 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.

British Antarctic Territory to be a separate colony.

3. On the day of the commencement of this Order all the islands and territories whatsoever which were immediately before such commencement comprised in the Dependencies of the Colony of the Falkland Islands as defined in the Letters Patent dated the 21st day of July, 1908(d), and the 28th day of March, 1917(e), and are situated south of the 60th parallel of south latitude between the 20th degree of west longitude and the 80th degree of west longitude shall form a separate colony which shall be known as the British Antarctic Territory.

Establishment of office of High Commissioner.

4. There shall be a High 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.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 58 & 59 Vict. c. 34.
(c) 52 & 53 Vict. c. 63. (d) Rev. VII, p. 583. (e) Rev. VII, p. 585.

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Powers and duties of High Commissioner.

5. The High Commissioner shall have such powers and duties as are conferred upon him by or under this Order or any other law, and such other powers and duties as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such powers or duties are conferred, shall do or 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.

Oaths to be taken by High Commissioner.

6. A person appointed to hold the office of High Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and an oath for the due execution of his office in the form set out in the Schedule to this Order.

Discharge of High Commissioner's functions during vacancy, etc.

7.—(1) Whenever the office of High Commissioner is vacant or the High Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of High Commissioner under this section he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to the office of High Commissioner.

(3) For the purposes of this section—

(*a*) the High Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the duties of his office, during his passage from any part of the Territory to another or to any other British territory south of the 50th parallel of south latitude, or while he is in any part of the last mentioned territory; and

(*b*) the High Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of High Commissioner's functions by deputy.

8.—(1) The High Commissioner may, by Instrument under the Public Seal of the Territory, authorize a fit and proper person to discharge for and on behalf of the High Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of High Commissioner as may be specified in that Instrument.

(2) The powers and authority of the High Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of High Commissioner as the High Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the High Commissioner by Instrument under the Public Seal.

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There shall be a Public Seal for the Territory. The High Commissioner shall keep and use the Public Seal for sealing all things whatsoever that shall pass the said Seal. Public Seal.

10. The High Commissioner, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Territory, make appointments to any such office and terminate any such appointment. Constitution of offices.

11.—(1) The High Commissioner may, by Regulations, make laws for the peace, order and good government of the Territory. Power to make Regulations.

(2) Any Regulation made by the High Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any Regulation has been disallowed by Her Majesty, the High Commissioner shall cause notice of such disallowance to be published in such manner and at such place or places in the Territory as he may direct.

(4) Every Regulation disallowed shall cease to have effect as soon as notice of disallowance is published, and thereupon any enactment amended or repealed by, or in pursuance of, the Regulation disallowed shall have effect as if the Regulation had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.

12. The High 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 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 punishment imposed on that person for any offence; or

(*c*) substitute a less severe form of punishment for any punishment imposed on that person for any offence; or

(*d*) remit the whole or any part of any punishment imposed on that person for any offence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

13.—(1) Subject to the provisions of this section, the existing laws shall continue to have effect in the Territory after the commencement of this Order and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order. Existing laws.

(2) The provisions of subsection (1) of this section shall be without prejudice to any powers conferred upon the High Commissioner by section 11 of this Order.

(3) For the purposes of this section "existing laws" means all Ordinances, Laws, rules, regulations, orders and other instruments having the effect of law in the Territory immediately before the commencement of this Order.

14.—(1) The High Commissioner may, by Regulations made under this Order, establish such courts of justice in and for the Territory as he may think fit and may make such provisions as he may think Establishment of courts.

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fit respecting the jurisdiction and powers of any such court, the proceedings in any such court, the enforcement and execution of judgments, decrees, orders and sentences of any such court given or made in the exercise of such jurisdiction and powers, and respecting appeals therefrom.

(2) A court established under this section shall sit in such place or places in the Territory as the High Commissioner may appoint:

Provided that it may also sit in such place or places within any other British territory south of the 50th parallel of south latitude as the High Commissioner, acting with the concurrence of the Governor of such territory, may appoint, in which case it may exercise its jurisdiction and powers in like manner as if it were sitting within the Territory.

(3) The High Commissioner may constitute all such judgeships and other offices as he may consider necessary for the purposes of this section and may make appointments to any office so established, and any person so appointed, unless otherwise provided by law, shall hold his office during Her Majesty's pleasure.

Amendment of section 1 (1) of the Falkland Islands (Legislative Council) Order in Council, 1948.

15. Subsection (1) of section 1 of the Falkland Islands (Legislative Council) Order in Council, 1948(a), shall be amended by the deletion therefrom of the definition of "the Dependencies" and the substitution therefor of the following definition:

"the Dependencies" means all islands and territories whatsoever between the 20th degree of west longitude and the 50th degree of west longitude which are situated between the 50th parallel of south latitude and the 60th parallel of south latitude; and all islands and territories whatsoever between the 50th degree of west longitude and the 80th degree of west longitude which are situated between the 58th parallel of south latitude and the 60th parallel of south latitude.".

W. G. Agnew.

Section 6. SCHEDULE

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF HIGH COMMISSIONER

I, DO SWEAR (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of High Commissioner of the British Antarctic Territory.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes provision for the constitution into a new colony under the name of the British Antarctic Territory of part of the Dependencies of the colony of the Falkland Islands and for the administration of the new colony.

(a) S.I. 1948/2573 (Rev. VII, p. 591: 1948 I, p. 1018).

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Annex 37

Telegram from the Secretary of State for the Colonies to Mauritius and Seychelles, Nos. 198 & 219, FO 371/184526 (19 July 1965)

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

TO (1) MAURITIUS
(2) SEYCHELLES

Cypher

Sent 19th July, 1965. 18.00 hrs.

IMMEDIATE
SECRET(AND PERSONAL)TO MAURITIUS
(1) PERSONAL No. 198
(2) No. 219

To (1) Your telegram Personal No. 61.

To (2) Your telegram Personal No. 56.

U.K./U.S. Defence Interests.

Matter has now been considered by Ministers in light of your advice. Americans have been informed that while we could not agree to their proposals in full we are nevertheless willing in principle to pursue proposed joint development further on the basis that, subject to the agreement of the two Governments, which we regard as essential, we would be prepared to detach from Mauritius and Seychelles and make available for our own and American use the following islands:

the whole of the Chagos Archipelago (including Diego Garcia),
Aldabra,
Farquhar and Desroches.

The position is thus that, whilst no final decision to proceed has yet been taken, provided that total compensation necessary to secure agreement of Governments of Mauritius and Seychelles is not too large, project will be proceeded with. As you know basic intention is that Britain should be responsible for cost of acquisition of necessary islands and compensation generally whilst Americans would finance construction costs of defence facilities.

2. For your own information Ministers were when considering the matter, aware of my views on probable elements in compensation necessary to secure acceptance of these proposals by Governments of Mauritius and Seychelles as follows:-

(i) unavoidable costs in respect of

(a) compensation for island owners;

(b) costs of resettlement of displaced labour;

(ii) probable demands by Governments for compensation in respect of loss of territory (additional to existing and anticipated development assistance under normal arrangements) which might comprise -

(a) provision of a grant to Seychelles sufficient to cover the cost of a full length civil airfield on Mahé (which we assume might be £2-3 m.);

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(b) provision of a capital grant to Mauritius, the amount being almost certainly not less than that involved in (a) above,

(iii) willingness to finalise on generous terms draft agreement covering the American Tracking Station in Seychelles which must in any case be settled as soon as possible and which unofficials would be likely to insist upon before considering any further facilities for Americans;

(iv) possible additional demands from Mauritius -

(a) to cooperate in a scheme to enable substantially more Mauritian emigrants to settle in Britain;

(b) to make efforts to secure American agreement to a substantial sugar export quota for Mauritius to the U.S.A.

3. Expenses as at (i) in preceding paragraph are clearly unavoidable. So too no doubt are some substantial compensation payments on lines of (ii). As to (iii) we recognise that in this wider context this should not present undue difficulty. As to (iv) both these possible demands would cause us grave difficulties and we sincerely hope that Governor Mauritius will be able to steer his Ministers off making them.

4. As indicated above no final decision on this project has yet been taken. In view of appreciable total compensation cost which seems inevitable we have raised with Americans question whether, without departing basically from division of costs of project indicated in paragraph 1 above, they would be prepared to make some contribution to compensation costs. The Americans have now stated that they are prepared in principle to make such a contribution. They have however stipulated (and we agree) that this fact and the method of payment, which would not be direct, must be kept strictly secret, and they attach the greatest importance to this. In any case, before Ministers here can take final decision on whether project should go ahead, we need some clear indication as to amount and nature of compensation necessary to secure Mauritius and Seychelles agreement.

5. Ministers have therefore directed that discussions should now be opened with Mauritius and Seychelles Governments on proposals outlined in paragraph 1 above. The object of this initial round of consultations with -

(to (1)) your Ministers

(to (2)) members of your Executive Council would be:-

(i) to secure their reactions to proposed development on lines indicated in paragraph 1 above;

(ii) to attempt to clarify likely compensation demands so as to enable us to gauge what it might be necessary to offer to secure willing and public acquiescence in proposed developments.

/You

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

You should not, of course, in these initial discussions indicate contents of paragraph 2 above. You should explain that before the British Government finally decides whether to go ahead with the project it is necessary to have some idea of its likely cost since, if this were too high, it might not be possible, in view of current overseas finance difficulties, to proceed with it at all. The British Government does not wish -

(to (1)) Mauritius

(to (2)) Seychelles

to incur any expense or loss as a result of the operation and will naturally be responsible for meeting the cost of compensating landowners and also the cost of resettlement of displaced labour. In addition, the British Government recognises that it would be reasonable for the Governments of Mauritius and Seychelles to expect some element of compensation in view of the proposed detachment of territory and would welcome an indication from those Governments of their views as to the level of compensation likely to be required to make the project acceptable to their public opinion.

6. In putting the matter to your unofficials you should indicate that as regards Diego Garcia there is a firm requirement for the establishment of Communications Station and supporting facilities including an airstrip. As regards the remainder of the islands (including the remainder of the Chagos Archipelago) you should indicate that the requirement for these is in the nature of an insurance for the future, that no firm plans exist for early defence developments on them but that it is possible that air and/or naval facilities may be required in future years. In addition, you should make plain points about timing of movements of population and about use of local labour mentioned in paragraph 1 of my telegram -

(to (1)) Personal No. 66

(to (2)) No. 75.

In this connection with reference to O.A.G. Seychelles telegram No. 104, whilst the Americans have indicated that they would not rule out possibility of employing Seychelles labour in connection with construction of facilities we know that this is likely to be difficult for them; any long-term employment possibilities once defence facilities are operational are extremely unlikely. O.A.G. Seychelles should not therefore take initiative in raising this matter with members of Executive Council; if point is raised by them there would be no objection to saying that British Government recognises importance to Seychelles of additional employment opportunities and will certainly bear the point in mind. For your own information we, of course, have in mind in this connection that if civil airfield is built on Mahé as part of quid pro quo this would generate very considerable employment possibilities.

7. I assume that you will judge it useful to stress the importance of these developments in the context of future security in the Indian Ocean area. However, both we and the Americans are anxious to play down this argument and also the American strategic role; these aspects are liable to arouse particular suspicions and hostility in some of the countries around the Indian Ocean.

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In instructions to British and American posts abroad, therefore, as little as possible is being said about these points. I must leave it to you to decide how to deal with this dilemma; I suggest that if necessary you should say merely that in the short run we welcome joint Anglo/American developments in the area, even though their practical effects would be limited at first to communication and supporting facilities on one island. In the longer term we would regard the possible eventual construction of air or naval staging facilities on one or more of the islands as a potential contribution to the security of the area, to the benefit of all concerned. You should add that H.M.G. hope that the proposals will be welcomed in Mauritius and Seychelles and that they attach considerable importance to securing the support of

(to (1)) your Ministers

(to (2)) members of your Executive Council

to them.

8. You should explain that it would be intended that the islands in question should be constitutionally separated from Mauritius and Seychelles and established, by Order in Council as a separate British administration. The Americans would not be prepared to go ahead on any other basis. Any suggestion of the islands required being made available on the basis of either leases or defence agreements with Mauritius or Seychelles must therefore be ruled out.

9. The above is also the answer to the point raised in O.A.G. Seychelles telegram No. 118 i.e. the Americans would not go ahead on any basis except excision. Excision would, of course, not (repeat not) affect constitutional relationship between Seychelles and Britain which would in any case be developed in the future as in the past in consultation with Unofficials in Seychelles. There would be no objection to O.A.G. Seychelles speaking on these lines to members of Executive Council if matter is raised; for his own information, with reference to his telegram No. 108 and paragraph 4 of his telegram No. 118 I am satisfied that integration would be most unlikely to be acceptable to Parliament here.

10. Present intended scope of development is as indicated in paragraph 6 above and you should not go beyond this. We recognise however that in light of recent newspaper speculation you may may be asked about possibility of islands being used in connection with nuclear forces. If this point is raised you can only say that it is an established point of both British and American policy never either to confirm or to deny the presence or absence of nuclear weapons in any base; or to confirm or to deny the intended use of any defence facility in connection with nuclear weapons. This policy is adopted for obvious reasons and if point is raised you must ask your unofficials to accept this; you could, however, point out that at present all that is intended is communications facilities in Diego Garcia.

11. In putting matter to -

(to (1)) your Ministers

(to (2)) members of your Executive Council

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

please emphasise strictly confidential nature of proposals and stress that at this stage they should give no publicity to any part of them or discuss them with anyone, except amongst themselves.

12. I understand from recent discussions in London with Governor, Mauritius, that he will put matter to Council of Ministers on Friday, 23rd July. I also understand from Governor, Seychelles, that Executive Council normally meets on Thursdays and I suggest, therefore, that O.A.G. Seychelles should raise matter with Executive Council on 22nd July. If Governor, Mauritius, wished to give advance information on matter to Premier there would be no objection to him doing so also on 22nd July. Grateful urgent telegraphic confirmation that these timings will be followed. Subsequently grateful also for telegraphic confirmation after you have spoken to unofficials that you have done so, in order that we can institute follow-up through posts in Commonwealth and foreign countries.

13. If you require further guidance before putting the matter to your unofficials I shall be very willing to supply any information you may need. A separate telegram will be sent before 22nd July in reply to O.A.G. Seychelles telegram No. 143 covering arrangements for administration of detached islands after detachment on lines recently discussed here with Governor, Seychelles and Governor, Mauritius; telegram will be repeated to Governor, Mauritius.

14. I should be grateful if as soon as possible you could let me know unofficials' reactions and, in particular, let me have estimates of the likely cost of compensation.

(Encryption sent to Ministry of Defence for transmission to Mauritius)

Copies sent to:-

Ministry of Defence	-	Mr. C.W. Wright
Ministry of Overseas Development	-	Mr. I.H. Harris
Treasury	-	Mr. J.A. Patterson
Foreign Office	-	Mr. E.H. Peck
Commonwealth Relations Office	-	Mr. L.B. Walsh Atkins

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Annex 38

Telegram from the Secretary of State for the Colonies to Mauritius and Seychelles, PAC 93/892/05, FO 371/184524 (21 July 1965)

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

TO SEYCHELLES (O.A.G.)

Cypher PAC 93/892/05

Sent 21st July, 1965. 00.15 hrs.

17 AUG 1965
24/31 (c)

IMMEDIATE
SECRET (AND PERSONAL TO MAURITIUS)
No. 222

Addressed to O.A.G. Seychelles.
Repeated IMMEDIATE to O.A.G. Mauritius,
PERSONAL No. 199.

My telegram No. 219, paragraph 13 (to Mauritius PERSONAL No. 198) and your telegram No. 143.

Administration of detached islands.

In discussion here with Governor Mauritius and Governor Seychelles agreement was reached on arrangements necessary under Legal, Administrative and Financial heads. These, with minor changes, have since been cleared with other interested Departments and proposed arrangements are set out in subsequent paragraphs which inter alia provide answers to questions raised in your telegram under reference.

2. Legal.

(a) Chagos to be detached by amendment of section 90(1) of Mauritius Constitution Order in Council 1964 to include reference to dependencies by name. Consequential amendment to Mauritius Interpretation and General Clauses Ordinance. Detachment of Aldabra Desroches Farquhar by suitable amendments to Letters Patent.

(b) Separate territory to be established by Order in Council similar to British Antarctic Territory Order in Council 1962. Under this a representative of Her Majesty would be appointed (referred to for convenience below as Commissioner although some other title may eventually be chosen). The Commissioner would be the same person as the Governor, Seychelles and would under the Order in Council have power to make laws.

(c) Seychelles law to apply mutatis mutandis in detached islands including Chagos archipelago.

(d) For Diego Garcia we shall have to decide in consultation with Americans, Ministry of Defence and Governor how cases involving British or American service personnel will be handled. Until such personnel arrive (and indefinitely in other detached islands) Commissioner could by law or administrative action provide for magisterial powers of island managers to continue and for Seychelles courts to

/try

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try cases when necessary. By arrangement with Mauritius Government he could ensure that Mauritius magistrates continued to visit Diego Garcia and other Chagos islands as in past, pending alternative arrangements.

3. Administrative.

(a) General. Administration in detached islands not immediately required for defence purposes to be neither better nor worse than at present in short term, including continuation of secondment of Mauritius teachers, nurses, etc. to Chagos; in longer term any improvements should not go beyond keeping in step with what is done in other Seychelles islands.

(b) Staff for islands. Staff required to be borrowed by Commissioner from either Mauritius (e.g. magistrates for visits to Chagos and nurses and teachers for posting there) or from Seychelles.

(c) Resettlement

(i) People from Diego Garcia (and any other islands when evacuated) should be resettled in other out-islands rather than in Mauritius or Seychelles.

(ii) Resettlement on other detached islands to be avoided if possible.

(iii) Aim at resettling as many as possible of the people from Diego Garcia (and certainly the Mauritians who are "iluois") on Agalega.

(iv) American agreement to employ maximum number of locals on Diego Garcia during construction phase, to be sought so as to spread resettlement and so as to increase prospect of there being alternative work available in Seychelles by time any Seychellois who could not be absorbed in Agalega returned to Mahe.

(d) Staff for Commissioner. We thought Commissioner would need one good Expatriate administrative officer plus local assistant plus supporting local staff for Commissioner and Administrative officer; local staff to be recruited in Seychelles.

(e) No separate buildings, telegraph facilities, etc. needed for Commissioner.

(f) Ship. Need for Commissioner to have shipping available (over and above that at present serving Seychelles islands) to enable him to administer in particular Chagos (and also handle resettlement operation) is accepted in principle. We have not yet gone into question of how this need would be met.

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

4. Financial.

(a) Taxes. No taxes or duties to be raised and no development incentives to be provided by Commissioner in detached islands.

(b) Seychelles Government to continue to derive revenue (e.g. export duty on copra and income tax from owners) in respect of detached islands; if any change required in Seychelles law to make this possible, there would be no objection to this.

(c) Services. In return for (b) Seychelles Government to be responsible for cost of providing services on existing lines in detached islands not at once required for defence purposes (including parts of Chagos Archipelago other than Diego Garcia) e.g. as in paragraphs 2(d) and 3(b) above. In this context, as regards Chagos, you will no doubt hope to arrange as part of deal with Chagos/Agalega Company that in future they will export Chagos copra through Seychelles so that Seychelles will be able to derive export duty on it.

(d) Costs of new services resulting from detachment operation (e.g. paragraphs 3(d) and (f) above) would be met by British Government.

(e) Development. No (repeat no) long term incentives (e.g. tax remission for replanting) to be given by Seychelles Government in respect of detached islands not immediately needed. Short term incentives (e.g. tax holidays and fertiliser subsidies), however, could be given. Full scale (i.e. short and long term) incentives should be given to Company for development of Agalega, Seychelles law if necessary being amended to make this possible; legal advice is that fact that Agalega is Mauritius territory would not (repeat not) render such action ultra vires.

(f) Compensation to island owners. Importance is attached to compensation being fixed at time of detachment on basis of existing assets and not (repeat not) at time island is required for defence use. Ideal arrangement from point of view of H.M.G. would be for actual payment only to be made when islands required for defence use. We recognise however that, at any rate as regards Moulinié and Chagos/Agalega Company, as we should be seeking co-operation from them e.g. over resettlement on Agalega and point in (c) above, we may have to envisage including in package deal with them (which will in any case be necessary) agreement to pay compensation on detachment and arrangements for continued running of islands not immediately needed (a lease back of islands from Commissioner to Company on short term basis on economic terms and on basis that any future development was at lessee's risk would be one way of tackling this).

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5. We hope above provides sufficient guidance for purposes of initial discussions of defence proposals in Executive Council and with Moulinie; there is no objection to any of these matters being discussed with them (you should however, stress that title of Commissioner is used only for convenience - see parenthesis in paragraph 2(b) above). In brief our idea is that in islands not immediately needed for defence purposes there should be smallest possible disturbance of existing arrangements.

6. One other point arises. We have noted Newton's arguments for transfer of Agalega to Seychelles. We do not, however, wish to complicate detachment operation by ourselves raising this issue. Rennie thinks it possible that it may arise during his talks with Mauritius Ministers. If so we can of course consider it at same time as but as separate exercise from detachment operation.

(Encyphered text passed to Ministry of Defence for repetition to Mauritius)

Copies sent to:-

Treasury	-	Mr. J.A. Patterson
Commonwealth Relations Office	-	Mr. L.B. Walsh-Atkins
Foreign Office	-	Mr. E.H. Peck
Ministry of Defence	-	Mr. F.J. Burlace
Ministry of Overseas Development	-	Mr. I.H. Harris

SECRET

Annex 39

Letter from E. J. Emery of the British High Commission in Canada to J. S. Champion of the U.K. Ministry of Defence, Commonwealth Relations Office (22 July 1965)

Annex 39

SECRET

344/1

British High Commission,
80 Elgin Street,
Ottawa 4, Canada.

22 July, 1965.

Dear John,

The Department of External Affairs are thin on the ground this month (cottage time and summons by Mr. Martin to his bedside in Windsor) but yesterday I saw the Acting Head of the Commonwealth Division, Mr. Beattie, to carry out the instructions in C.R.O. telegram No. 61 Saving about defence interests in the Indian Ocean. I had previously consulted my opposite number in the United States Embassy and had agreed with him that I should speak for his Mission as well as ours.

2. I handed Mr. Beattie a bout de papier describing the current proposals as set out in C.R.O. telegram No. 60 Saving and giving the facts about the islands in question as in C.R.O. telegram No. 62 Saving. I emphasised the strategic importance of the proposed development of joint user facilities in the Indian Ocean and expressed the hope of the British and United States Governments that if there were international criticism, e.g. at the United Nations, the Canadian attitude would be sympathetic and helpful.

3. Mr. Beattie said he was confident that the Canadian Government would not question the strategic value from the

/western

J.S. Champion, Esq. O.B.E.,
Defence Department,
Commonwealth Relations Office,
London, S.W.1.

SECRET

Annex 39

SECRET

western point of view of what was proposed. He thought, however, that there might well be a great hullabaloo at the United Nations and Canada would have to consider carefully how best she could help us if that were so. He was speaking without briefing but he seemed to recall that Canada had been specially associated with a resolution at the United Nations some years ago condemning the transfer of sovereignty of any part of a state without the consent of the inhabitants. The Department of External Affairs would be grateful for more information about how consultation with Mauritius and the Seychelles would be conducted. Would the Legislative Assembly of Mauritius and the Legislative Council of the Seychelles be consulted and if so were the inhabitants of the islands ear-marked for detachment directly represented in those bodies? Had ~~they~~ we contemplated some method of direct consultation with the inhabitants of the islands in question? Satisfactory answers to these questions might well make it easier for Canada to help us at the United Nations. I pointed out that the populations involved were very small and, in the case of the Chagos Archipelago, were "mostly contract labour from Mauritius and the Seychelles". This might mean that their real homes were in Mauritius and the Seychelles and that they only went ~~in~~ to the Chagos Archipelago for brief contract periods, not for permanent residence. I promised to make inquiries about this and to ask you for any further information you could give us at this stage to answer Mr. Beattie's queries

/and

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and to help reassure the Canadians that if they stood up for us in this at the United Nations they would not be open to accusation that they were going back on any resolution to which they had earlier put their hand. I shall be grateful to know what more I can say to the Department of External Affairs.

4. I am copying this letter to Eric Le Tocq in Canberra, Barry Smallman in Wellington, James Scott in New York and Oliver Forster in Washington, and I enclose an extra copy for your use.

Yours ever,

(E. J. Emery)

SECRET

Annex 40

Telegram from the Governor of Mauritius to the Secretary of State for the Colonies, No. 170, FO 371/184526 (23 July 1965)

FO 371/184526
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SECRET

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

FROM MAURITIUS (Sir J. Rennie)

Cypher D. 23rd July, 1965.
R. 23rd " " 21.30 hrs.

24 JUL 1965

24/116 (A)

IMMEDIATE
SECRET AND PERSONAL
PERSONAL NO. 170.

Your telegram Personal No. 198.

U.K./U.S. Defence Interests.

I informed Ministers this morning of what is proposed. While not ill-disposed they asked for time to consider further. This was reasonable request and while making clear you wish (corrupt group) early indication of their views, I agreed to discuss again on Friday 30th July unless you instructed me to pursue urgently before then.

2. Dislike of detachment was expressed both by Premier and Duval though I explained this was regarded as essential. It was clear however that any attempt to detach without agreement would provoke strong protest.

3. Premier raised the question of mineral or other valuable rights that might arise in future and considered the interests of Mauritius must be safeguarded. He also referred to reversion to Mauritius if use for defence purposes abandoned.

4. Interest was shown in the project as bargaining counter for the benefit of Mauritius but no indication was given of intention to use for party advantage. I was asked whether I had any idea of the compensation contemplated. I replied that clearly difficult to assess and you had asked me to sound them on the point. Ministers mentioned the possibility of the American sugar quota and referred to press speculation on the amount of compensation. I said that the sugar quota would raise difficult issue, and that lump sum payment would be favoured, and that exaggerated ideas should not be entertained since there was limit to the amount the British Government would think it worth paying for the facility.

Copies sent to:-

Ministry of Defence	- Mr. C.W. Wright
Ministry of Overseas Development	- Mr. I.H. Harris
Treasury	- Mr. J.A. Patterson
Foreign Office	- Mr. E.H. Peck
Commonwealth Relations Office	- Mr. L.B. Walsh Atkins

SECRET

Annex 41

Letter from S. Falle of the U.K. Foreign Office to F. D. W. Brown of the U.K. Mission to the U.N., FO 371/184526 (26 July 1965)

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Reference: FO/371/184526
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SECRET

(Z 4/111)

FOREIGN OFFICE, S.W.1.

26 July, 1965

Thank you for your letter (1199/40/65) of 14 July about defence facilities on the Indian Ocean islands. We have asked the Colonial Office to reply direct to the list of questions in paragraph 5. (You will already have seen Colonial Office telegram no. 222 to Seychelles repeated Personal No. 199 to Mauritius which dealt with some of these questions).

2. We agree (your paragraph 4) that if something has to be said in the U.N. it will need to go further than the statement in your telegram No. 1113 of 13 May, which is out of date. The facts as we know them and all the arguments we have been able to think up to explain and defend this project are contained in the C.R.O. telegrams to which you refer and our telegram No. Guidance 297 of 16 July as amended by the Corrigendum of 20 July. It is impossible to define the scope of the proposals more precisely. In essence, we want to take up now a political option - the detachment of the islands - in order to have real estate available for defence purposes in (say) five or ten years time. The only immediate facility planned is a U.S. Communication state on Diego Garcia. We cannot say now exactly what more we will want to build or when, but we believe that it will get progressively more difficult to detach the islands if Mauritius gets nearer to independence and impossible to do so if she becomes full independent. Similar considerations apply, though less strongly, to the Seychelles.

3. Unless this becomes essential we would much prefer not to take an initiative in the U.N. nor to make a formal statement. Your letter suggests that you think we can avoid this and may not have to answer criticism until the autumn. Much will depend on the reactions and discretion the governments to whom we have spoken and we should know more of this next week.

4. We would prefer not to give you detailed instructions until we see how the initial approaches are received and how any criticism develops. But by all means concert with the U.S. Mission a line based on the information in paragraphs 1 and 4 - 8 of C.R.O. telegram W Circular 60, using the arguments in the other telegrams under reference and in F.O. Guidance tel. no. 297 as a precautionary measure.

5. I am sending copies of this letter to those who received yours.

Despatched in UKMis Dept 26/7/65.

(S. Falle)

P.D.W. Brown, Esq., C.M.G.,
United Kingdom Mission,
NEW YORK.

SECRET

Mem 27/7 x
B.U. 10/8/65

Annex 42

Telegram from the Governor of Mauritius to the Secretary of State for the Colonies, No. 175, FO 371/184526 (30 July 1965)

Reference: FO 371/184526

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SECRET

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

FROM MAURITIUS (Sir J. Rennie)

Cypher

D. 30th July, 1965
R. 30th " " 17.00 hrs.

No. 12
- 3 AUG 1965
74/113

(13)

IMMEDIATE
SECRET AND PERSONAL
Personal No. 175

Your telegram Personal No. 204.

U.K./U.S. Defence Interests.

At meeting of the Council of Ministers today the Premier speaking for the Ministers as a whole, said that they were sympathetically disposed to the request and prepared to play their part in the defence of the Commonwealth and the free world. They would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius.

2. Ministers objected however to detachment which would be unacceptable to public opinion in Mauritius. They therefore asked that you consider "with sympathy and understanding" how U.K./U.S. requirements might be reconciled with the long term lease e.g. for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius.

3. As regards compensation for Mauritius they suggested the United States might purchase annually from Mauritius 300,000 to 400,000 tons of sugar at the Commonwealth negotiated price against the purchase by Mauritius from the United States of 75,000 tons of rice at about £40/41 per ton c.i.f. and 50,000 tons of wheat at about £25 per ton. American market for up to 20,000 tons of frozen tuna would also be of interest. United States might also be helpful about immigration. In addition there should be capital sum towards development. They also hoped that some use might be made of Mauritius labour in construction.

4. Premier suggested there should be discussion with representatives of British and American Governments either on the occasion of or before the September conference.

5. These views were subscribed to by all the Ministers present (only Ringadoo and Forget were absent) with reservation by Bissoondoyal that he would object to use as "nuclear base". On this point I took the line laid down in paragraph 10 of your telegram Personal No. 198. Ministers appreciated that Mauritius Government might be criticised for acquiescing in the project but were prepared to accept this consequence. (I said all criticism from outside need not be taken at face value and they agreed).

/6.

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Annex 42

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SECRET

6. I told Ministers I would report their views to you. Attitude to detachment is awkward but not unexpected despite my warning that lease would not be acceptable. Proposals for compensation are also highly inconvenient though Ministers are setting sights high in the hope of doing the best for Mauritius. I should like to emphasise, however, that apart from the regrettable leak (which is the fault of one Minister at the most) Ministers have taken responsible line and given collective view after consultation among themselves, and that so far there has been no attempt to exploit for party advantage with a view to constitutional conference. I hope also that inclusion of some element of trade in compensation will be seriously considered.

7. You may wish to repeat to Governor Seychelles for his information.

(Repeated to Seychelles as C.O. tel No. 242).

Copies sent to:-

Ministry of Defence	- Mr. C. W. Wright
Ministry of Overseas Development	- Mr. I. H. Harris
Treasury	- Mr. J. A. Patterson
Foreign Office	- Mr. E. H. Peck
" "	- Mr. Morland
Commonwealth Relations Office	- Mr. L. B. Walsh Atkins
" " "	- Mr. J. S. Champion

SECRET

Annex 43

Letter from J. S. Champion, U.K. Ministry of Defence, Commonwealth Relations Office, to E. J. Emery, British High Commission in Canada (2 Aug. 1965)

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23/E

2-DEF.86/237/1E

COMMONWEALTH RELATIONS OFFICE,
DOWNING STREET,
S.W.1.

2 August, 1965

Thank you for your letter 344/1 of 22 July about the reactions of the Canadians to our proposals for certain islands in the Indian Ocean. I have consulted the Colonial Office on Mr. Beattie's queries. They have replied as follows.

The legal position is that no part of the Chagos Archipelago is included in any electoral constituency for the Legislative Assembly of Mauritius. The islands of Aldabra, Desroches and Farquhar, however, are parts of a constituency of the Legislative Council of Seychelles, and their elected member is also a member of the Executive Council. At the moment, however, this member happens to be on a six-months' leadership training course in the United States (he is a young man of 23 years of age - and very pro- American we are told). The Colonial Office are considering whether, and if so how, he might be consulted.

As yet the Governor of Mauritius and the Acting Governor of Seychelles have been instructed to consult only the Council of Ministers and the Executive Council respectively. These consultations are on a strictly confidential basis (see para 9 of our W Circular 60 Saving) and there has therefore been no question at this stage of consultation with the legislatures. At a later stage, however, debates in the legislatures will no doubt take place. We are grateful to Mr. Beattie for drawing attention to the importance of timing in this connection, and indeed for his other comments also.

This is really only an interim reply to the questions raised in your letter, but I hope they may be helpful. The detailed arrangements and procedures to be followed after we have received the views of the Mauritius Council of Ministers and the Seychelles Executive Council, are still being worked out here. We will certainly keep you in touch so that you can keep the Department of External Affairs fully briefed.

Copies of this letter go to all recipients of yours.

(J. S. CHAMPION)
Defence Department

Miss E. J. Emery,
OTTAWA.

SECRET

Annex 44

Telegram from the U.K. Secretary of State for the Colonies to J. Rennie, Governor of Mauritius, No. PAC 93/892/01 (10 Aug. 1965)

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SECRET

OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

13 AUG 1965

Enter 2

Copies sent to the Prime Minister and Mr. Thomas

ZA/123 (D)

TO MAURITIUS (Sir J. Rennie)

Cypher

PAC 93/892/01

Sent 10th August, 1965. 21.30 hrs.

IMMEDIATE
SECRET AND PERSONAL
PERSONAL No. 214

Addressed to Governor, Mauritius.
Repeated " " Seychelles, No. 260.

Your telegram PERSONAL No. 175.

U.K./U.S. Defence Interests.

I should be grateful if you would inform Ministers that I much appreciate their willingness to co-operate and am gratified to know that the proposals outlined in your telegram have been made by the Council after careful and independent deliberation by Ministers themselves.

2. Please explain to Ministers that the United States Government has maintained throughout our discussions with them that the islands chosen for the development of defence facilities must be made available directly by Her Majesty's Government and that a leasehold arrangement would not do. We realise that Ministers might have difficulty over the public reactions to detachment; but we believe that any leasehold arrangements would make Mauritius Ministers vulnerable to accusations of harbouring "foreign bases".

3. Such accusations might prove extremely troublesome to Mauritius Ministers both internationally and domestically, as long as the lease continued. Outright detachment would avoid this. It is therefore the arrangement favoured by H.M.G. and is also in what we believe to be in the best interests of Mauritius.

4. If on reconsideration Ministers are prepared to accept detachment, recognizing that it is the only acceptable arrangement, Her Majesty's Government will do their utmost in negotiations with the United States Government to secure what they can of the various benefits indicated in your telegram. You should however warn Ministers that the chances of success are reduced by the fact that some of the suggestions involve difficult issues of domestic politics in the United States. You might invite them to discuss other elements of compensation within the direct power of Her Majesty's Government to grant and explain that, having regard to the United States Government's preparedness to meet the entire cost of construction of any defence facilities to be provided, any attempt to insist upon such contributions could prejudice the proposals as a whole. Equally, of course, H.M.G. will have to consider carefully whether they could meet whatever bids for compensation your Ministers may decide to make.

(Encyphered groups passed to M.O.D. (Navy) for transmission to Mauritius)

SECRET

/Copies

SECRET

Annex 45

Letter from R. Terrell of the U.K. Colonial Office to P. H. Moberly of the U.K. Ministry of Defence, PAC 36/748/08, FO 371/184527 (11 Aug. 1965)

PUBLIC RECORD OFFICE
Reference: FO 371 / 184527
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SECRET

Entry

11 August, 1965.

PAC 36/748/08.

IMMEDIATE

On the 7th September the Mauritius constitutional conference will open in London.

2. The conference is expected to deal with two main topics. First, it will discuss the long-term future status of the island: and secondly, it will, we hope, agree that Mauritius should go forward within the next few months to internal self-government. The Mauritian political parties are divided over the question of long-term status. Some are demanding independence within the Commonwealth; others look to some form of continued association with Britain. We doubt whether it will be possible for the conference to resolve these differences, but it might succeed in arriving at definitions of "independence" and "free association" which could in due course be put to the Mauritius electorate, and in deciding that the future status of the island should depend on the outcome of an election or a referendum.

3. We know that, whatever the long-term views of the parties, all are deeply concerned about defence and internal security. All fully recognise:

(a) that Mauritius will be virtually unable to provide for its own defence against any determined external attack; and

(b) that, when Mauritius Ministers assume responsibility for internal security, situations may arise in which the Government of the day will need external assistance in the form of troops. The prospect of building up the existing Special (Mobile) Force of 150 policemen trained in the use of infantry small arms to the extent that would be required (in theory) to make any need for external forces unnecessary in an emergency is not very attractive, particularly because it would be difficult or impossible in a society rent with communal differences to recruit a force of the required communal balance, or which could be fully relied upon in the kind of communal trouble to be expected.

4. We know that Sir Seewoosagur Ramgoolam, the Premier and leader of the Mauritius Labour Party, which wants independence within the Commonwealth, hopes to negotiate a defence treaty with Britain, and we must also expect that he will seek an undertaking from Her Majesty's Government to come to the assistance of the Government of Mauritius with British troops in the event of

/a

P. H. MOBERLY, ESQ.,
MINISTRY OF DEFENCE,
DS.11,
MAIN BUILDING,
WHITEHALL,
LONDON, S.W.1.

SECRET

Annex 45

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SECRET

a serious internal threat. You will have seen from the Governor's Personal telegram No. 175 that the Premier has informed him that his Ministers "would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius".

5. We are now engaged in preparing briefs for Ministers for the September conference. One of the most important of these must deal with defence and internal security so far as the latter involves the use of British forces.

6. Our Secretary of State's basic policy is, of course, to arrive at a constitutional formula for each territory that will (a) reconcile conflicting party policies about the future status of the territory; (b) ensure law and order; (c) satisfy international opinion so far as possible. Whilst Mauritius is a comparatively law-abiding and sensible place, to apply the basic policy there is not easy. The chances of success, we feel, will depend very largely on the firmness of the statements which the Secretary of State is able to make when crucial questions are put to him in the course of the conference. In this context the most important basic consideration, we assume, is the strategic value to the British Government of the main installations - the naval wireless station, H.M.S. MAURITIUS and Plaisance Airport.

nor anywhere else

7. Whilst current plans for developing alternative communications and staging facilities elsewhere in the Indian Ocean would presumably reduce the value of those in Mauritius, such plans are not yet firm and in any event must take some time to carry out. At the present stage, therefore, it ought presumably to be practical politics for the Secretary of State to make it clear that, whatever the outcome of the conference, Her Majesty's Government would not lightly permit any threat to internal security to prejudice the continued use of H.M.S. MAURITIUS or the availability of Plaisance Airport as a staging post. Do you agree, and if so, in what terms from your point of view could such an assurance be given?

8. Whilst at the present time any substantial threats to internal security would probably come from the right wing of Mauritius politics and would not in themselves appear to constitute any danger to H.M.S. MAURITIUS or Plaisance Airport or to Anglo-U.S. defence plans, it must be expected that left wing, pro-communist (Chinese and Soviet) threats to internal security will inevitably become stronger in the future. Moreover, such threats are likely to be stimulated rather than subdued by the Anglo-U.S. plans.

9. In this situation, if Mauritius is independent at the time when the proposed Anglo-U.S. installations in Diego Garcia and elsewhere are brought into use will Her Majesty's Government then continue to be as concerned about the internal security of Mauritius as at the present time? If so, it would, perhaps, be helpful if the Secretary of State could say so at the conference. Whilst it will presumably be necessary for him firmly to refuse to define the hypothetical circumstances in which Britain would send troops to assist the civil power in an independent Mauritius or in a Mauritius freely associated

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SECRET

with Britain, he should if possible be in a position to make very clear to the conference, and to any of the leaders who might question him in private, that the internal security of Mauritius is likely to be of great concern to Her Majesty's Government for an indefinite period ahead - if this is the case.

10. If the internal security of Mauritius is to be of great concern to Her Majesty's Government for an indefinite period ahead, it would strengthen the argument for a defence agreement. We know, of course, that no such agreements have been made latterly with independent African states. Moreover, no external threat to Mauritius is yet apparent. But, as indicated above, the Premier has already asked that any agreement over the use of Diego Garcia should also cover the defence of Mauritius, and it must be expected that all parties will want a defence agreement with Britain and that it should contain something about the provision of British troops for an internal security role. We know that one of the parties demanding independence at the same time actually wants a garrison of British troops to be stationed permanently in the island. It seems to us that there is probably no great risk involved in having a defence agreement. Do you agree? What line can we take about this in briefing the Secretary of State?

11. I am sorry to trouble you with so long a letter. But, as you will understand, the success of the constitutional conference is likely to turn very largely on the line the Secretary of State takes when dealing with the points I have raised. We must, if possible, have the briefs at least in first draft inside the next fortnight. I should, therefore, be most grateful if you could let me have your advice as soon as possible.

12. I should like to conclude with a warning that, if the Secretary of State is able to make only vague noises when dealing with some of these questions, it may well turn out to be impossible for Mauritius to advance from the status of dependency at all, with the consequences that all the existing defence commitments in respect of the island will have to remain intact. A decision to perpetuate them in substance, whatever the future status of Mauritius, therefore, may not involve any material alteration to the position that would otherwise obtain.

13. If you will give me a ring we can consider whether to have a meeting about this or whether you would prefer to write.

14. I am sending copies of this to Morland at the Foreign Office, Champion at the C.R.O. and Patterson at the Treasury who will, no doubt, comment if they wish.

(R. Terrell)

SECRET

Annex 46

Telegram from the Governor of Mauritius to the Secretary of State for the Colonies, No. 188, FO 371/184526 (13 Aug. 1965)

Fo 371/184526
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INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES
AMENDED COPY (Corrections * and underlined)

FROM MAURITIUS (Sir J. Rennie)

Cypher D. 13th August, 1965.
R. 13th " " 21.45 hrs.

13 AUG 1965
Z4 / 123

PRIORITY
SECRET AND PERSONAL
PERSONAL No. 188.

Your Secret and Personal telegram No. 214 and my Secret and Personal telegram No. 185.

U.K./U.S. Defence Interests.

I conveyed to Ministers your views this morning *explaining objections to lease and warning them of difficulty about compensation in the form of American trade. They renewed the suggestion of discussion in London between representatives of governments concerned and both the Premier and Duval said that they were sure that agreement could be reached in this way. They were clearly not prepared to agree here and now.

2. I am sorry that I have not been able to obtain the desired agreement but I think it would be counter productive to press further at present. You may like to consider discussion in the first instance with the Premier on his arrival in London *before the conference.

Copies sent to:-

Ministry of Defence	-	Mr. C.W. Wright
Ministry of Overseas Development	-	Mr. I.H. Harris
Treasury	-	Mr. J.A. Patterson
Foreign Office	-	Mr. E.H. Peck
" "	-	Mr. Morland
Commonwealth Relations Office	-	Mr. L.B. Walsh Atkins
" " "	-	Mr. J.S. Champion

SECRET

Annex 47

U.K. Ministry of Defence, Chiefs of Staff Committee, *Mauritius Constitutional Conference*, No. COS 154/65 (26 Aug. 1965)

SECRET

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COS 154/65

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MINISTRY OF DEFENCE

CHIEFS OF STAFF COMMITTEE

MAURITIUS CONSTITUTIONAL CONFERENCE

Note by the Secretary

1. The Chiefs of Staff have approved (1) the report (2) at Annex A.

2. In approving the report the Chiefs of Staff invited the Defence Secretariat to forward it to the Colonial Office as an expression of their views.

J.H. Lapsley
Air Vice-Marshal
Secretary
Chiefs of Staff Committee

Annex: A. Mauritius Constitutional Conference.

Notes:

1. COS 43rd Meeting/65, Minute 3.
2. DP 58/65, as amended.

Ministry of Defence
Main Building
Whitehall SW1

26th August 1965

SECRET

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Annex 47

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Annex A to COS 154/65

MAURITIUS CONSTITUTIONAL CONFERENCE

INTRODUCTION

1. The Mauritius consitutional conference will open in London on 7th September 1965. The Colonial Office are preparing briefs for Ministers, one of which will deal with defence and internal security, in so far as the latter involves the use of British forces.

2. The Colonial Office have asked (1) for a military view on certain points and the Defence Secretariat have consolidated these into the four following questions, on which they have asked our views:

a. To what extent should we undertake to assist Mauritius over internal security after independence?

b. To what extent should we undertake to assist Mauritius over external defence after independence, in the form of a defence agreement (bearing in mind the possible development of Anglo-American facilities on islands whose future still has to be negotiated with Mauritius and Seychelles)?

c. What assurance can we give about our continued use of the naval wireless station (HMS Mauritius) and of Plaisance Airport for staging purposes, either in public or privately, to Mauritius leaders?

d. Should we offer to help in building up the Special (Mobile) Force so that it can play a larger part in controlling internal security?

AIM

3. To answer the questions asked by the Defence Secretariat.

BACKGROUND

Strategic Importance of Mauritius

4. We have previously stated (2) that there are two major facilities in Mauritius which are most important to British strategy. These are:

a. The Naval and Strategic Wireless Station (HMS Mauritius). This is required to provide:

(1) Command and control of Commonwealth naval and merchant shipping in the Indian Ocean, Arabian Sea, and Persian Gulf.

(2) A link in our defence strategic communications to the Middle East, Far East, and South Africa, and as a link into the United States defence communications network.

Notes:

1. Annex to COS 2194/16/8/65.
2. COS 75/64.

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b. The Airfield at Plaisance. This is required as a valuable, and in some cases essential, staging post between the Middle East and Central Africa for Tac T (MR) aircraft, should staging or overflying in East Africa be denied. It could also become an essential airfield on the proposed reinforcement route to the Middle and Far East, flying round or over Southern Africa.

5. Any alternative to either of these facilities might take three to five years to construct.

US/UK Defence Interests in the Indian Ocean

6. In February 1964 it was agreed at official level that the United States should, at their own expense, develop certain defence facilities in the Indian Ocean which could also be used by the United Kingdom if HM Government made the islands concerned available. As a result of subsequent surveys the Americans have plans for the early construction of a communications station and facilities, including an airstrip, on Diego Garcia, one of the islands in the Chagos Archipelago which is a dependency of Mauritius.

7. The matter was considered (3) by Ministers last April, and the Colonial Office subsequently instructed (4) the Governor of Mauritius to inform his Ministers that, subject to the agreement of the Government of Mauritius, HM Government would be prepared in principle to pursue the proposed detachment of the whole of the Chagos Archipelago (including Diego Garcia) for the purpose of joint development with the Americans.

8. Discussions with the United States, Mauritius, and Seychelles are continuing. The islands earmarked for detachment from Mauritius are the Chagos Archipelago, including Diego Garcia. The islands which it is proposed to detach from the Seychelles are Aldabra, Farquhar, and Desroches.

QUESTIONS TO BE ANSWERED

Question a. To what extent should we undertake to assist Mauritius over internal security after independence?

9. There is an existing plan (5) to introduce up to one infantry battalion group into Mauritius for internal security duties if required and, subject to the current defence review, we expect to continue to have this capability. However, the extent, if any, to which HM Government should agree to provide British military assistance to maintain public order in Mauritius after full independency is primarily a political question. Although we have in certain cases taken military action at the request of the government concerned, or made plans to do so, we have no formal commitments of this kind towards other independent Commonwealth countries except Malta.

Notes:

3. OPD(65)21st Mtg.
4. Colonial Office telegram No 198 to Mauritius dated July 1965.
5. RTP(ME)19(Second Revise).

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ANNEX A TO COS 154/65
(Continued)

10. It would be very much in our interests to be able to use British forces to assist the local authorities in dealing with threats to the functioning of the airfield at Plaisance or of the Naval and strategic wireless station, HMS MAURITIUS. Such action would be facilitated both politically and militarily if we had a formal agreement to assist Mauritius in internal security.

11. On the other hand, it would be undesirable for us to be permanently committed to intervene in communal disorders at the behest of the Government of a genuinely independent Mauritius. Such a commitment might involve us in deploying to Mauritius forces more urgently needed elsewhere quite apart from incurring the odium of backing one community alternately against the other. Consequently, we believe that any internal security commitment that we accept in order to help to secure agreement to the excision of the Chagos Archipelago should be limited in time to the period during which we have defence facilities in Mauritius, and in scope to assistance to the local authorities in the protection of our facilities and of essential public utilities.

Question b. To what extent should we undertake to assist Mauritius over external defence after independence, in the form of a defence agreement (bearing in mind the possible development of Anglo-American facilities on islands whose future still has to be negotiated with Mauritius and Seychelles)?

12. We are advised that the conclusion of a defence agreement with a newly independent Commonwealth country is generally speaking undesirable. Furthermore, the acceptance of any more defence agreements at a time when our world-wide commitments are under review should be avoided unless there is an overriding political or military advantage to be gained.

13. While there are certain external communist influences at work in Mauritius, we can at present foresee no likely external military threat to either Mauritius or its dependencies. However, the Governor of Mauritius has reported (1) that the Premier has informed him that his Ministers "would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius".

14. We would much prefer that the detachment of Diego Garcia and the other dependencies from Mauritius should, once the compensation terms have been agreed, proceed without any consequential military commitment for the external defence of Mauritius. However, if Mauritius Ministers make detachment of the dependencies or retention of our staging facilities and wireless station conditional on an external defence agreement we should

Note:

1. Annex A to COS 2194/16/8/65.

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ANNEX A TO COS 154/65
(Concluded)

agree, since we would not like our plans for the development of US/UK defence interests or retention of our existing facilities in the Indian Ocean to founder on this point; however, the commitment need not necessarily be in the form of a formal Defence Agreement.

15. We are advised that a defence agreement covering only external defence would not satisfy Mauritius Ministers, and that a defence agreement covering internal security and not external defence is unlikely to be politically acceptable to them. We therefore consider that in spite of the disadvantages it would, on balance, be in our interests to enter into a defence agreement covering both internal security and external defence if this was the only way we could ensure the retention and safeguarding of our facilities and the successful outcome of our negotiations to detach the Chagos Archipelago. Such an agreement would obviously cease to be of any advantage to us once the negotiations for detachment had been completed or if in due course we had ceased to retain our facilities for any reason.

Question c. What assurance can we give about our continued use of the naval wireless station (HMS MAURITIUS) and of Plaisance Airport for staging purposes, either in public or privately, to Mauritius leaders?

16. There will be a naval requirement for communications facilities on the present scale in Mauritius for as far ahead as can be foreseen.

17. Similarly the airfield at Plaisance will continue to be a valuable, and in some cases essential, staging post, particularly if use of routes round or over southern Africa is developed. Even in the event of an airfield being built on Aldabra, Plaisance would continue to provide a useful alternative and we would wish to retain the facilities for staging aircraft through there in an emergency.

18. We should therefore assure the Mauritius Government that we foresee a continuing use for both facilities. There would be no objection to this being stated publicly.

Question d. Should we offer to help in building up the Special (Mobile) Force so that it can play a larger part in controlling internal security?

19. We consider that the proper way for Mauritius to maintain a satisfactory internal security situation is to build up the Special (Mobile) Force so that it can adequately cope with any foreseen eventuality. Although it might be assumed that the country has the ability and will to control its own affairs, since self-government in the near future is being considered, we are advised that the communal situation in Mauritius presents special problems in building up a reliable internal security force. Nevertheless a strong police force would ensure that British troops were less likely to be called on for internal security. Therefore we should be prepared to offer any necessary training assistance for this force on the understanding that its cost would not fall on the Ministry of Defence vote.

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SECRET

Part I to COS 43rd Meeting/65
24th August 1965

3. MAURITIUS CONSTITUTIONAL CONFERENCE SECRET

The Committee had before them a paper (1) by the Defence Planning Staff and a Secretary's minute (2) covering a draft Defence and Oversea Policy Committee (OPD) paper.

SIR RICHARD HULL said that the Colonial Secretary had not been able to persuade the Mauritian Ministers to agree to the detachment from Mauritius of Diego Garcia and the other islands of the Chagos Archipelago, in the context of the proposed development of Anglo/American military facilities in the Indian Ocean, in advance of the Mauritius Constitutional Conference, which would open in London on 7th September 1965. Thus, at the conference, defence and internal security issues were expected to assume particular importance. The report by the Defence Planning Staff answered four specific questions on points of defence policy relating to Mauritius posed by the Colonial Office. The Defence Secretariat had prepared a draft OPD paper seeking to establish the importance of having joint UK/US military facilities in the Chagos Archipelago in relation to the other issues of defence policy towards Mauritius.

This OPD paper had been drafted in consultation with the Foreign Office, at official level, as a joint submission by the Deputy Secretary of State for Defence and the Minister of State for Foreign Affairs. It was important that it should be considered by the Defence and Oversea Policy Committee at their meeting on Tuesday 31st August 1965, as this would be the last opportunity for Ministers to consider the matter before the Constitutional Conference.

Both the DP paper and the draft OPD paper were in general agreement, but in the draft OPD paper a different line had been taken on guarantees for Mauritian internal security. In considering defence arrangements and the internal security problem, the DP paper concluded that we could guarantee the external defence of Mauritius once the island became genuinely independent and, because of our naval establishment there, we might in the worst case accept certain responsibilities for internal security. On the other hand, the OPD paper, whilst also accepting the commitment for external defence, only allowed for the protection of our own forces and facilities, and argued against our becoming involved in an internal security role. The Committee would wish to hear the views of representatives of political departments.

Notes:

1. DP 58/65 (Final).
2. COS 2224/23/8/65.

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MR SMITH (Colonial Office) outlined the present position in Mauritius and the possible outcome of the Constitutional Conference. The island was divided into two basic communities: the Indians and the Creoles. The Prime Minister, an Indian, was aiming to achieve independence for Mauritius whilst retaining full external defence and internal security agreements with the United Kingdom; his objective was a seat in the United Nations; he was unlikely to achieve this under such arrangements. The Creole opposition wished to retain British supervision for their protection against the Indians and were therefore aiming for something less than independence. The outcome of the Conference was uncertain and his Secretary of State had stated that he was open to consider any kind of solution. The most likely course of events was that the Conference was unlikely to agree on full autonomy, but would accept that Mauritius should proceed to full internal self-government, with the possibility of further progress after a future referendum. Until that time British interests would be represented by a High Commissioner or Governor General. The Colonial Secretary was anxious to detach the Chagos Archipelago by consent and was disinclined to detach it arbitrarily by an Order in Council, which would have international political repercussions. The Mauritian Premier would press for a quid pro quo for the detachment of the Chagos Archipelago and it was the opinion of the Colonial Office that we should not get the bases by consent unless guarantees covering external defence and internal security were given.

MR WALSH ATKINS (Commonwealth Relations Office) said that his Department generally agreed with the draft OPD paper. They were not in favour of defence agreements with Commonwealth countries and agreements with regard to internal security found even less favour. In the case of Mauritius any British internal security action after full independence would have widespread repercussions in the Indian Ocean area owing to racial connections with other countries. In this connection, it was important to differentiate between total independence and independence under "free association"; if Mauritius achieved independence in "free association" with the United Kingdom, intervention in an internal security role might be more politically acceptable. While the legal position was not clear, it was noteworthy that the view existed in Whitehall that there was a right for a state to intervene in another country to protect its own people, even if no written agreement existed. With regard to defence agreements, his department had found that their stated policy of never entering into defence agreements, though not rigidly adhered to, had proved a valuable bargaining point in such discussions.

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In discussion, the following points were made:

a. There was a risk that we might, under pressure, accept an indefinite responsibility for internal security in Mauritius. As the likely outcome of the conference was partial independence, in which circumstance we would still have an internal security commitment under a British High Commissioner, the paragraph in the draft OPD paper on internal security should be amended to reflect this.

b. The Foreign Office agreed that commitments for the defence and internal security of a genuinely independent Mauritius were most undesirable, but they attached such importance to the detachment of the island bases that, if such agreements were the only method of achieving it, this would be considered as a special case. In their view, the presence of our naval forces in Mauritius and our position in the Indian Ocean as a whole would make it imperative for us to accept responsibility for the external defence of Mauritius whether we were invited to do so or not.

c. The naval communications station on Mauritius was a main centre for all naval communications East of Suez. As such it was of vital importance to the Navy and a station of this sort would remain so as long as forces were required to operate East of Suez; it was therefore essential that we should retain the right to protect it. The station had cost £5m to build and, whilst it was technically possible for it to be re-installed elsewhere, the financial penalty would be of the same order.

d. The Air Force Department considered that the provision of the island bases in the Chagos Archipelago was of such importance to our future strategy in the Indian Ocean that we should, if forced, accept whatever external defence or internal security commitments were necessary to ensure their detachment.

e. Several minor amendments to both the draft OPD paper and the DP paper were agreed.

Summing up, SIR RICHARD HULL said that the Committee would agree with the Foreign Office that it was a matter of prime importance that the detachment of the Chagos Archipelago from Mauritius should be achieved before any moves towards Mauritian independence, whether partial or complete, were agreed. It might be necessary for a commitment for the internal security of Mauritius to be accepted during the period of internal self-government short of full independence, but they wished at all costs to avoid a commitment to assist a genuinely independent

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Part I to COS 43rd Meeting/65
24th August 1965

member of the Commonwealth in controlling her own affairs, especially when that country had racial problems of a particularly difficult kind. The papers before them, as amended in the light of their discussion, would serve to define their objectives with regard to Mauritian independence. The draft OPD paper would make clear the joint Ministry of Defence and Foreign Office position and would enable Ministers to balance our military requirements against political considerations.

The Committee:

(1) Agreed with the remarks of the Chief of the Defence Staff in his summing up.

(2) Approved the DP paper, as amended in the light of their discussion, and invited the Defence Secretariat to forward it to the Colonial Office as an expression of their views.

(3) Took note of the draft OPD paper and invited the Defence Secretariat to incorporate the views of the Chiefs of Staff in the final version.

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NOTE

DP.58/65(Final)

In accordance with the instructions of the Chief of the Defence Staff, the attached paper will be tabled for consideration by the Chiefs of Staff at their meeting on Tuesday 24th August 1965.

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COPY NO 124

DP.58/65(Final)

20th August 1965

CHIEFS OF STAFF COMMITTEE

DEFENCE PLANNING STAFF

MAURITIUS CONSTITUTIONAL CONFERENCE

Report by the Defence Planning Staff

In accordance with the instructions (1) of the Chief of the Defence Staff we have answered the following four questions posed by the Defence Secretariat:

a. To what extent should we undertake to assist Mauritius over internal security after independence?

b. To what extent should we undertake to assist Mauritius over external defence after independence, in the form of a defence agreement (bearing in mind the possible development of Anglo-American facilities on islands whose future still has to be negotiated with Mauritius and Seychelles)?

c. What assurance can we give about our continued use of the naval wireless station (HMS Mauritius) and of Plaisance Airport for staging purposes, either in public or privately, to Mauritius leaders?

d. Should we offer to help in building up the Special (Mobile) Force so that it can play a larger part in controlling internal security?

2. We have consulted the Foreign Office, the Colonial Office, the Defence Secretariat, and the Defence Signal Staff. Our report is at Annex.

Recommendation

3. We recommend that, if they approve our report, the Chiefs of Staff should invite the Defence Secretariat to forward it to the Colonial Office as an expression of their views.

(Signed) R.E. COAKER
E.G.N. MANSFIELD
R.P.S. ERSKINE-TULLOCH
P.H.G. WINTLE

MINISTRY OF DEFENCE, S.W.1

Note:
1. COS 2194/16/8/65

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Memorandum by the U.K. Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs on Defence Facilities in the Indian Ocean, OPD(65)124 (26 Aug. 1965)

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COPY NO. 68

OPD(65)124

26th August, 1965

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

DEFENCE FACILITIES IN THE INDIAN OCEAN

Memorandum by the Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs

We are both much concerned with the urgency of obtaining further decisions on the proposed detachment of certain islands from Mauritius and Seychelles for the military purposes of the United States and ourselves. The islands in question are Diego Garcia and the rest of the Chagos Archipelago (which belong to Mauritius); and Aldabra, Farquhar and Desroches(which belong to Seychelles). The only island for which immediate plans exist is Diego Garcia, where the Royal Navy have plans to establish an oil fuel depot (to replace that in Ceylon), and where the Americans wish to build a communications station with supporting facilities. Details of the proposals were given in OPD(65)68, which the Committee considered at their meeting on April 12th.

2. At that meeting the Committee agreed in principle to pursue the proposal further, and that the price we might have to pay should be discussed with the Governments in Mauritius and Seychelles. As a result, the Governor of Mauritius has explained the situation to his Ministers, and the Governor of Seychelles to his Executive Council, and sought their reactions. The Seychelles Executive Council was lukewarm but raised no objection of principle. They thought that construction of a civil airfield on Mahe would be satisfactory compensation. Mauritius Ministers are reported to be sympathetically disposed, but they have raised a number of difficulties. In particular, they wish any agreement over the use of Diego Garcia to provide also for the defence of Mauritius; they would prefer a 99-year lease instead of detachment under permanent UK sovereignty; they suggest a greatly increased US sugar quota for Mauritius (and hope that the United States might also be helpful about immigration); and they mention an unspecified capital sum for development.

3. The Mauritius Constitutional Conference opens in London on September 7th. Although there is much to be said for keeping constitutional and defence questions apart, and for dealing with islands as a separate affair, Mauritius leaders have asked to discuss the matter while in London. Moreover, we understand that, in discussing the ultimate status of Mauritius (independence or something short of it), Mauritian politicians are likely to be specially interested in the extent to which Britian is prepared to remain responsible for their external defence and their internal security. This being so, the line taken by the Colonial Secretary with Mauritius leaders at the Conference on future defence arrangements will profoundly affect our chances of carrying them with us in the proposed

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detachment of Diego Garcia and the Chagos Archipelago. If we fail to persuade them now, we may never again be in a position to do so at an acceptable cost. Indeed if Mauritius opts for independence at this conference, this will be our last chance to secure the Chagos Archipelago.

4. We should like at this stage to underline the arguments set out by the Foreign Secretary and the Defence Secretary in their earlier paper (OPD(65)68). In the summing up of the discussion, the minutes of the OPD(65)21st Meeting record:-

> "If the Defence Review showed that we needed to retain a capability to intervene East of Suez, the facilities proposed might be most valuable ..... Alternatively, if we should seek to limit our commitments, the existence of the US bases might facilitate such a course."

In the studies on future strategy now being prepared for the Defence Review, it is assumed that these islands will be available in the long term. Recent events in Singapore have given a new urgency to these considerations. We regard the perpetuation of British sovereignty over the islands as extremely important both for their potential strategic value and because they are essentially a joint investment with the Americans. Moreover, if we fail to secure the islands now, the Americans will have neither the inclination nor the means to give us cooperation and logistic support which we shall need in the area.

5. We turn now to the terms on which we can still get these islands. The main ingredients, as suggested by Ministers in Mauritius and Seychelles, are considered below:-

a. Lease. The Americans have said at official level that it is extremely unlikely that the United States would want to go through with the deal unless the islands were to be permanently detached. Since we see the Americans as an essential partner we must regard American views against a lease as decisive. Moreover, any lease agreement is bound to bring Mauritius under very strong Afro-Asian pressure to revise it in due course. Although in possession of the islands we should be fully entitled and able to resist such pressure, it would nevertheless bedevil our relations with Mauritius and provide a continuing excuse for hostile powers to make trouble. We should therefore stick to the original proposal for detaching the islands once and for all and placing them under British sovereignty.

b. Sugar. This, of course, is for the Americans to decide, but we have strong reason to believe that they will find it impossible to go more than a very short way to meet the Mauritius bid.

c. Finance. At their meeting on April 12th the Committee agreed that the United States Government should be asked to contribute to the cost of compensating Mauritius and Seychelles for the loss of their islands. The US Government have recently replied that they are prepared in principle to provide a contribution to the detachment costs, up to one half of the roughly estimated £10m. total, through deduction of an agreed amount of

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UK payments due in research and development surcharges. American officials are thinking of R and D costs of the Polaris programme for this purpose, but we have not yet received detailed proposals from them. Despite discussions in Mauritius and Seychelles, no precise estimate can yet be made of the overall cost of development aid, buying out the commercial owners of the islands and resettling the inhabitants. Nevertheless, the American offer is a clear advance on the original basis on which the project was discussed with them, namely that the UK would pay the costs of detachment, while the US would pay for the construction of the facilities they required, and give us joint use. We believe that the American offer is the best we can hope for and that, although the costs are still unknown, we should tell the Seychelles that we are prepared to pay about £3million towards the cost of an unsophisticated civil airfield, Mauritius being offered aid for some suitable project at no greater cost than Seychelles. An immediate offer to Mauritius should help to overcome any disappointment over their other demands.

d. External Defence. Normally, we are unwilling to enter into formal arrangements for the external defence of newly independent Commonwealth countries. We should only undertake an obligation in return for a clear-cut political and strategic benefit. In this case, in return for accepting an obligation which we are extremely unlikely ever to be called upon to meet, we stand to gain the advantages already referred to. We therefore propose that, if it seems essential to secure Mauritian acceptance, we should offer, perhaps in a confidential memorandum of understanding, to be responsible for the future defence of an independent Mauritius on condition that Mauritius agrees now to transfer the Chagos Archipelago to British sovereignty.

e. Internal Security. Internal trouble appears a more real danger in Mauritius than external attack. If Mauritius remains a British dependency, we shall anyhow be responsible for internal security. We see serious objection, however, to being obliged to assist any genuinely independent member of the Commonwealth in controlling her own affairs, especially when that country has racial problems of a particularly difficult kind. Indeed, restoring order in an internal security situation might well take the form of backing one community against the other, according to the Government in power at the time. We believe this situation should be firmly avoided, and that we should press on with detaching the islands without getting ourselves involved in an internal security commitment to an independent Mauritius. If our agreement to accept some obligation to assist in internal security should turn out to be the only way of securing Mauritian acceptance of the detachment of Chagos, we should consider it in the context of a status short of genuine independence (in which case the obligation might indeed be held to remain anyway); thereafter, in the event of genuine independence, we should limit our commitment both in time and scope, tying it to the period of

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the continued use of our existing military facilities on Mauritius (a naval wireless station and a staging airfield) and limiting it to the protection of these facilities and of essential public utilities.

Conclusions

6. a. Perpetuation of British sovereignty over the islands is extremely important, both for their potential strategic value and because they will be a joint investment with the Americans.

b. As negotiation in Mauritius has failed to establish agreement on terms, we regard it as essential that, during their stay in London, Mauritius Ministers should be made aware of HMG's determination to go through with this project on terms which in HMG's view adequately compensate Mauritius for the loss of the remote and neglected Chagos Archipelago.

c. These terms should be financial compensation for Mauritius in the form of development or other aid comparable to the sum of about £3million to be offered to the Seychelles, plus a promise of continued British responsibility for the external defence of Mauritius: only as a last resort should we indicate willingness to commit ourselves to assist in internal security after full independence, and then we should limit our commitment to the period of the continued use of our existing defence facilities in Mauritius itself and to the protection of these and of essential public utilities.

d. If Mauritius Ministers refuse this offer, they should be told that, in that case, HMG will have to consider any proposals for the future status of Mauritius without the Chagos Archipelago, and will exercise their right to transfer Chagos to permanent British sovereignty under order-in-council, financial compensation as above being paid to the Mauritius Government.

e. With Seychelles we should press on with arrangements for the detachment of Aldabra, Farquhar and Desroches, in return for subsidising unsophisticated civil airfield on Mahe up to a limit of about £3million.

f. We should accept the US Government's offer to repay us half the costs of detachment and should invite their urgent views on how payment should be made.

Recommendation

7. We invite our colleagues to endorse the conclusions in para. 6 above.

F.J.M.

W.

Whitehall, S.W.1.
26th August, 1965.

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United Kingdom, *Mauritius and Diego Garcia: The Question of Consent - Note from 28 August 1965*, FCO 31/3437 (undated)

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MAURITIUS AND DIEGO GARCIA:THE QUESTION OF CONSENT

22 January 1965. Colonial Office minute to Secretary of State concerning recent official discussions within Whitehall. "We for our part stressed the absolute necessity ,in both local and international political terms,of acting only with the agreement of the political leaders in Mauritius and the Seycelles.."

C.O.S. Meeting 24 August 1965

Mr Smith(Colonial Office "The Colonial Secretary was anxious to detach the Chagos Archipelago by consent and was disinclined to detach it arbitarily by an Order in Council which would have international political repercussions....."

26 August 1965. Colonial Office Brief for Colonial Secretary (in connection with OPD(65) 124 ,a paper prepared by the F.O. and M.O.D.)

"...The Secretary of State will no doubt wish to resist strongly any suggestion that there should be any question of the matter being handled in the only other way that would be open to us for securing these facilities in the Indian Ocean if the acquiescence of the Mauritius Ministers could not be obtained on the terms suggested in OPD 65/124 i.e. by simply forcing the thing through, on our constitutional powers.To do so would have disastrous consequences from the point of view of World opinion.It would completely disrupt the Mauritius Constitutional Conference and would in all probability make impossible for some time to come any agreement on the constitutional future of Mauritius; this in turn could pose considerable internal security problems difficulties of which we had a foretaste in May..."

31 August 1965. OPD Meeting.

Deputy Secretary for Defence.." If agreement on the detachment of the Chagos group could not be obtained, we should nevertheless transfer them to direct United Kingdom sovereignty by Order in Council..

The Foreign Secretary.." If both the Seycelles and the Mauritius Governments agreed to our proposals there would be no international criticism of our actions. Nevertheless, if the latter did not agree the strategic importance of the Islands was sufficient to justify our passing the necessary Order in Council.Our legal right to do so was unquestioned....."

"The Colonial Secretary said her was not in agreement with these proposals.The Mauritius Constitutional Conference would in any case be difficult.When the Committee had last discussed detaching the Islands they had agreed that the proposed compensation should be increased and that the agreement of the Mauritius Government was essential... to threaten to go ahead with this (detachment) by Order in Council regardless of their agreement would undoubtedly wreck the Conference..."

7 September. Constitutional Conference opens.

13. September. Colonial Secretary sees Ramgoolam for discussions on detachment.

SECRET

Annex 50

U.K. Foreign Office and U.K. Ministry of Defence, *Brief for the Secretary of State at the D.O.P. Meeting on Tuesday, 31 August: Defence Facilities in the Indian Ocean*, No. FO 371/184527 (31 Aug. 1965)

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DEFENCE FACILITIES IN THE INDIAN OCEAN

I submit a brief for the Secretary of State to use at the D.O.P. meeting on Tuesday, 31 August. It has been cleared with United Nations Department.

[Chen Kun + d/f]

(G.G. Arthur)
27 August, 1965.

Mr. Peck

Copy to:-

Sir B. Burrows
Mr. Greenhill
Mr. Cable
Mr. Wade-Gery

P.V.S.

Private Secretary.

This brief quite fair but be wholly undesirable to go publicly. The securing of these islands should have been done earlier & quicker — Now we are likely to have criticism from some, like the Indians, who will be inwardly hoping that for reasons of their own

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shall

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shall go ahead -

I think there is no doubt that, if we do not take positive action, Soviet ability to take security & peace keeping action in the Indian Ocean will be left with extremely damaging results - I think therefore that we have to go ahead on a matter on which, if it works unchecked, our less scrupulous competitors will not hesitate for 5 minutes - such are the by-products of the "double standard" in international affairs -

PLOWDEN
27/8

Sir J Stratton.

SEEN BY SECRETARY OF STATE.

27/8.

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BRIEF For the Secretary of State at the D.O.P. Meeting on Tuesday, 31 August:

DEFENCE FACILITIES IN THE INDIAN OCEAN

Flag A The attached joint Foreign Office/Ministry of Defence paper was approved by Lord Walston in the absence of the Secretary of State. It is to be discussed at the Defence Overseas Policy Committee next Tuesday immediately after the paper on Singapore with which it has a logical connection.

2. The Secretary of State will be familiar with the background to this proposal which has now been under negotiation for 18 months. The back history, a description of the islands concerned, and a map are Flag B included in the earlier joint paper (OPD 65/68 of 7 April).

3. The Mauritius conference, which opens in London on 7 September, may be our last chance to achieve a satisfactory outcome. Even if Mauritius does not opt for full independence at this conference - and it seems unlikely that she will do so - it is unlikely that we shall be able to keep consultations with Mauritius confidential for much longer. Widespread public discussion of the proposal before agreement had been reached would make the achievement of a successful conclusion much more difficult. A decision on how to proceed is therefore required urgently.

Flag A 4. The new joint paper marks an important step forward. The Foreign Office have long urged the importance of the islands project for Anglo/American relations. The

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Ministry of Defence (including the Chiefs of Staff who discussed and approved it in draft) have gone further with a statement (paragraph 4 of the paper) of the extreme importance for our own strategic purposes of detaching the islands now. In the light of this statement the paper recommends that if Mauritius Ministers refuse our offers, they should be told that in that case Her Majesty's Government will have to consider any proposals for the future status of Mauritius without the Chagos Archipelago, and will exercise their right to transfer Chagos to permanent British sovereignty under order-in-council, financial compensation being paid to the Mauritius Government in accordance with our offer. There should be no need for such pressure in connection with the islands belonging to Seychelles, provided a satisfactory bargain can be struck on the amount of compensation to be paid.

5. It is difficult to assess precisely reactions in the United Nations. Even if the islands are detached with the consent of the Seychelles and Mauritius Ministers there will be criticism at the United Nations both from those who wish on strategic grounds to exclude British influence from the Indian Ocean area and from those who have a doctrinaire or emotional hostility to "foreign bases". We must also expect the argument that adjustments of territorial boundaries cannot be recognised unless they are freely agreed by the representatives of the people concerned after independence.

Flag C New Delhi telegram 2815 of 16 August foreshadows this line from the Indians.

6. Although there is nothing in the Charter of the

/United

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United Nations which forbids the adjustment of the boundaries of colonial territories, subject to observance of the principle in Article 73 (which we ourselves have frequently invoked) that the interests of the inhabitants are paramount, there are a number of United Nations resolutions which would undoubtedly be quoted against us. The most important is Resolution 1514 (the "Declaration on Colonialism"), operative paragraph 6 of which states that "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". Although this resolution does not in law have the force of a Charter amendment, it is regarded as such in practice by the Afro-Asian and Communist members.

7. If the islands are detached against the expressed wishes of the inhabitants, or without their consent, then our opponents will have more plausible arguments to hand and many of our friends may hesitate to defend us. In these circumstances the Charter, as well as United Nations resolutions will be invoked against us.

8. We should in reply be able to point to the remoteness of the islands concerned from the main islands, with which they have been united solely for the administrative convenience of the colonial power, and not because of any historic, geographic or ethnic affinity; and to the fact that the inhabitants concerned are few and nearly all contract labourers neither permanently living on, nor indigenous to, the islands they work on. We should have to argue that their detachment does not conflict with the interests of the inhabitants of Mauritius

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and Seychelles as a whole.

9. We shall have to meet criticism whether or not the consent of the representatives of the inhabitants has been secured. But without it our opponents' arguments will gain a more sympathetic hearing. We must, therefore, accept the fact that we shall be subject to continuing attacks in the United Nations. These will tend, at any rate temporarily, to obscure the positive aspects of our record of decolonisation, create suspicion about our progress with other of our remaining dependencies, and complicate our relations with the Organisation as a whole, thereby making it more difficult for us to fulfil our declared aim of sustaining and strengthening it. These attacks, however, although damaging at times, will not be unmanageable. The recommendation that we should proceed with this proposal, if necessary even without local consent, is made after full consideration of these difficulties. It is becoming clear from the Defence Review that if we wish to maintain a credible military presence east of Suez, to co-operate with the Americans in the Indian Ocean area, and to keep our lines of communication open to Australia, we must have these islands. In five years time we may well have lost our bases in Aden and Singapore. The new agreement with the Maldives covering our facilities at Gan, achieved after long and difficult negotiations, does not provide for the use of these facilities by our allies. If we insisted on our allies using them the independent Maldivian Government might go back on the agreement; and in any case our enjoyment of these facilities cannot

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be guaranteed, the Maldives being independent, in the long term.

10. Once our Singapore base has gone, we shall depend increasingly on American (as well as Australian) logistic support and co-operation. At present the Americans are in no position to help us in the Indian Ocean area, since they have no bases, facilities or forces permanently deployed, between the Mediterranean and the Philippines. Unless we secure the islands now we cannot expect them to have either the means or the inclination to help us, either with forces or logistics, in the future.

11. If we are to rely on deploying forces in the Indian Ocean area without Singapore and Aden, we must clearly have facilities on sovereign territory between Australia and Suez. The islands which we propose to detach from Mauritius and Seychelles are well situated for peace-keeping operations East of Suez, and particularly in East, Central and Southern Africa, where our participation in United Nations operations would be essential. If we do not detach these islands now, we shall find it very difficult to maintain our rôle East of Suez in the long term.

12. It is recommended that the Secretary of State should speak on the above lines at the Defence Overseas Policy Committee.

Permanent Under-Secretary's
Department.

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Annex 51

U.K. Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Tuesday 31st August, 1965, at 11 a.m.*, OPD(65), CAB 148/18 (31 Aug. 1965)

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OPD (65) 37th Meeting

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CABINET

Defence and Oversea Policy Committee

MINUTES of a Meeting held at 10 Downing Street, S.W.1, on Tuesday, 31st August, 1965, at 11 a.m.

Present:

The Right Hon. HAROLD WILSON, M P, Prime Minister

The Right Hon. MICHAEL STEWART, M P, Secretary of State for Foreign Affairs

The Right Hon. ARTHUR BOTTOMLEY, M P, Secretary of State for Commonwealth Relations

The Right Hon. ANTHONY GREENWOOD, M P, Secretary of State for the Colonies

The following were also present:

The Right Hon. THE EARL OF LONGFORD, Lord Privy Seal

The Right Hon. BARBARA CASTLE, M P, Minister of Overseas Development (*Items 1-3*)

The Right Hon. FREDERICK MULLEY, M P, Deputy Secretary of State for Defence and Minister of Defence for the Army

The Right Hon. GEORGE WIGG, M P, Paymaster General

The Right Hon. JOHN DIAMOND, M P, Chief Secretary, Treasury

Field-Marshal Sir RICHARD HULL, Chief of the Defence Staff

Admiral Sir DAVID LUCE, Chief of Naval Staff and First Sea Lord

General Sir JAMES CASSELS, Chief of the General Staff

Air Marshal Sir BRIAN BURNETT, Representing Chief of Air Staff

Secretariat:

Sir BURKE TREND
Mr. P. ROGERS
Mr. M. J. MORIARTY
Air Vice-Marshal J. H. LAPSLEY

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The Prime Minister, summing up the discussion, said that the Committee gave general approval to OPD (65) 123 as guidance for our officials at the forthcoming discussions with our Allies, but it must be made clear that what was said about the future level of our forces in the area was subject to the conclusions of the Defence Review. Questions of the size and cost of our future defence contribution in the area should not be raised in the paper to be prepared for circulation to our allies, which should take the form primarily of an analysis of the situation arising from the secession of Singapore and the difficulties with which we were confronted as a consequence. If our Allies raised during the discussions questions about the future level of our forces, we should make it clear that until the Defence Review was more advanced, we were not in a position to discuss the issues in more detail. We should, however, indicate orally that we looked to a sharing of the cost, and any new facilities to be established, on a co-operative basis. The official discussions could be only exploratory; opportunities for further discussion with Ministers of our Allies would be afforded by the forthcoming visits of the Foreign Secretary and of the Secretary of State for Defence to the United States and to Australia and New Zealand respectively. Meanwhile we should not invite Lee Kuan Yew to visit the United Kingdom but we should not discourage him from doing so.

The Committee—

Approved OPD (65) 123 subject to the points indicated in the Prime Minister's summing up, as the basis of guidance for our representatives at the forthcoming official discussions with officials from Australia, New Zealand and the United States.

---

2. Defence facilities in the Indian Ocean

(Previous Reference: OPD (65) 21st Meeting, Item 6)

The Committee considered a memorandum by the Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs (OPD (65) 124) on Defence Facilities in the Indian Ocean.

The Deputy Secretary of State for Defence said that it was urgent to obtain further decisions on the proposed detachment of certain islands from Mauritius and Seychelles for the military purposes of the United States and ourselves, both because of their strategic position in the Indian Ocean and because the establishment of facilities on them was important to our relations with the United States. The agreement of the Mauritius Ministers to the transfer should be obtained if possible but in any event the decision to detach the islands should be taken before the end of the Mauritius Constitutional Conference which was about to open in London. The United States had now agreed to pay half the estimated cost of detachment of approximately £10 million. In response to the request

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of Mauritius Ministers we might accept responsibility for the external defence of Mauritius, but there was strong objection to our similarly accepting a continued responsibility for internal security after Mauritius became independent, since this might embroil us with opposing racial groups in the island. If agreement on the detachment of the Chagos group could not be obtained, we should nevertheless transfer them to direct United Kingdom sovereignty by Order in Council.

The Foreign Secretary said that if both the Seychelles and the Mauritius Governments agreed to our proposals, there would be no international criticism of our actions. Nevertheless, if the latter did not agree the strategic importance of the islands was sufficient to justify our passing the necessary Order in Council. Our legal right to do so was unquestioned. Moreover, the Chagos Archipelago was 1,800 miles from Mauritius and they had been grouped together some time ago only for administrative convenience: there were no ethnic or historic connections between the islands and Mauritius.

The Colonial Secretary said he was not in agreement with these proposals. The Mauritius Constitutional Conference would in any case be difficult. When the Committee had last discussed detaching the islands, they had agreed that the proposed compensation should be increased and that the agreement of the Mauritius Government was essential. Their Ministers would be very disappointed at our not agreeing to accept a 99-year lease and also if the United States did not accept their proposals on sugar. The offer to accept responsibility for their external defence would be useful in negotiations. However, our acceptance of responsibility for internal security would be the main issue. Minority guarantees would be a most important part of the conference and could probably only be satisfactorily resolved by an assurance that we would provide forces for internal security at the request of the Mauritius Government. At least we should therefore agree that a request from the Mauritius Government after independence for assistance in internal security would be sympathetically considered. Mauritius Ministers would, on this basis, probably accept the detachment of the islands but to threaten to go ahead with this by Order in Council regardless of their agreement would undoubtedly wreck the conference.

In discussion the following points were made:

(*a*) In the negotiations, aid in training the Mauritian Police and Security Forces should be offered in an attempt to obtain their agreement, without formally taking on the responsibility to provide United Kingdom forces for internal security.

(*b*) The compensation payments could not be met from the provision which had been made for overseas aid; and there were substantial grounds for suggesting that, since they would in effect represent the price paid for the acquisition of a defence asset, they should be charged to Defence Votes, although the Ministry of Overseas Development might well be responsible for the control of the payments if these were for aid purposes. On the other hand it would be unfortunate to impose on Defence Votes any avoidable

additional burden at a time when we were seeking to secure the maximum economy in defence expenditure. The question of which Departmental Vote should bear these costs should therefore be further considered by the Treasury.

The Prime Minister, summing up the discussion, said that at the forthcoming conference we might if necessary agree to " consider sympathetically " the provision of United Kingdom forces for purposes of internal security at the request of the Mauritius Government after independence if it proved that agreement could not be reached on the basis of our providing assistance in training and by the secondment of trained personnel for the Mauritius Police and Security Forces. A decision on whether or not we should detach the islands in question by Order in Council if the agreement of Mauritius Ministers could not be obtained to this course need not be taken at this stage, and until we could see how the forthcoming conference progressed. It was, however, essential that our position on the detachment of the islands should in no way be prejudiced during its course and the Colonial Secretary should bring the matter back to the Committee in good time for a decision to be reached on this issue before the conference reached any conclusion.

The Committee—

(1) Invited the Colonial Secretary:

(*a*) to be guided by the Prime Minister's summing up in the course of the forthcoming constitutional conference.

(*b*) to bring the matter before them again before the conference reached any conclusion.

(2) Invited the Chief Secretary, Treasury, in consultation with the Deputy Secretary of State for Defence, the Colonial Secretary and the Minister of Overseas Development to give further consideration to the departmental responsibility for the expenditure involved.

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3. Southern Rhodesia

The Commonwealth Secretary said that on his recent tour of a number of Commonwealth countries in West Africa he had been under strong pressure from political leaders there to seek an early agreement in Southern Rhodesia. They were conscious of our difficulties and while a solution on the basis of the five principles which we had laid down might not be publicly welcomed, they recognised the necessity for compromise if agreement were to be obtained. In Southern Rhodesia itself the recent conference of the Rhodesia Front Party appeared to have led to a hardening of attitudes and it was possible that the Prime Minister, Mr. Smith, might now intend to make a unilateral declaration of independence (u.d.i). In

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Annex 52

U.K. Foreign Office, *Minute from E. H. Peck to Mr. Graham: Indian Ocean Islands*, FO 371/184527 (3 Sept. 1965)

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INDIAN OCEAN ISLANDS

We have heard both from the American Embassy and from our Embassy at Washington that Messrs. Kitchen and Myers will be in Europe about 23/24 September and would like to call in London in order to talk about ways and means of setting the American share of compensation payments to Mauritius and the Seychelles against R. & D. charges owed by H.M.G. to the U.S. Government. They will be bringing with them Captain Coward of the U.S. Navy attached to the Politico-Military Department of the State Department and three other experts. They would obviously be glad to talk generally to us about the project and about any progress that may have been made at the Mauritian Constitutional Conference, but the main purpose of the visit is to discuss finances. I have spoken to Mr. Moberly, who has confirmed that the dates proposed would be convenient to the Ministry of Defence, but that any date would be unlikely to produce a satisfactory discussion unless the Americans had been able to let us have an outline of their ideas in writing in advance. I have passed this to Mr. Barringer of the American Embassy, who said that Captain Coward had told him that it was the intention to let us have a piece of paper.

2. I do not think that it would be necessary for Mr. Peck to attend the discussions between Mr. Kitchen's team and the Ministry of Defence, but I am sure that Mr. Kitchen would hope to have a meeting with him at some time to discuss the project in general terms. Would the dates proposed be convenient?

3. Mr. Trench's letter of 26 August, at paragraph 4, asks whether it is intended to bring the Americans in on talks about the Islands with the Mauritians in the course of the forthcoming Constitutional Conference, and if not, what the reasons for this decision are. I have not put this suggestion to the Colonial Office. I do not think that it comes from the Americans, since it has all along been agreed that the negotiations for the detachment of the Islands must be our responsibility. It would be inappropriate, and I am sure that the Colonial Office would resist it, if we were to suggest that the Americans should attend the Constitutional Conference at any stage. I submit a draft letter from Mr. Arthur.

This is not affected by the POD discussion on 31 August, minutes of which Mr. Peck has seen.

(J.A.N. Graham)
2 September 1965.

Mr. Arthur
Mr. Peck

I shall be away at the time of the Kitchen/Myers proposed visit, but everyone else in POD will be here, and Mr. Graham could perhaps attend the discussions.

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Before seeing this minute, I had had a telephone call from Mr. Trafford Smith of the Colonial Office who wished to inform me of the discussion he had had with the Colonial Secretary and the Governor of Mauritius regarding the tactics for the constitutional conference and how to introduce the subject of "support facilities".

2. The plan is to have the talks on the "support facilities" proceeding in parallel (and in a smaller group) with the constitutional talks, the object being to link both up in a possible package deal at the end. The smaller group would be chaired by the Colonial Secretary and would comprise the Governor and his advisers, Rangoolam, and three Mauritius party leaders, also Ministers in the Coalition, probably the leader of the Parti Mauritienne, a Muslim and a Hindu.

3. Mr. Trafford Smith wondered whether someone from the Foreign Office and/or someone from the Ministry of Defence might at a suitable stage in the support facilities talks attend to give some statement on the general importance of the facilities we need in the context of global defence and Anglo-American interest. I said that though I for my part would be willing to do this if it were thought desirable, my inclination was that the less we stressed the American interest the better.

4. Mr. Trafford Smith then went on to say that in the course of the talks the Colonial Office anticipated that the Mauritians would put forward their demands for an increased sugar quota and increased immigration facilities. These would have to be answered in a pretty negative manner by the British officials, but it would be difficult for the latter to talk convincingly of the American difficulties. The Colonial Office wondered whether it would not be tactically a good thing to ask American experts to talk to the Mauritian leaders exclusively on the two points of sugar quota and immigration so that the Mauritians did not feel that they had been fobbed off with second-hand views. I replied to Mr. Trafford Smith that the Americans were extremely keen to keep out of all the negotiations for support facilities which they considered to be our affair and that I would be very reluctant to bring them into the talks, if only for the very good reason that this would raise the price. However on the understanding that all they required were members of the American Embassy with expert briefs on these two specific subjects, I undertook without commitment to sound out the American Embassy accordingly. I shall tackle Mr. George Newman on the subject this afternoon if opportunity arises. I understand that this erruption into the talks would be wanted towards the end of next week or the beginning of the week starting on 13 September.

5. Perhaps some of this minute could be worked into the letter to Mr. Trench, though I do not think we need ask Washington to produce the sugar and immigration experts.

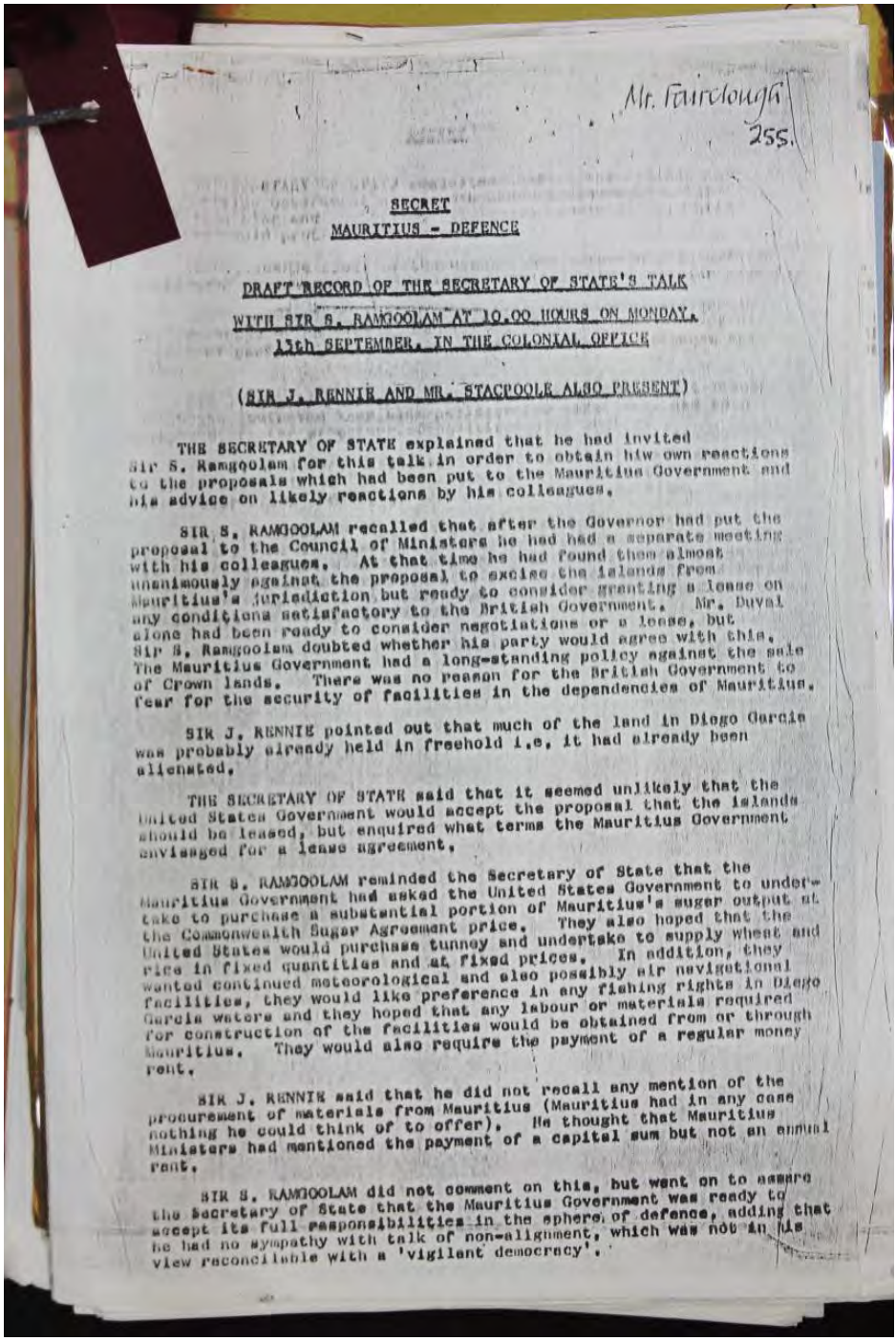
(P.H.Peck)
3 September, 1965

Mr. Graham

Dft to issue as amended

Annex 53

United Kingdom, *Draft Record of the Secretary of State's Talk with Sir S. Ramgoolam at 10.00 Hours on Monday, 13th September, in the Colonial Office*, FCO 31/3834 (13 Sept. 1965)



Mr. Fairclough
255.

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MAURITIUS - DEFENCE

DRAFT RECORD OF THE SECRETARY OF STATE'S TALK WITH SIR S. RAMGOOLAM AT 10.00 HOURS ON MONDAY, 13th SEPTEMBER, IN THE COLONIAL OFFICE

(SIR J. RENNIE AND MR. STACPOOLE ALSO PRESENT)

THE SECRETARY OF STATE explained that he had invited Sir S. Ramgoolam for this talk in order to obtain his own reactions to the proposals which had been put to the Mauritius Government and his advice on likely reactions by his colleagues.

SIR S. RAMGOOLAM recalled that after the Governor had put the proposal to the Council of Ministers he had had a separate meeting with his colleagues. At that time he had found them almost unanimously against the proposal to excise the islands from Mauritius's jurisdiction but ready to consider granting a lease on any conditions satisfactory to the British Government. Mr. Duval alone had been ready to consider negotiations on a lease, but Sir S. Ramgoolam doubted whether his party would agree with this. The Mauritius Government had a long-standing policy against the sale of Crown lands. There was no reason for the British Government to fear for the security of facilities in the dependencies of Mauritius.

SIR J. RENNIE pointed out that much of the land in Diego Garcia was probably already held in freehold i.e. it had already been alienated.

THE SECRETARY OF STATE said that it seemed unlikely that the United States Government would accept the proposal that the islands should be leased, but enquired what terms the Mauritius Government envisaged for a lease agreement.

SIR S. RAMGOOLAM reminded the Secretary of State that the Mauritius Government had asked the United States Government to undertake to purchase a substantial portion of Mauritius's sugar output at the Commonwealth Sugar Agreement price. They also hoped that the United States would purchase tunney and undertake to supply wheat and rice in fixed quantities and at fixed prices. In addition, they wanted continued meteorological and also possibly air navigational facilities, they would like preference in any fishing rights in Diego Garcia waters and they hoped that any labour or materials required for construction of the facilities would be obtained from or through Mauritius. They would also require the payment of a regular money rent.

SIR J. RENNIE said that he did not recall any mention of the procurement of materials from Mauritius (Mauritius had in any case nothing he could think of to offer). He thought that Mauritius Ministers had mentioned the payment of a capital sum but not an annual rent.

SIR S. RAMGOOLAM did not comment on this, but went on to assure the Secretary of State that the Mauritius Government was ready to accept its full responsibilities in the sphere of defence, adding that he had no sympathy with talk of non-alignment, which was not in his view reconcilable with a 'vigilant democracy'.

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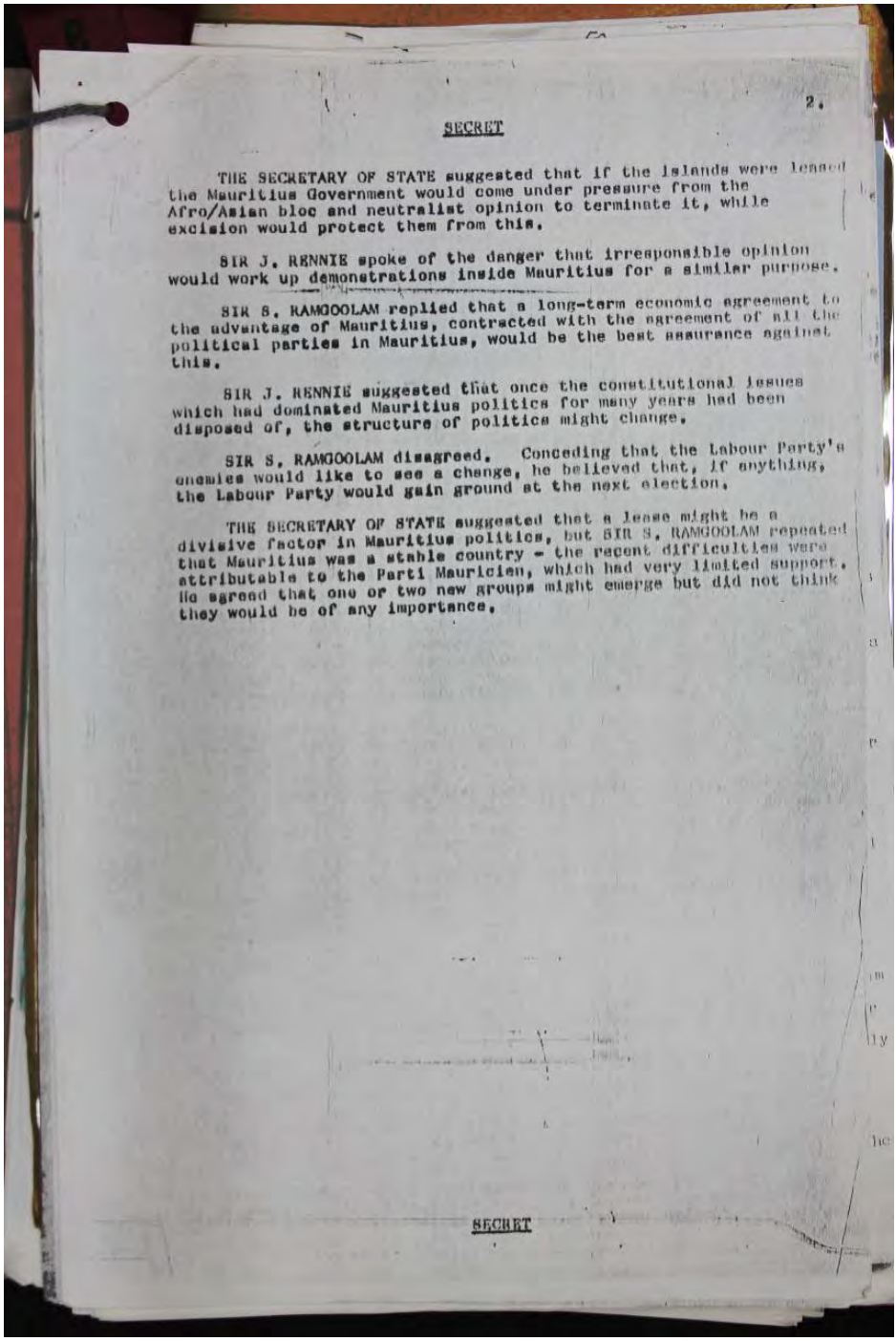

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THE SECRETARY OF STATE suggested that if the Islands were leased the Mauritius Government would come under pressure from the Afro/Asian bloc and neutralist opinion to terminate it, while excision would protect them from this.

SIR J. RENNIE spoke of the danger that irresponsible opinion would work up demonstrations inside Mauritius for a similar purpose.

SIR S. RAMGOOLAM replied that a long-term economic agreement to the advantage of Mauritius, contracted with the agreement of all the political parties in Mauritius, would be the best assurance against this.

SIR J. RENNIE suggested that once the constitutional issues which had dominated Mauritius politics for many years had been disposed of, the structure of politics might change.

SIR S. RAMGOOLAM disagreed. Conceding that the Labour Party's enemies would like to see a change, he believed that, if anything, the Labour Party would gain ground at the next election.

THE SECRETARY OF STATE suggested that a lease might be a divisive factor in Mauritius politics, but SIR S. RAMGOOLAM repeated that Mauritius was a stable country - the recent difficulties were attributable to the Parti Mauricien, which had very limited support. He agreed that one or two new groups might emerge but did not think they would be of any importance.

Annex 54

U.K. Pacific and Indian Ocean Department, *Points for the Secretary of State at D.O.P. meeting, 9:30 a.m. Thursday, Sept. 16th*, CO 1036/1146 (15 Sept. 1965)

References:

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Points for the Secretary of State at D.O.P. meeting
9.30 a.m. Thursday, September 16th

The Mauritius Conference - progress so far

In plenary sessions, the four main Mauritius parties and the two leading Independents (Mr. Paturau and Mr. Ah Chuen, on behalf of the Chinese) have set out their opening positions. All the parties except Parti Mauricien have circulated papers to the Conference summarising their views, and the Parti Ma uricien will shortly table their paper.

2. On the basis of these papers (we have had the Parti Mauricien paper, privately, in draft for some days) separate negotiations have been held individually with each party and with the two Independents. Parallel with these meetings, a Committee of the whole Conference under the chairmanship of Lord Taylor has been studying the franchise and the electoral system, one of the most difficult technical problems to be settled in a multi-racial community like Mauritius. Tomorrow, the intention is to start in plenary session the process of going through the detailed provisions of the constitution in broad outline to determine the extent to which general agreement can be reached on isolated points of difference.

3. The main issue to be decided at the Conference is the future status of Mauritius - independence with safeguards for minorities, or some form of association. It is already becoming clear at the separate discussions with individual parties that, while the leaders have shown a certain degree of flexibility and to some extent moved a little closer towards one another's positions, the likelihood of getting support from a substantial majority of the Conference for an agreed outcome is small. Though the Mauritius Labour Party led by Sir Seewoosagur Ramgoolam, the largest single party, is pressing for independence and maintains that it has the support of the majority of the inhabitants of Mauritius, solid evidence for this support has so far not been produced, and the Parti Mauricien have

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put forward a strong case for believing that there might ~~in fact~~ not be a ~~small~~ majority ~~against~~ for independence if the point were put impartially to the test. For this reason, the Parti Mauricien insists that a referendum must be an essential prerequisite for acceptance of any final solution, while the Labour Party is against a referencum and prefers an election AFTER FACT OF INDEPENDENCE as a means of consulting the people. The Muslim Party is pressing for separate communal representation, and it looks as though the Mauritius Labour Party have promised them that as the price of their support for independence. It is possible however that the Muslim Party might throw their lot in with the Parti Mauricien in certain circumstances. Because of the general objections to communalism, and the undue importance which any acceptance of it gives to the Muslim Party in Mauritius, an early move at the Conference may be to rule out communal electorates as being unacceptable to H.M.G. and to propose that the problem of adequate representation of minorities should be solved by other electoral means.

4. In this situation, and on the form at present shown by the various groups at the Conference, it seems that the strength of feeling against independence may make it impossible for the Conference to accept a programme by which Mauritius would proceed straightforwardly to independence. It may be necessary to decide on a form of association under which at any time in the future, if a sufficient majority of the people desired it, the territory could go on to independence: or if support for such a solution is inadequate, to finish the Conference with two alternative constitutional schemes, one for an independent Mauritius, the other for a form of association with Britain, the choice being put to the people by referendum. A referendum may in any case be necessary as the balance of opinion at the Conference may be so close as to make it impossible for H.M.G. to impose a solution in favour of either independence or association. It may yet turn out that a decision for independence could be made acceptable to an adequate

/majority

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majority in Mauritius with adequate minority safeguards which might involve some commitment by Britain to assist in the maintenance of internal security in some circumstances, as well as to look after external defence. So far, neither the possibility of a defence treaty covering external defence, nor of internal security, have been discussed but the intention is to open up this question, which is one of the key elements in reaching a settlement, in discussions with individual groups. (R. see P.S. at end of note) DEFENCE INT. SECURITY MS LP attitude

See Rosmont

Defence facilities in the Indian Ocean - discussions with Mauritius Ministers

5. This subject is, of course, not on the agenda of the Mauritius Conference: but the possible requirement as part of the Mauritius constitutional settlement for a treaty covering external defence and some arrangement for British assistance in the maintenance of internal security establishes a link between the two sets of negotiations and it may be that in the end, it will be necessary to reach a settlement on both questions at the same time. On September 13th the Secretary of State met the principal Mauritius Ministers concerned (the four Party Leaders and Mr. Paturau, an Independent) for a first run over the ground. The general proposal for the detachment of the islands had already been put to the Mauritius Council of Ministers by the Governor before the delegations had left Mauritius, and Mauritius Ministers had shown themselves favourably disposed in principle, but had made various suggestions for special compensation from the Americans. They wanted a U.S. sugar quota of 300,000 tons, special facilities for immigrants from Mauritius, provisions for the use of Mauritius labour ~~and materials~~ in any construction work on the islands in question, the safeguarding of fishing and mineral rights etc.; above all, they proposed a lease of the islands rather than detachment.

6. They hoped it might be possible to arrange tripartite negotiation with the Americans in London in which these suggestions could be pursued.

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7. At the meeting on Monday, the Mauritius Ministers were informed of our reaction and that of the Americans to this proposal. Because of the basic Anglo-American agreement under which the British provided the sites while the Americans did the construction, tripartite negotiations were out of the question. The fact that American sugar quotas were a matter for Congress made it difficult to negotiate a special arrangement for Mauritius, and our expert advice is that it would be against both Mauritius and Commonwealth interests to attempt to do so. There were similar objections as regards special arrangements for Mauritius immigration into the U.S. The Mauritius Ministers showed some reluctance to accept these points, and arrangements were made for them to see the Economic Minister at the American Embassy on September 15th. Sir Seewoosagur Ramgoolam told the Americans that the Mauritius Government was on the side of the free world but had to do everything possible to prevent a fall in the standard of living with the rising population - hence his concern for a maximum return from Mauritius exports and the maximum emigration. The Americans explained their difficulties as regards sugar and immigration, but the Economic Minister said that he had taken note of the case made by the Mauritius Ministers and would report back to Washington.

8. The conclusion of the Monday meeting at the Colonial Office with Mauritius Ministers was that they would give further consideration to other forms of compensation than sugar and immigration. It was suggested that Britain might be able to help with economic development, and that a scheme of assisted land settlement might be worked out which would be financed from Britain, possibly through the Commonwealth Development Corporation. An approach is being made to Lord Howick and further meetings will shortly be held with Mauritius Ministers.

9. In view of the preoccupation of some sections of the Mauritius Conference delegation with provision for external defence and internal security, it may be necessary to keep the discussions on

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Indian Ocean defence facilities running parallel with defence and internal security discussions at the Conference, until the moment comes for a settlement of both questions.

P.S. An important consideration is also that failure by the Mauritius Labour Party to obtain independence or a firm commitment to independence might so prejudice their position that they would rapidly lose ground to a more extreme Hindu party without political experience and much more open to Communist penetration.

(A point made by the Governor)

Pacific and Indian Ocean Department,
15th September, 1965

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Annex 55

United Kingdom, *Secretary of State's Private Discussion with the Secretary of State for Defence on 15 September: Indian Ocean Islands*, FO 371/184528 (15 Sept. 1965)

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Secretary of State's Private Discussion with the Secretary of State for Defence on 15 September

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Indian Ocean Islands

The Colonial Secretary is due to report to his colleagues at the O.P.D. tomorrow on the progress made at the Mauritius Constitutional Talks regarding obtaining the acquiescence of Mauritian leaders in the detachment of Diego Garcia (and certain other islands) for defence purposes. I learn from the Colonial Office that the defence facilities question is being treated in a small group consisting of the Colonial Secretary, the Governor and four of the principal Mauritian political leaders. Though the question has been mentioned in general terms, I understand that it has not been grasped and various side issues such as an increased U.S. sugar and immigration quotas are being explored. It seems likely that the detachment of the islands may have to be arranged in a package deal at the conclusion of the Constitutional Talks.

2. The Foreign and Defence Secretaries may like to stress to Mr. Greenwood at the O.P.D. tomorrow the great importance they attach to obtaining, in the first place, Diego Garcia and later, certain other islands for joint defence facilities developed in conjunction with the Americans and that this strategic concept has assumed even greater importance since the Quadripartite talks on Far East defence. The Americans would take it very much amiss if we were, through lack of determination, to fail to secure these islands at this moment. If Mauritian acquiescence cannot be obtained, then the course recommended by the Joint Foreign Office/Ministry of Defence paper, i.e. forcible detachment and compensation paid into a fund, seems essential.

(E.H.Peck)
15 September, 1965

Secretary of State

Annex 56

U.K. Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 16th September, 1965 at 9:45 a.m.*, OPD(65) (16 Sept. 1965)

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OPD (65) 39th Meeting

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CABINET

Defence and Oversea Policy Committee

MINUTES of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 16th September, 1965 at 9.45 a.m.

Present:

The Right Hon. HAROLD WILSON, M P, Prime Minister

The Right Hon. JAMES CALLAGHAN, M P, Chancellor of the Exchequer

The Right Hon. DENIS HEALEY, M P, Secretary of State for Defence

The Right Hon. ARTHUR BOTTOMLEY, M P, Secretary of State for Commonwealth Relations

The Right Hon. ANTHONY GREENWOOD, M P, Secretary of State for the Colonies

The following were also present:

The Right Hon. BARBARA CASTLE, M P, Minister of Overseas Development

The Right Hon. THE EARL OF LONGFORD, Lord Privy Seal

Mr. GEORGE THOMSON, M P, Minister of State for Foreign Affairs

Mr. MAURICE FOLEY, M P, Joint Parliamentary Under-Secretary of State, Department of Economic Affairs

Admiral Sir DAVID LUCE, Acting Chief of the Defence Staff (*For Items 2 and 3*)

General Sir JAMES CASSELS, Chief of the General Staff (*For Items 2 and 3*)

Air Chief Marshal Sir CHARLES ELWORTHY, Chief of the Air Staff (*For Items 2 and 3*)

Secretariat:

Sir BURKE TREND
Mr. D. S. LASKEY
Mr. F. A. K. HARRISON
Air Vice-Marshal J. H. LAPSLEY

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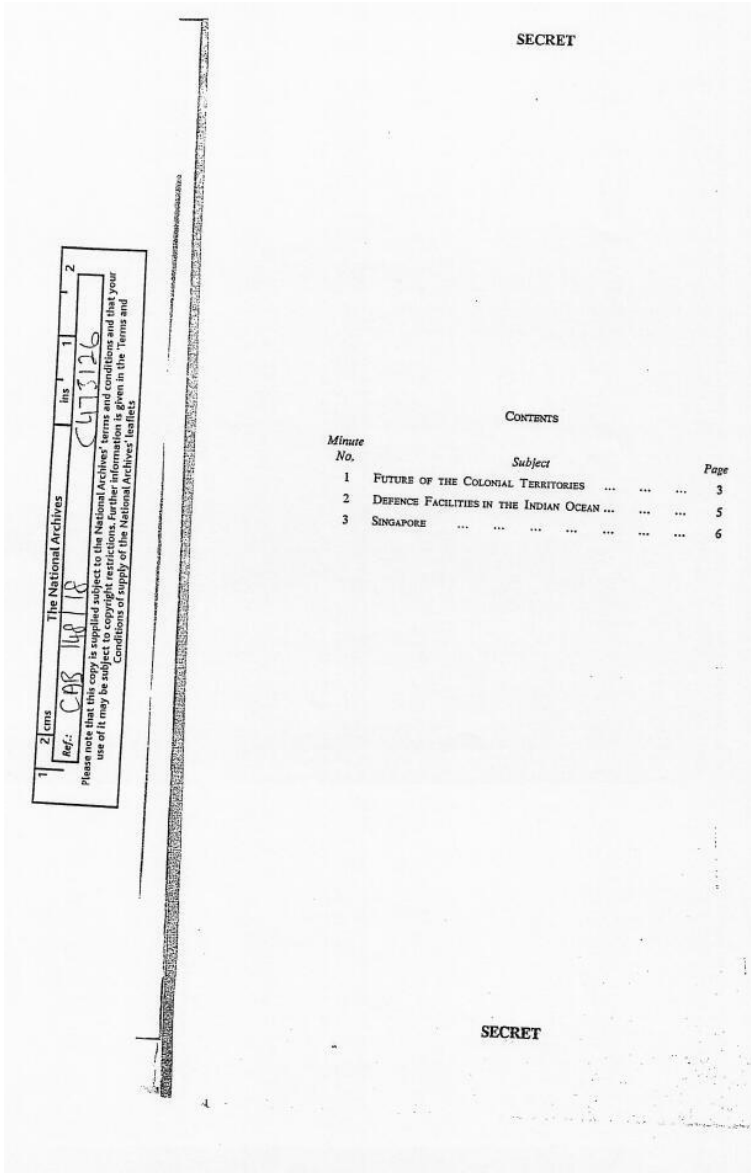

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2. Defence Facilities in the Indian Ocean

(Previous Reference: OPD (65) 37th Meeting, Item 2, Conclusion (i))

The Colonial Secretary said that he had discussed with the Mauritian leaders the detachment of the islands in the Chagos Archipelago. They were disappointed that the United States Government was not prepared to consider the lease of the islands or to meet their requests over sugar purchases and emigration. They had however had discussions with the United States Embassy and the latter had agreed to consider their suggestions as regards trade. They had also discussed with the Colonial Development Corporation the possibility of a land settlement scheme. It had been previously envisaged that we might offer a maximum of £3 million as compensation for the detachment of the islands. He had made an initial offer of £1 million and this had not been badly received. If it would help to secure agreement we might consider making available a further £1 million to finance development schemes over a period of years. We might also consider a provision that after, say, 99 years, the islands would revert to Mauritius if they were no longer required by the United Kingdom and the United States. There had been some discussion about a continuing British responsibility for internal security, but this had been in the context of future constitutional development rather than of the detachment of the islands. Of the two main Mauritius parties one favoured independence while the other preferred a form of association with the United Kingdom. Both would want some assurance of continued British assistance in maintaining internal security but it might not be necessary for us to go beyond an agreement to consult at the request of the Mauritius Government. We were already helping to build up Mauritian security forces and would try to meet any further requests for such assistance. There had been no detailed discussion as yet about a defence agreement. The Constitutional Conference should end by the middle of the following week and he was hopeful that by then agreement on the detachment of the islands would have been secured. He had not pressed for an immediate decision both because this might prejudice agreement on the constitutional issues and because the Mauritian leaders were aware of the strength of their bargaining position and undue pressure might only induce them to put up their price.

In discussion it was pointed out that an urgent and satisfactory decision for the detachment of the islands was necessary both in our own defence interests and in order to maintain our political and military relations with the United States.

Summing up the discussion *the Prime Minister* said that the Committee would wish to take note of the Colonial Secretary's statement and to express the hope that agreement for the detachment of the islands would be reached urgently, and in any case by the end of the present Constitutional Conference. A decision on whether or not we should detach the islands in question by Order in Council

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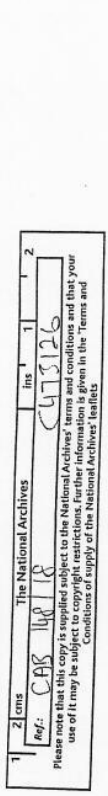
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if the agreement of Mauritian Ministers could not be obtained should still be deferred.

The Committee—

Took note of the Colonial Secretary's statement and agreed with the Prime Minister's summing up.

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3. Singapore

The Prime Minister said that a report by the Commonwealth Secretary on the discussions with the Australian, New Zealand and United States Authorities would be available for consideration by the Committee in the following week and it would therefore be preferable that Singapore should be discussed then.

The Chancellor of the Exchequer said that the aim must be to reduce defence expenditure in the Far East and there should be no question of increasing expenditure by establishing alternative facilities in Australia while planning to retain the Singapore base.

The Committee—

Invited the Commonwealth Secretary to circulate a report on the quadripartite discussions in time for a meeting of the Committee in the following week.

Cabinet Office, S.W.1,
16th September, 1965.

Annex 57

United Kingdom, *Mauritius - Defence Issues: Record of a Meeting in the Colonial Office at 9:00 a.m. on Monday, 20th September, 1965*, FO 371/184528 (20 Sept. 1965)

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MAURITIUS - DEFENCE ISSUES

RECORD OF A MEETING IN THE COLONIAL OFFICE AT 9.00 A.M. ON MONDAY, 20TH SEPTEMBER, 1965

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PRESENT:

Secretary of State (In the Chair)

Sir H. Poynton	Sir R. S. Ramgoolam
Sir J. Rennie	Mr. J. Koenig, Q.C.
Mr. Trafford Smith	Mr. A. R. Mohamed
Mr. A. J. Fairclough	Mr. S. Bissoondoyal
Mr. J. Stacpoole	Mr. J. M. Paturau

The Secretary of State again expressed his desire to keep the discussion of the proposal to establish defence facilities in the Mauritius dependencies separate from the Constitutional Conference and mentioned his own double role as a spokesman of Her Majesty's Government's interests in this matter and as a custodian within the British Government of the interests of Mauritius. He enquired about the upshot of the meeting between Mauritian Ministers and officials of the U.S. Embassy in London.

Mr. Koenig replied that the U.S. spokesman had been unable to offer concessions. They had promised to transmit to their Government the points made by the Mauritius Delegation but had been unable to give any indication when the U.S. Government's reaction would be made known.

The Secretary of State suggested that the Mauritius Government should draw the conclusion from the United States Government's attitude - for instance their insistence on excision and their refusal to consider a lease - that the Americans did not regard the proposed facilities as indispensable. (In subsequent discussion the possibility that

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Annex 57

the facilities required might conceivably be established in islands belonging to Seychelles was mentioned by the Secretary of State). He went on to outline, for the confidential information of the Mauritius Ministers, the economic assistance which the Mauritius Government could expect from Britain up to 1968 irrespective of compensation for the defence facilities; this would include a C.D. & W. allocation for 1966/8 totalling £2.4m., i.e. £800,000 per year, while Britain would envisage that, subject to the relevant criteria being met and if a genuine need could be shown, it would be possible to consider making available Exchequer loans to Mauritius at the rate of about £1m. a year. This possible loan figure was in no sense an allocation - allocations of Exchequer loans were never made and it was not intended that this should be done in this case.

Sir S. Ramgoolam commented that this would fall far short of Mauritius' needs for development finance.

The Secretary of State said that in present economic conditions, Britain was unfortunately unable to increase her total aid to the developing countries. He suggested that against this background a sum of the order (say £1m.) previously mentioned as compensation for the detachment of Diego Garcia would be very valuable if it were used to finance, for instance, a land settlement scheme. Whatever sum was settled on, it should be allocated for specific and identifiable projects and would, of course, be entirely separate from the compensation to be paid to land owners in Diego Garcia and from expenditure on resettlement.

Sir S. Ramgoolam said that the Mauritius Government was not interested in the excision of the islands and would stand out for a 99-year lease. They envisaged a rent of about £7m. a year for the first twenty years and say £2m. for the

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remainder. They regarded the offer of a lump sum of £1m. as derisory and would rather make the transfer gratis than accept it. The alternative was for Britain to concede independence to Mauritius and allow the Mauritius Government to negotiate thereafter with the British and United States Governments over Diego Garcia.

Mr. Koenig spoke of Mauritius' record of loyalty to Britain in two World Wars and his own natural inclination to advocate that the facilities required for Commonwealth defence should be made available free of charge. As against this the grave economic needs of Mauritius made him anxious to find some middle way between a generous gesture of this kind and what Sir S. Ramgoolam had proposed. He urged that the possibility of inducing the U.S. Government, who had rejected all the suggestions which the Mauritius Government had put forward, to find some alternative method of providing economic assistance for Mauritius should be explored. The U.S. Embassy officials had left him unconvinced that the U.S. Government understood or felt any interest in the economic needs of Mauritius.

Mr. Mohamed suggested that the Mauritius Government should now await replies from the U.S. Government on the points which had been discussed at the recent meeting. But Sir S. Ramgoolam thought it would be better to bring further pressure to bear upon the U.S. Government through the British Government to increase the quota for Mauritius sugar in the U.S. domestic market.

The Secretary of State pointed out that Diego Garcia was not in present conditions a source of wealth to Mauritius; and that it would be in the general interests of the area, including the interests of Mauritius, that there should be an Anglo/U.S. military presence there.

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Sir S. Ramgoolam rejoined that he fully understood the desirability of this, not only in the interests of Mauritius but in those of the whole Commonwealth. He repeated that he would prefer to make the facilities available free of charge rather than accept a lump sum of £1m. which was insignificant seen against Mauritius' annual recurrent budget amounting to about £13.5m. - with the development budget the total was about £20m. He was not trying, he said, to extract the large sums he had mentioned from the British Government, for that would damage the prosperity of the parent country of the Commonwealth to which all the developing countries in the Commonwealth looked for aid. It was from the United States that additional aid should come.

The Secretary of State pointed out that the U.S. Government undertook world wide defence responsibilities in alliance with Britain. The distinction Sir Seewoosagur was observing was therefore an over-simplification. He invited comments from the other Mauritian Ministers.

Mr. Bissoondoyal and Mr. Mohamed expressed their support for the views expounded by the Premier.

After Sir S. Ramgoolam had suggested that if Mauritius could sell 300,000 tons of sugar yearly in the U.S. domestic market she would gain some £15m., Mr. Trafford Smith pointed out that, as explained earlier, under the proposed arrangement it fell to Britain to undertake all expenditure connected with the acquisition of the site for the proposed facilities, including compensation to the Mauritius Government.

Mr. Koenig said that, recognising that this was so, the Mauritius ministers had tried at their meeting at the United State Embassy to argue for assistance over and above financial compensation; they wanted arrangements which would provide assistance with trade. Sir Seewoosagur Ramgoolam stressed

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that Mauritius ministers needed to provide for the future; lump sum compensation now was no good; something of long term assistance to the people of Mauritius was necessary and this was why trade arrangements were sought.

Sir John Rennie made the point that, if Mauritius obtained lump sum compensation now, they could put it into valuable development which could provide a continuing benefit to Mauritius and a continuing income to the Mauritius Government. It was moreover the case that the Mauritius Government would be acquiring land which it did not at present own in compensation for land surrendered in Chagos. Sir Hilton Poynton agreed and made the point that if, for example, lump sum compensation were invested in a land settlement scheme, then the position would be that at no capital cost to the Mauritius Government they would have secured an appreciable recurrent benefit by way of rents paid by the settlers.

Mr. Mohamed interjected that there had been some experience of the difficulty in collecting rents; a land settlement scheme would not produce much income.

Sir Seewoosagur Ramgoolam repeated that the matter should be considered on the basis of Chagos being made available on a 99 year lease. The Secretary of State said that he could of course see the advantages of this from Mauritius's point of view. He wished that he thought that such an arrangement might be acceptable. The United States Government had been so specific and categorical in insisting that British sovereignty must be retained over Chagos - in other words that Chagos should be made available on the basis of detachment - that he felt sure that a lease would not be acceptable. In these circumstances, as he had said

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earlier, it was his own personal view that the whole project might well fall through and the United States Government look elsewhere for the facilities they sought if Mauritius continued to demand a lease.

Sir Seewoosagur Ramgoolam said that the sort of compensation that had been suggested was of no real interest to the Mauritius Government. The United States was spending vast sums of money elsewhere in the world on bases that were not secure. Admittedly Diego Garcia was not being used at present; but in the future it might be of great strategic significance. Mauritius must obtain some significant benefit from making it available. He did not pretend to know the military significance of Diego Garcia but, in considering compensation for Mauritius, the scale on which the United States has accepted expenditure on bases elsewhere had to be borne in mind. The Secretary of State pointed out that it was most unlikely that Diego Garcia would ever be built up on such a scale as the kind of bases that Sir Seewoosagur Ramgoolam was referring to. Sir Hilton Poynton made the point that Sir Seewoosagur appeared to be referring to the cost of building military installations and not of acquisition of sites. Sir Seewoosagur Ramgoolam repeated that attention should be paid to what the United States had spent elsewhere in considering compensation for Mauritius. There were other considerations also to be borne in mind. Mauritius had an increasing population to cope with and the Government must ensure that standards do not decline - or only do so very slightly. A lump sum of £1 million was not of interest.

Mr. Paturau made the point that if, as had been suggested, the suggestion of using Diego Garcia were dropped and the required facilities were developed in islands belonging

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to Seychelles, this would cost a great deal more. These islands were much further from, for example, India and Ceylon and so would presumably be less directly valuable. It therefore seemed to him that it must be worth an appreciable amount to the United States that Diego Garcia should be made available. Mauritius should have obtained a one hundred thousand ton U.S. sugar quota in 1962. It was lost as a result of political pressure. If, given the apparent value of Diego Garcia to the United States Mauritius could now use political pressure to secure a substantial sugar quota, this seemed to him only sensible.

Sir Seewoosagur Ramgoolam then suggested that the Mauritius ministers' proposals should be communicated to the United States Government. When Mr. Trafford Smith made the point that the United States Government was not directly involved since negotiations on this matter were between the Mauritius and British Governments, Sir Seewoosagur suggested that it might then be better if the whole matter were left until Mauritius were independent and were then negotiated with the independent Government.

The Secretary of State then said that it might be possible for him to secure agreement to increasing the proposed compensation from £1 million in the direction of £2 million. In reply to this Sir Seewoosagur Ramgoolam said that the Mauritius ministers had not come to bargain. They could not bargain over their relationship with the United Kingdom and the Commonwealth. But there were real economic difficulties in Mauritius and if the British Government could obtain assistance on the lines they had suggested this would be highly desirable. He reiterated that lump sum compensation was not of such importance as something which would ensure a steady economy for Mauritius over a period of years. As

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regards the suggestion that lump sum compensation could be invested in e.g. land settlement he said that he did not wish to be tied to particular projects at once; he did not wish to commit future governments of Mauritius. Land settlement had been tried some years ago and lessons had been learned and changes made. On this point Sir John Rennie interjected that, whilst he did not himself think that £1 million was very much by way of compensation, it was nonetheless clear that land settlement must be undertaken now; and capital provided by way of lump sum compensation would make this possible.

The Secretary of State said that what Mauritius ministers were really saying was that because the United States could not help over her sugar quota and trade, then the United Kingdom must stump up hard cash instead. Mr. Mohamed said that this was not really the way they looked at it. If only the U.K. were involved then they would be willing to hand over Diego Garcia to the U.K. without any compensation; Mauritius was already under many obligations to the U.K. But when the United States was involved as well then they wanted something substantial by way of continuing benefit. They were prepared to forego lump sum compensation but continuity was essential and the most important thing was the U.S. sugar quota. The Secretary of State said that he would like to be clear on the attitude of Mauritius ministers. As he understood it their attitude could be summed up as follows:

(i) If economic assistance from the United States on the scale that had been suggested could be made available then the Mauritius Government would be willing to agree to the detachment of the Chagos Archipelago without compensation.

(ii) If however economic assistance on the lines suggested was not forthcoming then they would propose that

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Chagos should be made available on a 99 year lease at a rental of £7 million per annum for 20 years and £2 million thereafter.

(iii) That the Mauritius Government were not in any event interested in lump sum compensation from Britain of £2 million, part in capital at once and part spread over a period.

Sir Seewoosagur Ramgoolam, commenting on the third of the above points said that they could not contemplate demanding assistance that they would regard as adequate from their "parent and relation"; this would only take away part of a limited pool of assistance which was of help to the whole Commonwealth. But a foreign government was involved and they should pay up. The Secretary of State made the point that U.S. and U.K. defence facilities throughout the world were so inextricably interwoven together that it simply would not be possible for us to demand from the United States that they should make substantial annual payments to Mauritius. Mr. Koenig took this point and said that he thought that the United States could not be expected to make money payments to Mauritius; what they wanted was trade. Although at the meeting they had had at the U.S. Embassy the point had been made that the administration was not responsible for the sugar quota, he, Mr. Koenig, had made the point that, given the present position in Aden and Singapore and given also the attitude of China, it seemed to him very possible that these considerations would so impress even Congress that they might be willing to adopt a different attitude regarding the sugar quota for Mauritius than the one they had adopted on the previous occasion in 1962; it was noteworthy that their attitude then, too, had been dicated by political considerations.

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The Secretary of State said that it would obviously be highly undesirable to have a public discussion in Congress involving the situation in Aden and Singapore. Even though, as Mr. Koenig pointed out there had been public discussion of defence facilities in the Indian Ocean, it would be impossible for these to be linked with the question of the sugar quota. The Secretary of State added that if it would be of assistance he would have thought that it would have been possible to agree that any agreement concerning Chagos might provide that it would be returned to Mauritius if British and American defence interests in it ceased; he would have to consult his colleagues on this point but it seemed to him feasible.

Mr. Paturau said that he could see that the Mauritius Government's original proposal of a U.S. sugar quota of three to four hundred thousand tons would be extremely difficult since it would inevitably have to be linked with the question of defence facilities. But surely discussion of a one hundred thousand ton quota was possible without this difficulty; one hundred thousand tons was the figure that had been proposed by the U.S administration in 1962 but completely rejected by Congress; there seemed no reason why discussion of a quota of this amount now need be linked with the defence issue. Mr. Trafford Smith again stressed the intense difficulties that would arise over any question of a special sugar quota for Mauritius because of the fact that all other Commonwealth suppliers were involved.

Sir Seewoosagur Ramgoolam then said that an alternative arrangement might be to calculate what benefit Mauritius would have derived from the sort of sugar quota and other trade arrangements that they had been suggesting and for the

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United States Government to make yearly payments to Mauritius of that amount. One could calculate the figure on the basis of say, 20 per cent gross profit on say, £13 to £15 million worth of sugar plus the benefits of the proposed rice and wheat agreements. He was talking in this connection in terms of a lease but if the islands were detached then different figures could easily be calculated; it should in any case be provided that if the islands ceased to be needed for defence purposes they would revert to Mauritius.

Sir H. Poynton mentioned the precedent of certain U.S. bases in the West Indies, leased in 1940 and no longer needed, which had reverted to the jurisdiction of the Government concerned.

Mr. Paturau said that for the past two years Antigua and Fiji had been taking up Mauritius' quota in the U.S. market and they would have no grounds for complaint if Mauritius' quota was now enlarged at their expense; but in fact the 100,000 tons a year, for which Mauritius was asking, could be absorbed in the increase of consumption in the United States.

Sir H. Poynton said that the British Embassy in Washington had advised strongly against any departure from the "past performance" formula. The United States might offer some readjustment within the Commonwealth quota but even this would risk breaching the "past performance" formula to the disadvantage of the Commonwealth as a whole. Moreover even if this difficulty could be avoided it would clearly be extremely difficult to secure agreement within the Commonwealth.

Mr. Paturau said that Mauritius had been unfairly dealt with when quotas were established on the basis of performance in the first half of a year since Mauritius, along with all Southern Hemisphere producers, was a "second-half-year" producer.

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U.K. EYES ONLY

Summing up the discussion, the Secretary of State said that the Mauritius Government sought economic help from the United States, or failing this a monetary payment from the United States. He felt bound to warn Mauritian Ministers that there was no prospect of their getting anything approaching what they were asking for, and that there was a risk that the United States Government would look elsewhere for the facilities they needed. It would be cheaper to build an island than pay the sums suggested. He suggested an adjournment and expressed the hope that the Mauritius Government would look urgently for more acceptable proposals which could be discussed at an early further meeting.

Some discussion followed on the method by which Sir S. Ramgoolam's figure of £7m. a year for additional economic aid had been arrived at. Sir S. Ramgoolam said that he had calculated the benefits Mauritius would receive from the proposals about trade in sugar, wheat and rice between Mauritius and the U.S.A. at about £3-4m. a year; and had put forward £5-7m. to take account of rising population and unforeseen needs. It appeared, however, that if the United States took 300,000 tons of Mauritius sugar at the domestic price £45 per ton) the difference between this and the world price for the same quantity (at £20 per ton) would be £7.5m. per annum.

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U.K. EYES ONLY

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Annex 58

United Kingdom, *Note for the Record relating to a Meeting held at No. 10 Downing Street on 20 September 1965 between the UK Prime Minister, the Colonial Secretary and the Defence Secretary* (20 Sept. 1965)

NOTE FOR THE RECORD

Mauritius

The Prime Minister held a meeting at No. 10 Downing Street at 5.30 p.m. on September 20. The Colonial Secretary, the Defence Secretary and officials were present.

The Colonial Secretary reported on the latest stage of the Constitutional Conference on Mauritius. He said that the Mauritians had opened their mouths very wide over compensation for the detachment of Diego Garcia. It was agreed that the Prime Minister would have a private word with Sir R. Ramgoolam on the following day.

I subsequently telephoned Mr. Stacpoole (Colonial Office) to say that the Prime Minister could see Sir R. Ramgoolam at 5.00 p.m. on September 21 and to ask for speaking notes.

Aden

There was also a very brief discussion on Aden telegrams Nos. 998 and 1018. It was agreed that it would be best to try to hold the position until after Mr. George Thomson had seen President Nasser and King Feisal.

September 20, 1965.

Annex 59

U.K. Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965)

PRIME MINISTER

This is a good brief, & I hope it can be extended, either by calling off the next two cards.

Mauritius

Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago. I attach a brief prepared by the Colonial Office, with which the Ministry of Defence and the Foreign Office are on the whole content. The key sentence in the brief is the last sentence of it on page three.

I also attach a minute from the Colonial Secretary, which he has not circulated to his colleagues, but a copy of which I have sent to Sir Burke Trend. In it, the Colonial Secretary rehearses arguments with which you are familiar but which have not been generally accepted by Ministers.

September 22, 1965

Annex 59

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PRIME MINISTER

I am glad you are seeing Ramgoolam because the Conference is a difficult one and I am anxious that the bases issue should not make it even harder to get a Constitutional settlement than it is already. I hope that we shall be as generous as possible and I am sure that we should not seem to be trading Independence for detachment of the Islands. That would put us in a bad light at home and abroad and would sour our relations with the new state. And it would not accord well with the line you and I have taken about the Aden base (which has been well received even in the Committee of 24). Agreement is therefore desirable and agreement would be easier if Ramgoolam could be assured that:

(a) We would retrocede the Islands if the need for them vanished, and

(b) We were prepared to give not merely financial compensation (I would think £5,000,000 would be reasonable but so far the D.O.P. have only approved £3,000,000) but a defence agreement and an undertaking to consult together if a serious internal security situation arose in Mauritius.

The ideal would be for us to be able to announce that the Mauritius Government had agreed that the Islands should be made available to the U.K. government to enable them to fulfil their defence commitments in the area.

AG.

Lancaster House

22nd September, 1965

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Copy sent to Sir B. Trend 22.9.

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NOTE FOR THE PRIME MINISTER'S MEETING
WITH SIR SEEWOOSAGUR RAMGOOLAM, PREMIER OF MAURITIUS

Sir Seewoosagur Ramgoolam (call him 'Sir Seewoosagur' - pronounced as spelt with accents on the first andthird syllables: or 'Premier' his official title. He likes being called 'Prime Minister').

Born Mauritius 1900. Hindu. Locally educated, studied medicine at University College Hospital, London. L.R.C.P., M.R.C.S. Leader of the Mauritius Labour Party, the largest Mauritius political party, which polled 42% of the electorate at the 1963 General Election. In politics since 1940. Knight Bachelor, June 1965, dubbed last Saturday, September 18th, his 65th birthday.

Getting old. Realises he must get independence soon or it will be too late for his personal career. Rather status-conscious. Responds to flattery.

The Defence Facilities Proposals

The proposal is that the whole of the Chagos Archipelago (population about 1000), shall be detached from Mauritius: and three islands from Seychelles. In developing defence facilities, the British would be responsible for providing the sites, including compensation, removal and resettlement of population, etc., and the Americans for construction, with joint British-American user of the facilities. Neither the American nor the British defence authorities can accept leasehold. At present no more than an airfield and communications installations will be constructed.

Cost

On the British side, the total cost might be up to £10m., of which Mauritius and Seychelles would each receive about £3m. compensation for detachment, while costs of compensation to land-owners, resettlement of displaced population and other contingencies might about to £3-4m. NOT FOR MENTION /The U.S. Government has secretly agreed to contribute half these costs indirectly, by writing off equivalent British payments towards Polaris development costs./

The Mauritius reaction

The proposals have been discussed, first in Mauritius by the Governor with the Council of Ministers, and more recently in London by the Secretary of State with the four main Mauritius party leaders and a leading Independent Minister. Their reaction has been that, while in principle they are anxious to co-operate in western defence, they cannot contemplate detachment but propose a long lease, and that they would require concessions from the Americans as regards U.S. purchases of Mauritius sugar and Mauritius purchases of

/U.S.

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U.S. rice and wheat on favourable terms, and also as regards emigration to the U.S. The unsurmountable difficulties of securing these concessions from the Americans, especially as regards sugar (which the Mauritians regard as the most important) have been explained to Mauritius Ministers at length and they have heard the arguments direct from the Economic Minister at the U.S. Embassy. When offered lump-sum compensation for detachment of the order of £2m., they brushed it aside as a drop in the ocean of Mauritius requirements, returned to their proposals for trade and immigration concessions from the U.S., and suggested as an alternative that they should receive what the Mauritians calculate is the money value of these concessions, viz. up to £7m. per annum for twenty years and £2m. per annum thereafter. (They appear to think that we ought to persuade the Americans to pay this. The Premier at one stage said he was not trying to "sting" Britain for this).

There is thus deadlock as to compensation for detachment. In discussion however, Mauritius Ministers have made it clear that, since the Americans are involved, their desire is for trade concessions from the Americans, and that, if it were simply a matter of helping Britain, they might consider providing the sites as a gesture of co-operation - though whether with or without the £2m. compensation is not clear. The discussions have also shown that agreement that the islands should revert to Mauritius when no longer required for defence facilities might help.

In the course of discussion, the Secretary of State hinted that, if Mauritius Ministers persisted in their demands, it might be necessary for H.M.G. either to call the whole thing off or to consider whether the facilities could be provided entirely on Seychelles islands. On their side, Mauritius Ministers are well aware that H.M.G. wishes to continue to enjoy the use of H.M.S. Mauritius, a £5m. communications station, and Plaisance airfield, both in the island of Mauritius itself and both of strategic importance.

The Mauritius Constitutional Conference

The gap between the parties led by Sir S. Ramgoolam wanting independence, and the Parti Mauricien and its supporters who seek continuing association ith Britain, will not be closed by negotiation. H.M.G. will have to impose a solution. The remaining conference sessions will be devoted to bringing the position of all parties on details of the constitution as close together as possible and, in particular to securing the agreement of all parties to the maximum possible safeguards for minorities. The Secretary of State's mind is moving towards a decision in favour of independence,

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followed by a General Election under the new Constitution before Independence Day, as the right solution, rather than a referendum to choose between independence and free association, as the Parti Mauricien have demanded.

Sir S. Ramgoolam's present position

The Premier heads an All-Party Government - hence the negotiations on defence facilities with the leaders of all parties. It is thus difficult for him to come to any final agreement on the defence facilities without consulting his colleagues. The Premier should not leave the interview with certainty as to H.M.G's decision as regards independence, as during the remaining sessions of the Conference it may be necessary to press him to the limit to accept maximum safeguards for minorities.

Handling the interview

The Prime Minister might say that he has heard of the progress of the Conference and knows that the Secretary of State is impressed by the difficulties of the proposals for a referendum and free association, and the strength of the case for independence. If the ultimate decision is in favour of independence, the Premier will understand the necessity to include in the Independence Constitution maximum safeguards for minorities, especially as regards the electoral system, so as to remove as far as possible their legitimate fears. With the Conference approaching its end it would be regrettable if difficulties should arise over the defence facilities question. The Premier has asked for independence but at the same time has said that he would like to have a defence treaty, and possibly to be able to call on us for assistance in certain circumstances towards maintaining internal security. If the Premier wants us to help him in this way, he must help us over the defence facilities, because these are in the long term interests both of Britain and Mauritius. He must play his part as a Commonwealth statesman in helping to provide them.

Throughout consideration of this problem, all Departments have accepted the importance of securing consent of the Mauritius Government to detachment. The Premier knows the importance we attach to this. In the last resort, however, detachment could be carried out without Mauritius consent, and this possibility has been left open in recent discussions in Defence and Overseas Policy Committee. The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, without Mauritius consent, but this would be a grave step.

Colonial Office, September 22nd, 1965.

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Annex 60

U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965)

CO Sir B. Trend
FO CRO Enter Z Jones
M/Def

RECORD OF A CONVERSATION BETWEEN THE PRIME MINISTER AND THE PREMIER OF MAURITIUS, SIR SEEWOOSAGUR RAMGOOLAM, AT NO. 10, DOWNING STREET, AT 10 A.M. ON THURSDAY, SEPTEMBER 23, 1965

Present:-

The Prime Minister
Mr. J.O. Wright

The Premier of Mauritius,
Sir Seewoosagur Ramgoolam

After welcoming the Prime Minister of Mauritius, the Prime Minister said how glad he was to see him in London: the Queen had told him at his audience the previous Sunday of the honour she had bestowed on him on his 65th birthday. The Prime Minister then asked Sir Seewoosagur how the conference was going. Sir Seewoosagur Ramgoolam said that the conference was going reasonably well. He had had a discussion with his colleagues the previous evening and they were now thinking over what he had said. He himself felt that Independence was the right answer; the other ideas of association with Britain worked out on the lines of the French Community simply would not work. There was also some difference of opinion over the future of the electoral pattern in Rhodesia.

The Prime Minister said that he knew that the Colonial Secretary, like himself, would like to work towards Independence as soon as possible, but that we had to take into consideration all points of view. He hoped that the Colonial Secretary would shortly be able to report to him and his colleagues what his conclusion was. He himself wished to discuss with Sir Seewoosagur a matter which was not strictly speaking within the Colonial Secretary's sphere: it was the Defence problem and in particular the question of the detachment of Diego Garcia. This was of course a completely separate matter and not

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bound up with the question of Independence. It was however a very important matter for the British position East of Suez. Britain was at present undertaking a very comprehensive Defence Review, but we were very concerned to be able to play our proper rôle not only in Commonwealth Defence but also to bear our share of peace-keeping under the United Nations: we had already made certain pledges to the United Nations for this purpose.

Sir Seewoosagur Ramgoolam said that he and his colleagues wished to be helpful.

The Prime Minister went on to say that he had heard that some of the Premier's colleagues, perhaps having heard that the United States was also interested in these defence arrangements, and seeing that the United States was a very rich country, were perhaps raising their bids rather high. There were two points that he would like to make on this. First, while Diego Garcia was important, it was not all that important; and faced with unreasonableness the United States would probably not go on with it. The second point was that this was a matter between Britain and Mauritius and the Prime Minister referred to recent difficulties over taxi-drivers at London Airport.

Sir Seewoosagur Ramgoolam said that they were very concerned on Mauritius with their population explosion and their limited land resources. They very much hoped that the United States would agree to buy sugar at a guaranteed price and perhaps let them have wheat and rice in exchange. The important thing was not so much to have a lump sum but to have a steady guaranteed income.

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The Prime Minister said that Britain would of course continue with certain aid and development projects. The money for the airfield at Diego Garcia would also come from Britain and would come in the form of a flat sum. Moreover that flat sum would not be very much more than the Secretary of State had already mentioned. While he could make no commitment at the moment, the Prime Minister thought that we might well be able to talk to the Americans about providing some of their surplus wheat for Mauritius. As for Diego Garcia, it was a purely historical accident that it was administered by Mauritius. Its links with Mauritius were very slight. In answer to a question, Sir Seewoosagur Ramgoolam affirmed that the inhabitants of Diego Garcia did not send elected representatives to the Mauritius Parliament. Sir Seewoosagur reaffirmed that he and his colleagues were very ready to play their part.

The Prime Minister went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.

Sir Seewoosagur Ramgoolam said that he was convinced that the question of Diego Garcia was a matter of detail; there was no difficulty in principle. The Prime Minister

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said that whilst we could make no open-ended commitment about the defence of Mauritius, our presence at Diego Garcia would, of course, make it easier to come to Mauritius's help when necessary.

On leaving, Sir Seewoosagur Ramgoolam said that the one great desire in Mauritius was that she should retain her links with the United Kingdom. Mauritius did not want to become a republic but on the contrary wished to preserve all her present relationships with the United Kingdom. The Prime Minister said that he felt that the Commonwealth had a much more important rôle to play in the future than it had even in the past as a great multi-racial association. The last Prime Ministers' meeting had been a very exciting one and he looked forward to seeing Sir Seewoosagur at the next one.

As Sir Seewoosagur was leaving, the Cabinet was assembling outside the Cabinet Room and the Prime Minister introduced Sir Seewoosagur to a number of members of the Cabinet.

September 23, 1965

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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 III

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Annex 85 Government of the United Kingdom and Government of the United States, *Agreed Minute*, FO 93/8/401 (30 Dec. 1966)

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Annex 89 U.K. Colonial Office, *Minute from A. J. Fairclough of the Colonial Office to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary*, FCO 16/226 (22 May 1967)

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Annex 95	United Kingdom, *The Mauritius Independence Order 1968 and Schedule to the Order: The Constitution of Mauritius* (4 Mar. 1968)
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Annex 105 U.K. Foreign and Commonwealth Office, *"BIOT: The Ex-Seychelles Islands"*, FCO 40/686 (15 Oct. 1975)

Annex 106 U.K. House of Commons, *Written Answers: Foreign and Commonwealth Affairs - Indian Ocean*, FCO 31/3836 (21 Oct. 1975)

Annex 107 United Kingdom, *Anglo/US Consultations on the Indian Ocean: November 1975 - Agenda Item III, Brief No. 4: Future of Aldabra, Farquar and Desroches*, FCO 40/687 (Nov. 1975)

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United Kingdom, *Record of a Meeting Held in Lancaster House at 2.30 p.m. on Thursday 23rd September: Mauritius Defence Matters*, CO 1036/1253 (23 Sept. 1965)

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RECORD OF A MEETING HELD IN LANCASTER HOUSE AT 2.30 P.M. ON THURSDAY 23rd SEPTEMBER

MAURITIUS DEFENCE MATTERS

Present:- The Secretary of State (in the Chair)

Lord Taylor	Sir S. Ramgoolam
Sir Hilton Poynton	Mr. S. Bissoondoyal
Sir John Rennie	Mr. J. M. Paturau
Mr. P. R. Noakes	Mr. A. R. Mohamed
Mr. J. Stacpoole	

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THE SECRETARY OF STATE expressed his apologies for the unavoidable postponements and delays which some delegations at the Constitutional Conference had met with earlier in the day. He explained that he was required to inform his colleagues of the outcome of his talks with Mauritian Ministers about the detachment of the Chagos Archipelago at 4 p.m. that afternoon and was therefore anxious that a decision should be reached at the present meeting.

2. He expressed his anxiety that Mauritius should agree to the establishment of the proposed facilities, which besides their usefulness for the defence of the free world, would be valuable to Mauritius itself by ensuring a British presence in the area. On the other hand it appeared that the Chagos site was not indispensable and there was therefore a risk that Mauritius might lose this opportunity. In the previous discussions he had found himself caught between two fires: the demands which the Mauritius Government had made, mainly for economic concessions by the United States, and the evidence that the United States was unable to concede these demands. He had throughout done his best to ensure that whatever arrangements were agreed upon should secure the maximum benefit for Mauritius. He was prepared to recommend to his colleagues if Mauritius agreed to the detachment of the Chagos Archipelago:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) that if Mauritius became independent, there should be an understanding that the two governments would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) that the British Government should use its good offices with the United States Government in support of Mauritius request for concessions over the supply of wheat and other commodities

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(iv) that compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and others affected in the Chagos Islands.

This was the furthest the British Government could go. They were anxious to settle this matter by agreement but the other British Ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council.

3. SIR S. RAMGOOLAM replied that the Mauritius Government were anxious to help and to play their part in guaranteeing the defence of the free world. He asked whether the Archipelago could not be leased. (THE SECRETARY OF STATE said that this was not acceptable). MR. BISSOONDOYAL enquired whether the Islands would revert to Mauritius if the need for defence facilities there disappeared. THE SECRETARY OF STATE said that he was prepared to recommend this to his colleagues.

4. MR PATURAU said that he recognised the value and importance of an Anglo-Mauritius defence agreement, and the advantage for Mauritius if the facilities were established in the Chagos Islands, but he considered the proposed concessions a poor bargain for Mauritius.

5. MR. BISSOONDOYAL asked whether there could be an assurance that supplies and manpower from Mauritius would be used so far as possible. THE SECRETARY OF STATE said that the United States Government would be responsible for construction work and their normal practice was to use American manpower but he felt sure the British Government would do their best to persuade the American Government to use labour and materials from Mauritius.

6. SIR S. RAMGOOLAM asked the reason for Mr. Koenig's absence from the meeting and MR. BISSOONDOYAL asked whether the reason was a political one, saying that if so this might affect the position.

7. MR. MOHAMED made an energetic protest against repeated postponements of the Secretary of State's proposed meeting with the M.C.A., which he regarded as a slight to his party.

8. THE SECRETARY OF STATE repeated the apology with which he had opened the meeting, explaining that it was often necessary in such conferences to concentrate attention on a delegation which was experiencing acute difficulties, while he himself had been obliged to devote much time to a crisis in another part of the world.

9. MR MOHAMED then handed the Secretary of State a recent private letter from Mauritius which disclosed that extensive misrepresentations about the course of the Conference had been published in a Parti Mauricien newspaper. THE SECRETARY OF STATE commented that such misrepresentations should be disregarded, and that MR. MOHAMED had put forward the case for his community with great skill and patience.

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10. MR. MOHAMED said that his party was ready to leave the bases question to the discretion of H.M.G. and to accept anything which was for the good of Mauritius. Mauritius needed a guarantee that defence help would be available nearby in case of need.

11. At SIR S. RAMGOOLAM'S request the Secretary of State repeated the outline he had given at a previous meeting of the development aid which would be available to Mauritius between 1966-1968, viz. a C.D. & W. allocation totalling £2.4 million (including carryover) thus meaning that £800,000 a year would be available by way of grants in addition Mauritius would have access to Exchequer loans, which might be expected to be of the order of £1m. a year, on the conditions previously explained. He pointed out that Diego Garcia was not an economic asset to Mauritius and that the proposed compensation of £3m. would be an important contribution to Mauritius development. There was no chance of raising this figure.

12. SIR S. RAMGOOLAM said that there was a gap of some £4m. per year between the development expenditure which his government considered necessary in order to enable the Mauritian economy to "take off" and the resources in sight, and enquired whether it was possible to provide them with additional assistance over a 10 year period to bridge this gap.

13. THE SECRETARY OF STATE mentioned the possibility of arranging for say £2m. of the proposed compensation to be paid in 10 instalments annually of £200,000.

14. SIR S. RAMGOOLAM enquired about the economic settlement with Malta on independence and was informed that these arrangements had been negotiated in the context of a special situation for which there was no parallel in Mauritius.

15. SIR H. POYNTON pointed out that if Mauritius did not become independent within three years, the Colonial Office would normally consider making a supplementary allocation of C.D. & W. grant money to cover the remainder of the life of the current C.D. & W. Act, i.e. the period up to 1970. He added that if Mauritius became independent, they would normally receive the unspent balance of their C.D. & W. allocation in a different form and it would be open to them after the three year period to seek further assistance such as Britain was providing for a number of independent Commonwealth countries.

16. SIR S. RAMGOOLAM said that he was prepared to agree in principle to be helpful over the proposals which H.M.G. had put forward but he remained concerned about the availability of capital for development in Mauritius and hoped that the British Government would be able to help him in this respect.

17. MR. BISSOONDOYAL said that while it would have been easier to reach conclusions if it had been possible to obtain unanimity among the party leaders, his party was prepared to support the stand which the Premier was taking. They attached great importance to British assistance being available in the event of a serious emergency in Mauritius.

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18. MR. PATURAU asked that his disagreement should be noted. The sum offered as compensation was too small and would provide only temporary help for Mauritius economic needs. Sums as large as £25m. had been mentioned in the British press and Mauritius needed a substantial contribution to close the gap of £4-5m. in the development budget. He added that since the decision was not unanimous, he foresaw serious political trouble over it in Mauritius.

19. THE SECRETARY OF STATE referred to his earlier suggestion that payment of the monetary compensation should be spread over a period of years.

20. SIR S. RAMGOOLAM said that he was hoping to come to London for economic discussions in October. The Mauritius Government's proposals for development expenditure had not yet been finalised, but it was already clear that there would be a very substantial gap on the revenue side.

21. SIR H. POYNTON said that the total sum available for C.D. & W. assistance to the dependent territories was a fixed one and it would not be possible to increase the allocation for one territory without proportionately reducing that of another.

22. Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr. Ramgoolam, Mr. Bissoondoyal and Mr. Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

(vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

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(a) Navigational and Meteorological facilities;

(b) Fishing Rights;

(c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;

(viii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. SIR S. RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

24. THE SECRETARY OF STATE pointed out that he had to leave almost immediately to convey the decision to his own colleagues and LORD TAYLOR urged the Mauritian Ministers not to risk losing the substantial sum offered and the important assurance of a friendly military presence nearby.

25. SIR S. RAMGOOLAM said that Mr. Paturau had urged him to make a further effort to secure a larger sum by way of compensation, but the Secretary of State said there was no hope of this.

26. SIR J. RENNIE said that while he had hoped that Mauritius would be able to obtain trading concessions in these negotiations, this was now ruled out. It was in the interest of Mauritius to take the opportunity offered to ensure a friendly military presence in the area. What was important about the compensation was the use to which the lump sum was put.

27. SIR S. RAMGOOLAM mentioned particular development projects, such as a dam and a land settlement scheme, and expressed the hope that Britain would make additional help available in an independence settlement.

28. SIR H. POYNTON said that the Mauritius Government should not lose sight of the possibility of securing aid for such purposes from the World Bank, the I.D.A. and from friendly governments. While Mauritius remained a colony such powers as Western Germany regarded Mauritius economic problems as a British responsibility but there was the hope that after independence aid would be available from these sources. When Sir S. Ramgoolam suggested that he had said that grants could be extended for up to 10 years, Sir H. Poynton pointed out that he had only indicated that when the period for which the next allocation had been made expired, it would be open to the Mauritius Government to seek further assistance, from Britain, even though Mauritius had meanwhile become independent. It would not be possible to reach any

/understanding

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understanding at present beyond saying that independence did not preclude the possibility of negotiating an extension of Commonwealth aid.

29. At this point the SECRETARY OF STATE left for 10, Dowing Street, after receiving authority from Sir S. Ramgoolam and Mr. Bissoondoyal to report their acceptance in principle of the proposals outlined above subject to the subsequent negotiation of details. Mr. Mohamed gave the same assurance, saying that he spoke also for his colleague Mr. Osman. Mr. Paturau said he was unable to concur.

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United Kingdom, *Record of UK-US Talks on Defence Facilities in the Indian Ocean*, FO 371/184529 (23-24 Sept. 1965)

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(Z 4/190)

FOREIGN OFFICE, S.W.1.

10 December, 1965.

Thank you for your letter 119101/65G of 22 October to Geoffrey Arthur giving a list of State Department amendments to the record of the September talks about the Indian Ocean Islands.

2. I enclose two copies of a clean text incorporating the American amendments, and taking account of two points made by the Ministry of Defence in their letter of 8 October, of which I now enclose a copy together with our reply of 21 October.

(J.A.N. Graham)
Permanent Under-Secretary's Department

N.C.C. Trench, Esq.,
WASHINGTON.

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List of Officials who took part in U.S./U.K. talks on Defence Facilities in the Indian Ocean

21-24 September, 1965

U.S. Side

Jeffrey C. Kitchen	State Department
Howard Meyers	State Department
Capt. Asbury Coward	State Department
Ray Bronez	OSD/ISA (PHP)
W.J. Allen	OSD/Assistant General Counsel
Capt. R.C. Zimmerman	USN, Joint Chiefs of Staff
Mr. T.W. Riebel	(FSO-3), Navy, Op/Nav
Mr. W.W. Hancock	Air Force, Office of Secretary of the Air Force/Assistant General Counsel
Mr. T.W. Aiken	Navy, Bureau of Weapons
Cdr. McGrath	USN
Mr. Philip H. Barringer	U.S. Embassy
Mr. R. Zannes	U.S. Embassy

U.K. Side

Mr. E.N. Peck	Foreign Office
Mr. P.L. Bushe-Fox	Foreign Office
Mr. J.A.N. Graham	Foreign Office
Mr. M.H. Young	Foreign Office
Mr. M.R. Norland	Foreign Office
Mr. J. Burlace	D.S.11, Ministry of Defence
Mr. P. Moberly	" "
Mr. M. Holton	D.S.1, Ministry of Defence
Mr. R.J. Penney	(AUS/NAT) Space (N), Ministry of Defence
Mr. B. Swain	NAT 1 (N), " " "
Mr. A.T. Fairclough	Colonial Office
Mr. R. Blaikley	" "
Mr. R. Terrell	" "
Mr. Baker	Treasury Solicitors Office

/Mr. P. Nicholls

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SECRET

Mr. P. Nicholls	Treasury
Mr. G.S. Downey	"
Mr. G.P. Hadden	"

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DEFENCE FACILITIES IN THE INDIAN OCEAN

Record of a Meeting with an American Delegation headed by Mr. Paul Kitchen, on 21 September, 1965, Mr. Peak in the chair

Mr. Peak began by thanking the Americans for coming. He explained that the Constitutional Conference on the future of Mauritius had not yet ended - it should finish at the end of this week - and that Mauritius Ministers' attitude to the defence project was not yet finally clear. The present talks must therefore be without commitment and without prejudice to the conclusion of a satisfactory settlement with Mauritius. He would nevertheless be willing to discuss the three American drafts in detail if possible, and at any rate in outline. It seemed generally agreed that each draft should be discussed in a separate sub-committee. The Ministry of Defence would deal separately with their American opposite numbers over draft A about the American financial contribution.

Mr. Kitchen said that it would be more convenient for the same sub-committee to deal with draft C and draft B, taking draft C this afternoon and draft B tomorrow morning. This was agreed.

Mr. Fairclough then explained the position reached in the Mauritius constitutional conference. The British side had tried to keep the independence issue which the conference was really meant to deal with, separate from the defence project, but the outcome of the latter was found to depend partly on the former problem. One main party in Mauritius with a different policy from that of Dr. Ramgoolam but belonging to his coalition government, favoured some continuing link with Britain. Dr. Ramgoolam's party wanted full independence. It seemed that the conference was moving towards agreement on "free association". There were prospects of reaching agreement on the constitutional arrangements for internal affairs. There was no sign of imminent agreement on external affairs. Because of the loose nature of the coalition government the defence project had to be discussed with Ministers from all parties. Both pro and anti independence parties regarded the defence project as a bargaining counter which they might use either to achieve or to avoid complete independence. No party leader wanted to settle the defence project before the independence issue was settled. All Mauritius Ministers had given a positive response to the defence project in that they agreed with us that it was in the interests of Mauritius. Discussion had turned on their demand for favourable trading arrangements to bolster up the economy of Mauritius in the long term. Mauritius Ministers had adhered firmly to their demand for such arrangements, particularly for a very large American sugar quota. They had pointed out that a foreign country, the United States, wanted defence facilities on Mauritius territory and that the Americans should therefore pay for them. They recalled the United States Administration's recommendation to Congress in 1962, that Mauritius should be given a sugar quota of 100,000 tons. They failed to understand why it was not practicable to get a quota of this order of magnitude now. At the last meeting held with Mauritius Ministers to discuss the defence project earlier this week they had generally maintained their position on this but had hinted that they might move from it if the United States gave them financial aid equivalent in value to the benefits of a very large sugar quota. The likely outcome appeared to be independence for Mauritius and agreement on the detachment of the islands required for defence facilities in return for suitable compensation but Mauritius Ministers were insistent that such compensation should be of a kind which would

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help the long term economic stability of Mauritius. This meant sugar. We had told the Mauritians that a sugar quota of this order or magnitude was probably impossible.

Mr. Kitchen confirmed that a sizeable sugar quota was impossible and asked about Mauritian demands for a long lease rather than detachment of the islands concerned. Mr. Fairclough replied that there were signs that Mauritius might accept a detachment in exchange for a sugar quota and a reversion clause allowing the return of the islands to Mauritius if and when they were no longer required for U.S./U.K. defence purposes.

In answer to a question from Mr. Peck, Mr. Fairclough confirmed that we had told the Mauritians that a lease was out of the question. Mr. Kitchen said that they had made it clear at the talks last January that an agreement of the kind made over Ascension Island was required. Nothing since then had caused them to change their mind. Mr. Peck asked for the American side's views on the question of a reversion clause. Mr. Kitchen said he would prefer to deal with this in the sub-committee. He went on to thank Mr. Fairclough for his exposition.

He described the Mauritian demand for a sugar quota as "out of the ball park". There had been fierce agitation recently in the U.S. press against any kind of sugar quotas for countries outside the Western hemisphere. The State Department considered that they had done yeoman work in getting a quota of 15,000 tons for Mauritius. The situation in 1962 had been entirely different. The Cuban crisis had played havoc with the sugar market. Mr. Fairclough assured Mr. Kitchen that the Colonial Office sugar experts fully agreed that a Mauritian quota of the size suggested would cause a radical upset in existing arrangements.

There was a brief discussion about the Mauritian request for an increased immigration quota into the United States. It was agreed that the number of Mauritians who had applied for immigration visas in the last few years was so far below their present not very large quota that this was not worth pursuing.

Mr. Kitchen emphasised that they could not contemplate anything but once and for all compensation. They had changed the basis of the understanding reached in 1964 when it had been agreed that H.M.G. were to be responsible for the costs of detachment and had offered to contribute a substantial sum. No more funds were available. It would take too long to raise the necessary appropriations even if they had been willing to do so. Mr. Peck expressed gratitude on H.M.G's behalf for the generous American contribution and Mr. Fairclough emphasised that in his explanation of the position he was not suggesting that the Colonial Office supported the Mauritian case.

Mr. Fairclough then explained the position reached over the Seychelles. Nothing more had been done after the original approach to the Executive Council, since nothing could be settled until the Mauritius question was resolved. The Executive Council's reaction had been reasonably satisfactory. As expected, they had asked for an airfield. The Seychellois had, however, made it clear in this connexion that they were not prepared to look at any formal agreement to cover the existing tracking station on Mahé until the compensation for the main project had been settled. Finalisation of the tracking station agreement must therefore wait on finalisation of the main project. It appeared that the latter would be welcome to the Seychellois and that the compensation they asked for was of manageable proportions. We could not, however, make a firm proposal to the Seychelles in this regard until the Mauritian position was clarified. This should be within the next two or three days. This was because there had to be reasonable balance between compensation paid to each territory, i.e. it would be impracticable to give Mauritius less than the Seychelles and they would probably have to have more.

SECRET /Mr. Kitchen

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Mr. Kitchen suggested that the reverse process might have merit. Supposing we reached a settlement with the Seychelles over the islands only required for defence purposes the Mauritians might be more inclined to see reason.

Mr. Peck pointed out the difficulty over this otherwise attractive course of action was that the only firm military requirement now was for facilities on Diego Garcia in the (Mauritian) Chagos archipelago. Mr. Kitchen said that after all our planning also encompassed the possibility of the availability of facilities some time on Aldabra and other of the Seychelles Islands.

Mr. Peck made the point that we would want to avoid a second row in the United Nations if possible, and therefore to carry out the detachment as a single operation. Mr. Kitchen suggested that this was worth further discussion later. Admittedly both sides had so far thought in terms of a single operation but the price seemed to go up as time went by and a thoroughly lop-sided situation had arisen. Mr. Peck agreed that detachment would have been far easier a year ago. Mr. Fairclough noted that Mauritian demands seemed to be diminishing rather than increasing at this moment.

On draft C, covering the tracking station, Mr. Kitchen emphasised that they regarded this as closely related to draft A covering the American financial contribution. They regarded the latter as dependent on a successful conclusion of the tracking station agreement. Speaking frankly he very much hoped that it would be possible during our current discussions to reach agreement between the two sides of the table on the terms of the tracking station agreement.

Mr. Fairclough explained that we shall have to clear any draft with the Governor of the Seychelles and make sure that he was confident of selling it to the Executive Council. The Governor had indicated that this should be possible provided the agreement was shown to be in a standard form in line with previous precedents. Mr. Kitchen drew attention to the fact that the Americans had made a number of concessions in the draft.

It was agreed that a discussion of draft C should continue in the afternoon, while draft B would be taken tomorrow morning. Draft A would be discussed in a separate sub-committee in the Ministry of Defence.

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DEFENCE FACILITIES IN THE INDIAN OCEAN

Record of a Meeting of U.K. and U.S. Officials on 24 September, 1965, to discuss Draft B. Mr. Peck in the Chair.

The following points of interest which do not emerge from the record of the two "plenary" meetings were made in discussion.

2. Mr. Kitchen explained that the U.S. draft had not been prepared with an eye to publication. They accepted that something would have to be published in due course. The thing might have to be modified to put it in a suitable form for this.

3. Mr. Blaikley explained that the Colonial Office envisaged the detachment operation taking place in three stages. During the first stage normal life would continue on the islands detached but not yet needed for defence facilities. In the middle stage the population would have to be cleared off any island when it was needed for defence purposes. This process would take a little time. During the final stage it was envisaged that an island with defence facilities installed on it would be free from local civilian inhabitants.

4. It was agreed that special arrangements would have to be made to cover the middle period when there might be U.S. forces and local inhabitants living for a time on a particular island.

5. The question of jointly financed facilities, a category not previously considered, was discussed. Mr. Kitchen explained that they were thinking of a situation in which both parties had a similar requirement in mind and it might be met more expeditiously and economically if the costs were shared. Mr. Fairclough explained that it would greatly ease the problems of resettlement in view of the prevailing unemployment in Mauritius and the Seychelles if local labour could be employed at least during the constructional phase. Mr. Kitchen said that they regarded the matter sympathetically and were willing to consider using local labour, but only during the constructional phase.

6. There was a lengthy discussion of the problems of jurisdiction over the islands detached. This was continued in the "plenary" meeting.

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DEFENCE FACILITIES IN THE INDIAN OCEAN

Summary record of 'Plenary' meeting between the United Kingdom and United States officials (led by Mr. Kitchen), Mr. Peck in the Chair on 24 September, 1965

Mr. Fairclough confirmed that at a final meeting with Mauritius Ministers, Dr. Ramgoolam and a majority of Ministers present had agreed to the detachment of the Chagos Archipelago in return for agreed compensation. They had been promised an agreement on the external defence of Mauritius, with provision for consultation in the event of internal disorder. Although the position was not yet crystal clear, it was reasonable to assume that there would be no serious difficulty over detachment. In answer to a question about a future timetable, he explained that the necessary legal measures would be comparatively quick, but that resettlement and other administrative arrangements might take longer.

It was agreed in discussion that the term 'detachment' should be avoided in any public statements on this subject, and that some other phrase - e.g. the retention under the administration of Her Majesty's Government should be devised in its place.

Mr. Kitchen explained that a review of United States communication requirements made it hard for him to judge when they would be ready to construct facilities on Diego Garcia. The favourable outcome of these discussions would assist progress in Washington.

Mr. Kitchen asked about British requirements for defence facilities on the islands. Mr. Kennedy replied that the only British requirement at present was for a Naval oil storage depot at Diego Garcia, and that this was still subject to approval.

Mr. Holton reported on results of discussion of Draft A - financial arrangements. They had reached complete agreement subject to

(a) reference to Governments;

(b) any necessary adjustments to wording to put the text in a form suitable to a secret understanding;

(c) consequential adjustments to draft 'A' when the text of draft 'B' had been finally agreed.

Mr. Terrell reported that the sub-committee had reached agreement on all points of substance in Draft 'C' (Mahé tracking station). Certain definitions needed expanding. The United States side had agreed to produce a redraft. He would pursue separately with the United States Embassy a point about transmission of messages by Cable & Wireless (Seychelles). He recalled that the Seychelles Executive Council had refused to consider an almost identical draft in 1964, and had demanded a substantial quid pro quo.

Mr. Peck noted that the main details had now been ironed out. It would not be possible to clinch this agreement in isolation. We undertook to put the draft to the Seychelles

/Executive

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Executive Council (subject to the advice of the Governor) along with the proposal for the detachment of Aldabra, Farquhar and Desroches, for which substantial compensation was to be paid. This should provide the required quid pro quo.

Mr. Fairclough explained that the 'package' to be put to the Seychelles Executive Council must include the draft tracking station agreement, compensation for detachment and compensation for resettlement.

The Meeting agreed that the agreement should be published in due course.

Mr. Bronze explained that in preparing draft 'B', the United States side had not taken account of the need for an interim régime to continue after detachment in the islands not yet needed for defence purposes. It was important that any such arrangements written into the draft should not obscure the fact that after detachment any of the islands would be available for defence use, as required. They would have to look at this again in Washington and consider also some provision for emergency defence use of islands not yet required for permanent facilities. They would produce a redraft of the second sentence of the first paragraph, to cover these two points.

Mr. Bronze went on to explain that they found difficulty over the Ministry of Defence redraft of (2). Either (2) and (5) were repetitive or (2) seemed unduly restrictive. The phrase 'mutual agreement' was difficult for them.

Mr. Moberly drew a distinction between (2) and (3). (2) was meant to deal with a United States proposal for taking over an island (or part of an island) for the construction of defence facilities. (3) was meant to deal with technical and administrative details.

Mr. Fairclough explained that the Colonial Office would be happy if given due notice of United States intent to take over a fresh island.

Mr. Moberly explained that the Ministry of Defence also wanted to be able to look at any such proposal in the light of our own military requirements.

It was agreed that the United States side would produce a redraft taking account of points made in discussion.

Mr. Bronze said that the United States side agreed to the amended wording of (5), (6) and (8) (see revised text enclosed). They would look again at (4), as amended by the British side. Some provision covering third party use of any jointly financed facilities would be needed here. They would also incorporate in (7) an understanding with respect to the use of local (i.e., Seychelles and Mauritius) labour. (9) - covering jurisdiction would need considerable further thought, but the United States would make proposals.

Mr. Baker said that at first sight the arrangements for jurisdiction in the Ascension Island agreement would fit.

Mr. Fairclough explained that if the judicial arrangements they envisaged for islands not yet required for defence purposes - Seychelles law administered by the Governor in his capacity as administrator of the new colony - proved satisfactory, they might be extended from this interim period to the final period. If not, they could be changed by the Administrator.

SECRET /Mr. Kitchen

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Mr. Kitchen said that they would like to consider further the terms of years to be inserted in (10) - the review clause. They were thinking of a 50 year agreement, with a review after (say) 20 years.

Mr. Fairclough explained that some fixed term would help vis-à-vis Mauritius Ministers, who had again raised the question of Chagos reverting to Mauritius if and when no longer required for Defence purposes. There would be no need to put a reversion clause in the agreement.

Mr. Peak turned to arrangements for follow-up action. It was agreed that we should keep the United States Embassy informed of the steps taken by Colonial Office, and that the American side should provide redrafted passages, as agreed in discussion, through their Embassy /See note on further action attached/.

Mr. Kitchen concluded by expressing his gratitude for this major decision by Her Majesty's Government which would be of great value to the free world and the West. The discussions had been most useful; we should have a further round (perhaps in Washington) if necessary to speed up action.

Mr. Peak thanked Mr. Kitchen.

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SECRET

DEFENCE FACILITIES IN THE INDIAN OCEAN

NOTE ON FURTHER ACTION

United States Side

Draft 'B'

To suggest language for second sentence of first paragraph - see explanation in text.

To suggest redraft of last sentence of (2) (agreement to United States construction of new facilities).

To redraft (4) - use by third countries.

To produce working for second sentence of (7), covering use of local labour where possible.

To redraft (9) setting out arrangements for jurisdiction.

To consider what terms of years should be inserted in (10) (review clause).

Draft 'C'

To produce a redraft, keeping to the sense of the United States draft, but expanding various points of definition in the light of discussion.

General

To keep us informed of developments concerning the forthcoming review of United States communications requirements.

United Kingdom Side

To make the necessary constitutional and administrative arrangements for the detachment of Chagos Archipelago from Mauritius, upon payment of compensation, as agreed, to the Mauritius Government.

To secure the agreement of the Exec. Co to the detachment of Aldabra Farquhar and Desroches in return for compensation to be settled, and to the terms of a formal agreement covering the tracking station on Mahé.

To keep the United States Embassy informed of progress, and to give them an estimate of the time it will take to complete the constitutional and administrative processes as soon as it is possible to form such an estimate.

/To

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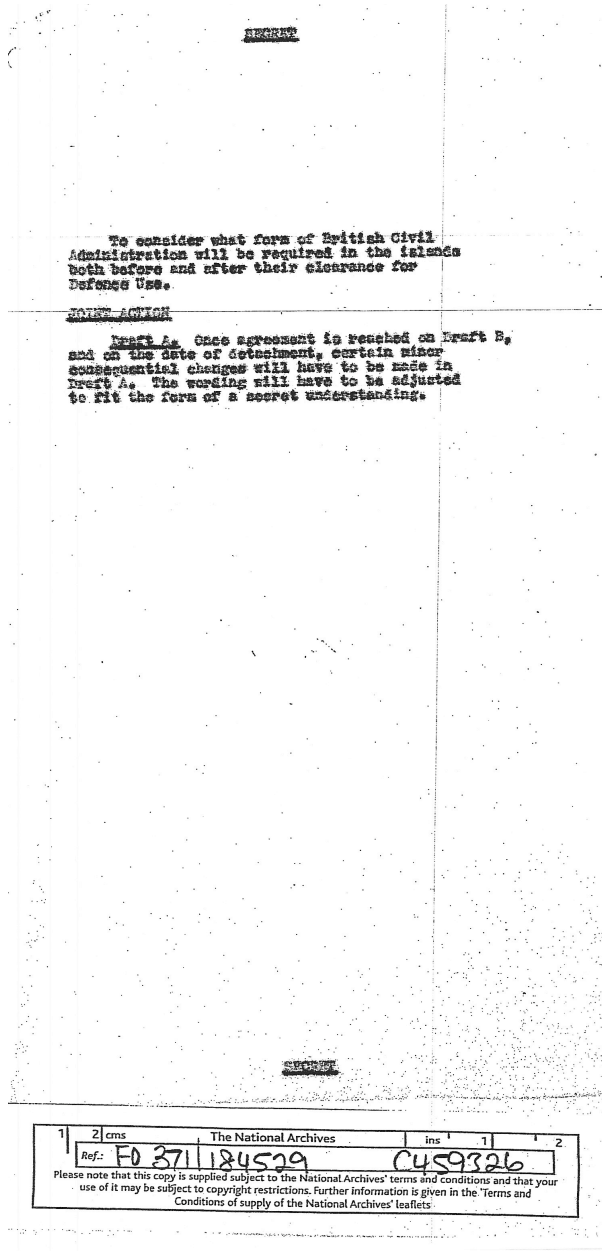
Annex 62



SECRET

To consider what form of British Civil Administration will be required in the islands both before and after their clearance for Defence Use.

JOINT ACTION

Draft A. Once agreement is reached on Draft B, and on the date of detachment, certain minor consequential changes will have to be made in Draft A. The wording will have to be adjusted to fit the form of a secret understanding.

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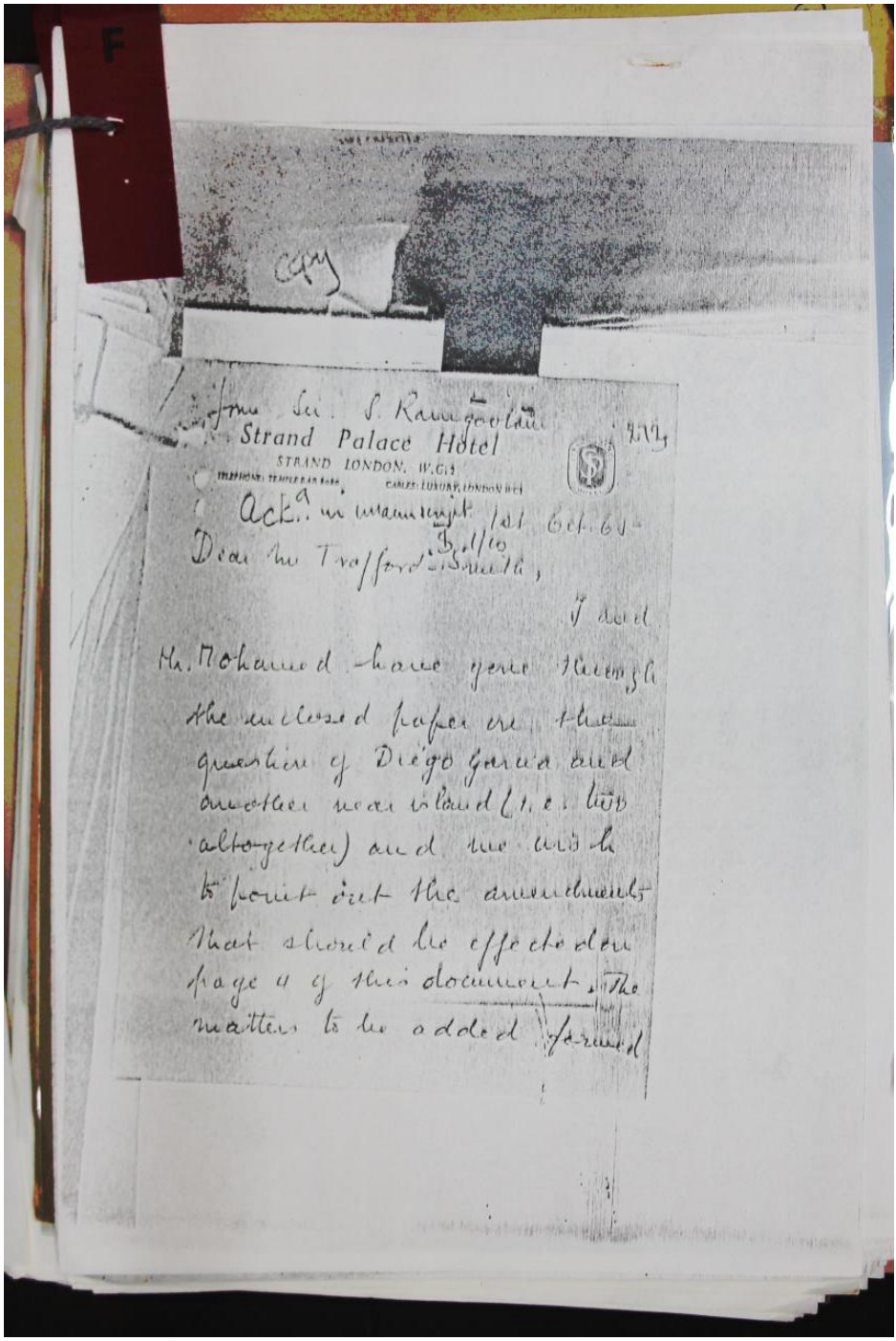
Handwritten amendments proposed by S. Ramgoolam, FCO 31/3834



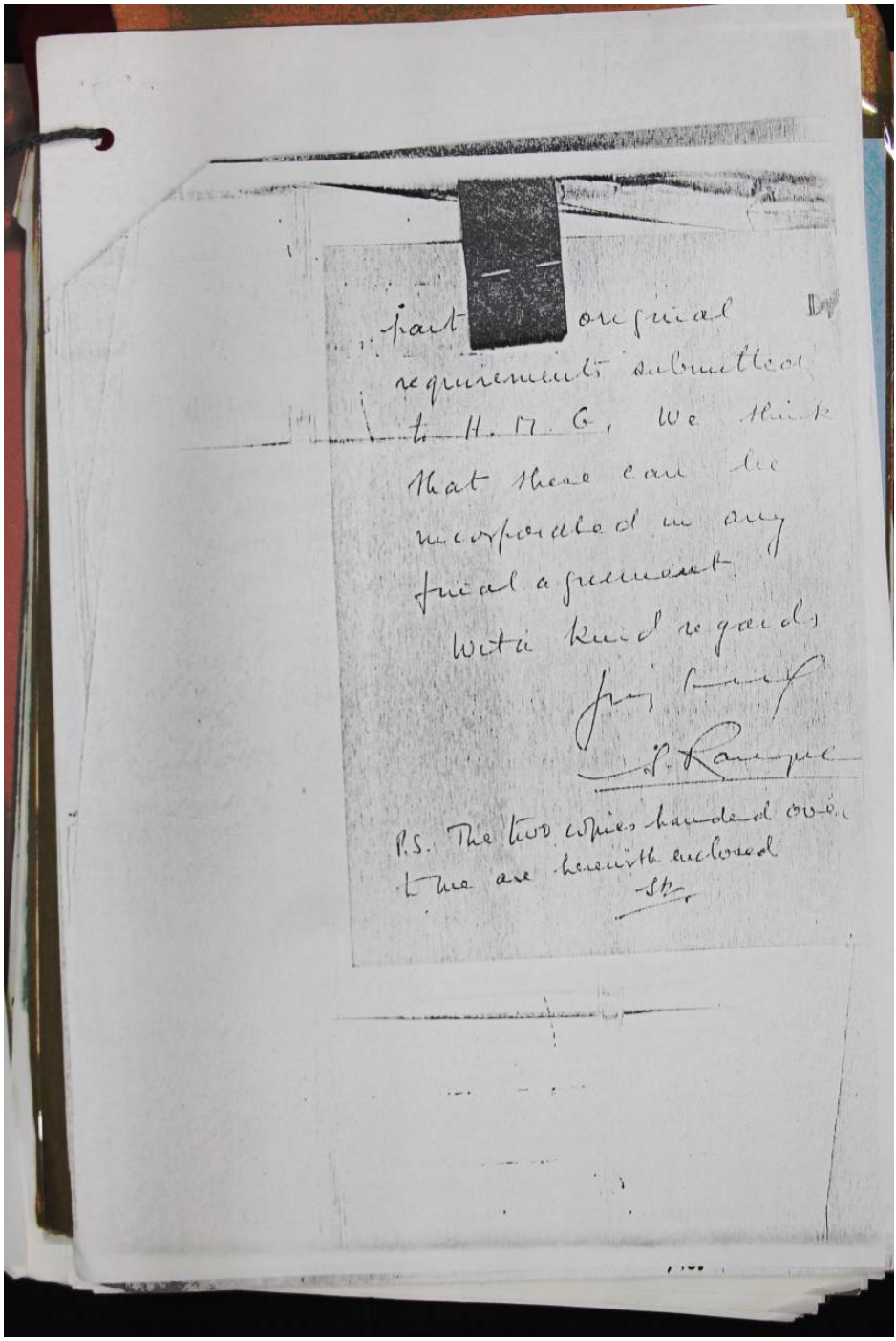
Strand Palace Hotel
STRAND LONDON, W.C.2
TELEPHONE: TEMPLE BAR 8400 CABLES: LUXURIA, LONDON

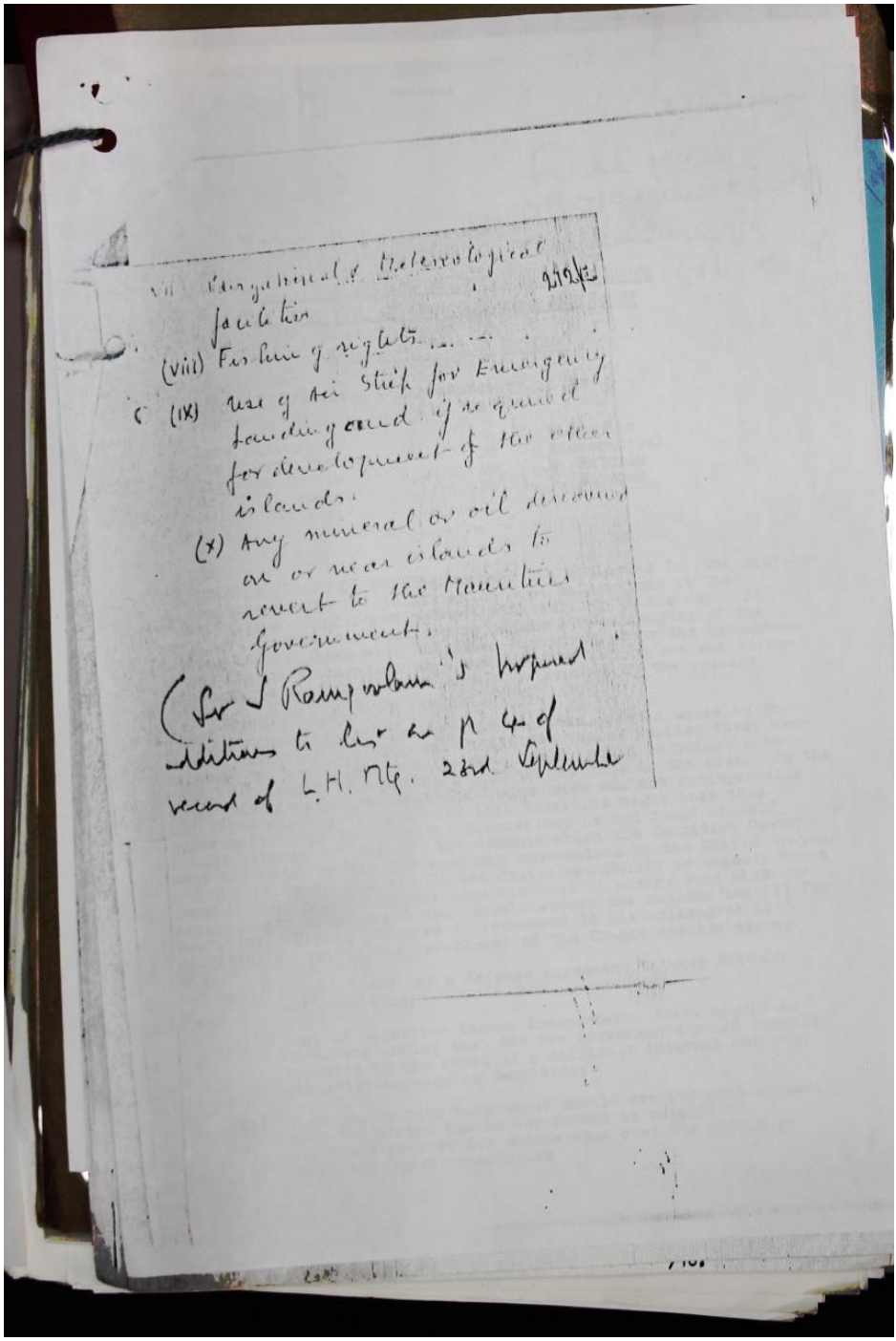
Ackd in manuscript 1st Oct. 65
Bell/ib

Dear Mr Trafford Smith,

I send Mr. Mohamed herewith the enclosed papers re the question of Diego Garcia and another near island (i.e. two altogether) and we wish to point out the amendments that should be effected on page 4 of this document. The matters to be added are underlined

Annex 63


[redacted] official
requirements submitted
to H. M. G. We think
that these can be
incorporated in any
final agreement.
With kind regards
Yours sincerely
P. Ramsay
P.S. The two cables handed over
to me are herewith enclosed
PR



(vii) Geographical & Meteorological facilities

(viii) Fisheries rights

(ix) use of Aei Stick for Emergency landing ground if required for development of the other islands.

(x) Any mineral or oil deposits on or near islands to revert to the Mauritius Government.

(for J Ramphul's proposed additions to Sec 4 of Act of L.H. Ntg. 2nd Schedule

Annex 64

United Kingdom, *Mauritius Constitutional Conference Report* (24 Sept. 1965)

Colonial Office
INFORMATION DEPARTMENT
ABBey 1266

64

MAURITIUS CONSTITUTIONAL CONFERENCE

Attached is a copy of the final report of the Conference which was circulated to delegates at the closing session of the Conference held today (Friday, September 24th) with the Secretary of State for the Colonies (Mr. Anthony Greenwood) in the Chair.

The Report was signed by the Secretary of State and the Secretary General (Mr. M.M. Minogue).

September 24th, 1965

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MAURITIUS CONSTITUTIONAL CONFERENCE REPORT 1965

INTRODUCTION

1. In the final communique of the Mauritius Constitutional review talks in July 1961, two stages of constitutional advance were proposed, on the assumptions:-

(i) that constitutional advance towards internal self-government was inevitable and desirable;

(ii) that after the introduction of the second stage of constitutional advance following the next general election, Mauritius would, if all went well, be able to move towards full internal self-government before the next following election; and

(iii) that at that time it was not possible to foresee the precise status of Mauritius after full internal self-government had been achieved.

The communique further recorded the general wish that Mauritius should remain within the Commonwealth; but whether as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries, was a matter which should be considered during the next few years in the light of constitutional progress generally. A copy of the communique is attached at Annex A.

2. The two stages of constitutional advance envisaged in the 1961 communique were duly carried into effect; and when early in 1964 the Mauritius (Constitution) Order 1964 was made and the present all-party government of Mauritius had taken office, the constitutional advances foreshadowed in the 1961 communique were complete. The move to full internal self-government, and the ultimate status to be aimed at, thus became matters for discussion and decision.

3. During the discussions early in 1964 leading to the formation of the present all-party government, the timing of a conference to consider further constitutional advance was considered and it was agreed that this should be at some convenient time after October 1965. Further discussions on the occasion of the Secretary of State's visit to Mauritius in April, however, made it seem probable that a conference in September 1965 would be acceptable and, particularly in view of the importance of bringing to an end the period of uncertainty in Mauritius as soon as possible, it was decided to convene the conference in September. The Secretary of State's Despatch of the 8th June, 1965 to the Governor conveying an invitation to the Premier and the other leaders of parties represented in the legislature to attend a constitutional conference opening in London on 7th September, 1965 is attached at Annex B.

4. The main task of the Conference was to reach agreement on the ultimate status of Mauritius, the timing of accession to it, whether accession should be preceded by consultation with the people, and if so in what form.

THE CONFERENCE

5. The Conference met at Lancaster House under the chairmanship of the Secretary of State for the Colonies, Mr. Anthony Greenwood, from 7th September, 1965 until

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24th September, 1965, assisted by the Joint Parliamentary Under-Secretary, Lord Taylor. It was attended by representatives of all the political parties in the Mauritius Legislature, namely:

The Mauritius Labour Party (Leader The Hon. Sir Seewoosagur Ramgoolam) which at the last election won 19 out of the 40 seats in the legislature and polled 42.3% of the votes cast.

The Parti Mauricien Social Democrat (Leader The Hon. J. Koenig, Q.C.) which won 8 seats and polled 18.9% of the votes.

The Independent Forward Bloc (Leader The Hon. S. Bissoondoyal) which won 7 seats and polled 19.2% of the votes.

The Muslim Committee of Action (Leader The Hon. A. R. Mohamed) which won 4 seats and polled 7.1% of the votes.

Two independent members of the legislature, The Hon. J. M. Paturau and The Hon. J. Ah Chuen also attended.

A full list of those attending the Conference is attached to this Report.

6. The main debate at the Conference was between the advocates of independence and of continuing association with Britain as the ultimate status of Mauritius. The Secretary of State for his part had repeatedly indicated that he did not wish to form any view as between those courses in advance of the Conference; that no proposals for the constitutional future of Mauritius were ruled out in advance; and that he hoped that every effort would be made in preliminary discussions in Mauritius to reach agreement on as many as possible of the matters before the Conference. These varying points of view were brought out in the speeches by the Secretary of State and the leaders of the four Mauritius parties at the opening session. The texts are given in Annex C.

CONSTITUTION

7. The Conference recognised that there were a number of matters which would have to be provided for in the constitution of Mauritius which would not be affected by the decision on final status. All the delegates agreed to these matters without prejudice to their views on this question. Subject to this reservation on ultimate status, a large measure of agreement was reached on the details of a constitutional framework covering the great majority of these matters. A framework embodying these points and in such a form that it could be used as the basis of the new constitution, whichever way the decision eventually went on ultimate status, is set out in Annex D.

8. Since it had proved impossible to reach agreement at the Conference on the electoral system, and the Secretary of State was reluctant to determine such an important matter without further consultation, he decided that a Commission should be appointed to make recommendations to him on:-

(i) the electoral system and the method of allocating seats in the Legislature, most appropriate for Mauritius, and

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(ii) the boundaries of electoral constituencies.

The Commission should be guided by the following principles:-

(a) The system should be based primarily on multi-member constituencies.

(b) Voters should be registered on a common roll; there should be no communal electoral rolls.

(c) The system should give the main sections of the population an opportunity of securing fair representation of their interests, if necessary by the reservation of seats.

(d) No encouragement should be afforded to the multiplication of small parties.

(e) There should be no provision for the nomination of members to seats in the Legislature.

(f) Provision should be made for the representation of Rodrigues.

9. The Conference also considered the question of Mauritian citizenship. It was recognised that should the decision on ultimate status be in favour of independence, the independence constitution would have to include provisions governing citizenship. Moreover, the type of association considered by the Conference involved provision for Mauritius to move on, by due constitutional process, to full independence without having to seek the approval of the British Government. The British Government would therefore wish to determine, at the time of a decision on association, the arrangements governing Mauritian citizenship if and when a move from associated status to full independence should take place. The Conference discussed the citizenship question against this background, without prejudice to their views as to the ultimate status of Mauritius. It was not possible to go into the matter in detail, but the Secretary of State made it plain that the British Government would wish to ensure that the arrangements governing Mauritian citizenship followed the general principles adopted in many Commonwealth countries, and set out in Annex E.

10. The position of Mauritius civil servants for whom the Secretary of State had responsibility was also considered, in view of the decisions implicit in the constitutional arrangements described in Annex D, that Mauritius should proceed to the stage of full internal self-government and that the Service Commissions should become executive. The Secretary of State informed the Conference that the standard practice was that when a country moved to full internal self-government with executive Service Commissions, and in consequence the Secretary of State's power to continue to carry out his responsibilities towards the officers concerned inevitably ceased, a compensation scheme should be introduced under which the officers concerned would be able to retire with compensation for loss of career prospects. He went on to explain that it would be necessary for the Mauritius Government to agree to the introduction of such a compensation scheme and the related Public Officers Agreement,

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both following the usual pattern, and in terms satisfactory to the British Government. The details of these arrangements remain to be settled in negotiations between the British and Mauritius Governments.

POPULAR CONSULTATION

11. The Conference devoted a considerable time to consideration of whether advance to ultimate status should, in the words of the Secretary of State's Despatch of 8th June "be preceded by consultation with the people and if so in what form". It was argued that no such consultation was necessary, as the wish of the people of Mauritius for independence had been amply demonstrated by the support accorded in three general elections to parties which favoured independence. It would, however, be appropriate that there should be a fresh general election, under whatever electoral arrangements were agreed upon at the Conference, in advance of independence; and that the government then elected should lead the country into independence. On the other hand it was argued that the question of independence had not been a prominent issue in previous general elections and that it was doubtful whether a majority desired it. At general elections, voters directed their attention mainly to other issues, and were distracted by communal considerations. Cases were cited within the Commonwealth where decisions on ultimate status had been made by referendum, and it was argued that those precedents should be followed in the case of Mauritius.

ULTIMATE STATUS

12. In addition to the arguments relating to ultimate status summarised in the preceding paragraph it was also contended that to grant independence would be in accordance with British policy and practice; and that independence was a goal which Britain herself should encourage her dependent territories to attain. Given the universal desire in Mauritius to remain within the Commonwealth and on terms of close friendship with Britain, there was little reason for stopping short of full independence at the hitherto untried intermediate status of association. Finally, it was argued that only through independence could Mauritius achieve unity, and attain membership of the Commonwealth and of the United Nations.

13. Against independence and in favour of association it was argued that the results of previous general elections were irrelevant, since independence had not been in issue. There were on the contrary, grounds, in the support accorded in political meetings throughout Mauritius to those advocating association, for doubt whether a majority of the people wanted independence. Mauritius was too small, isolated, and economically vulnerable to be viable as an independent country. Emphasis was laid on her dependence on sugar exports, and her liability to cyclones. It was further argued that should Britain ever accede to the Treaty of Rome and enter the European Economic Community, Mauritius would have a far better chance of negotiating advantageous arrangements with the Community as a territory associated with Britain than if she were independent. The problems of growing population and unemployment in Mauritius, were also emphasised.

THE BRITISH GOVERNMENT'S VIEWS

14. In the face of this conflict between the advice afforded to the British Government by the various parties in Mauritius as to

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the ultimate status of the country and given the general recognition of the importance of terminating as rapidly as possible the recent period of uncertainty, it was clear during the Conference that it would fall to the British Government to make a decision as between independence and association and on the question of popular consultation, without the benefit of unanimous advice from the parties at the Conference.

15. The Mauritius Labour Party and the Independent Forward Bloc, which advocated independence had between them 26 out of the 40 seats in the legislature and the support at the 1963 election of 61.5% of the voters. The Muslim Committee of Action was also prepared to support independence, provided that certain conditions regarding the electoral system were met.

16. On the other hand, a significant section of the population, especially in the community known as the General Population, was opposed to independence. In view of the complex composition of the population, the Secretary of State attached great importance to ensuring that full weight was given to the views of the Parti Mauricien delegates and the two independents.

17. He concluded, however, that the main effect of the referendum for which they asked would be to prolong the current uncertainty and political controversy in a way which could only harden and deepen communal divisions and rivalries. He therefore came to the conclusion that a referendum would not be in the best interests of Mauritius, and that it was preferable that a decision on ultimate status should be taken at the present Conference.

18. The proposals for association developed by the Parti Mauricien did not rule out the possibility of Mauritius becoming independent. It was inherent in this form of association, as distinct from the normal colonial relationship, that the territory itself should be free at any time to amend its own constitution and, by due constitutional process, to move on to full independence. Given the known strength of the support for independence, however, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled.

19. The Secretary of State had throughout the Conference emphasised the importance that he attached to the constitution containing every possible safeguard against the abuse of power. Discussions at the Conference had shown that there was good ground for believing that such safeguards and many other provisions of the internal scheme of government would command general acceptance, whatever the ultimate status. In considering his final decision, therefore, the Secretary of State felt confident that it would be possible to produce a constitution which would command the support and respect of all parties and of all sections of the population.

20. The Secretary of State accordingly announced at a Plenary meeting of the Conference on Friday, 24th September, his view that it was right that Mauritius should be independent and take her place among the sovereign nations of the world. When the electoral Commission had reported, a date would be fixed for a general election under the new system, and a new Government would be formed. In consultation with this Government, Her Majesty's

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Government would be prepared to fix a date and take the necessary steps to declare Mauritius independent, after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly. Her Majesty's Government would expect that these processes could be completed before the end of 1966.

21. It would be the British Government's intention, in preparing the draft of the Independence Constitution, to recommend the inclusion in it of the provisions set out in the constitutional framework in Annex D to this Report. This scheme had been devised to take the fullest possible account of the views expressed by delegates at the Conference. In addition to these provisions, however, and in consequence of the decision that the ultimate status of Mauritius will be Independence, it will be necessary to include in the Independence Constitution additional arrangements for the appointment and removal of ambassadors, high commissioners and principal representatives abroad of Mauritius. The usual arrangements would be followed and appointment and removal in respect of these offices would take place on the advice of the Prime Minister, who would consult the Public Service Commission before tendering advice in cases where career civil servants were involved.

22. The Secretary of State also referred to discussions he had had with the individual Parties regarding the adoption of certain constitutional practices concerning the appointment and tenure of office of the Queen's representative in an independent Mauritius. The Queen's representative would have special responsibilities which he would exercise in his personal discretion, and the Secretary of State stressed that it was of fundamental importance to make special arrangements protecting the impartiality of the Queen's representative. The individual Parties to the Conference agreed that to this end the following constitutional practices should be adopted. In making his recommendation for the appointment of the Queen's representative, the Prime Minister would take all reasonable steps to ensure that the person appointed would be generally acceptable in Mauritius as a person who would not be swayed by political or communal considerations; it would be for the Prime Minister of the day to make arrangements to give effect to this practice. In the case of the recommendation to Her Majesty for the appointment of the first Governor General of an independent Mauritius, the person appointed would come from outside Mauritius and the name would be agreed between the British Government and the Prime Minister before it was submitted to Her Majesty. Once appointed, the Governor General would, unless he resigned, be permitted to continue in office for his full term unless a recommendation was made to Her Majesty for the termination of his appointment on medical grounds established by an impartial tribunal appointed by the Chief Justice.

23. At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come

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into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield.

24. As regards membership of the Commonwealth, the Secretary of State referred at the final Plenary session to the general desire expressed to him by all parties that Mauritius should remain within the Commonwealth. He made it plain that, as delegates would appreciate, the question of membership of the Commonwealth was a matter not for the British Government alone but for the members of the Commonwealth as a whole to decide. He indicated that the British Government would be happy, if the desire of Mauritius for membership of the Commonwealth were confirmed by a resolution of the legislature elected at the general election which was to be held before independence, to transmit such a request to other Commonwealth governments.

25. Finally the Secretary of State underlined the importance attached by Britain to the maintenance of the close and friendly relations which had existed between Britain and Mauritius for over 150 years. The achievement of independence would, in his belief, strengthen rather than weaken these ties of friendship. Mauritius would naturally continue to be eligible for economic assistance from Britain, in the same way as other formerly dependent territories and would still benefit from the Commonwealth Sugar Agreement.

26. The Secretary of State said that he felt sure that all the political parties represented at the Conference and every man and woman in Mauritius would loyally accept the decision that Mauritius should become independent, and would co-operate in making a success of the new constitutional arrangements.

Lancaster House, S.W.1

24th September, 1965.

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LIST OF THOSE ATTENDING CONFERENCE

The Right Honourable Anthony Greenwood, M.P.,
Secretary of State for the Colonies

Lord Taylor
Parliamentary Under-Secretary of State for the Colonies

Mrs. Eirene White, M.P.,
Parliamentary Under-Secretary of State for the Colonies

U.K. DELEGATION

Sir Hilton Poynton, G.C.M.G.
Mr. A.N. Galsworthy, C.M.G.
Mr. Trafford Smith, C.M.G.
Mr. M.G. de Winton
Mr. A.J. Fairclough
Mr. R. Terrell

GOVERNOR OF MAURITIUS

Sir John Rennie, K.C.M.G.

MAURITIUS DELEGATION

Sir Seewoosagur Ramgoolam
Hon. J. Koenig, Q.C.
Hon. S. Bissoondoyal
Hon. A.R. Mohamed
Hon. J.H. Paturau
Hon. J. Ah Chuen
Hon. G. Forget
Hon. V. Ringadoo
Hon. S. Boolell
Hon. H. Walter
Hon. R. Jomadar
Hon R. Jaypal
Dr. the Hon L.R. Chaperon
Dr. the Hon. N. Cure
Hon. V. Govinden
Hon. M. Ramnarain
Hon. S. Virah Sammy
Hon. R. Modun
Hon. G. Duval
Hon. R. Devienne
Hon. J.C.M. Lesage
Hon. H. Rossenkhan
Hon. A.W. Foondun
Hon. D. Basant Rai
Hon. A. Jugnauth
Hon. S. Bappoo
Hon. M.R. Abdool
Hon. A.H. Osman

CONFERENCE ADVISER

Professor S.A. de Smith

SECRETARIAT

Mr. M.M. Minogue
Mr. T.C. Platt
Mr. E.C. Reavell
Mr. J.K. Sawtell
Mr N.N. Walmsley

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ANNEX A

The following final communique was approved at the sixth and final Plenary Session of the Mauritius Constitutional Review Talks at the Colonial Office today, Friday (July 7, 1961), with the Secretary of State for the Colonies (Mr. Iain Macleod) in the chair:-

At the invitation of the Secretary of State for the Colonies representatives of the Mauritius Labour Party, the Independent Forward Bloc, the Muslim Committee of Action, the Parti Mauricien and two independent members of the Mauritius Legislative Council met in London from June 26 to July 7 to exchange views on the present Constitution and to discuss the extent, the form and timing of any changes. Sir Colville Deverell, the Governor of Mauritius, and Professor S.A. de Smith, the Constitutional Commissioner, were present throughout the talks.

2. After an initial plenary meeting and separate and frank discussions with each of the groups the Secretary of State tabled proposals which were discussed at two plenary sessions. In the light of the comments made upon them by delegates, the proposals were further modified by the Secretary of State and discussed at further plenary sessions on July 5 and 6.

3. The proposals are based on the assumption that constitutional advance in Mauritius towards internal self-government is inevitable and desirable; that the extent and timing of any advance must take into account the heterogeneity of the population and include provisions for adequate safeguards for the liberties of individuals and the interests of the various communities. It is that and not any lack of talent or aptitude for government which conditions the pace of advance in Mauritius.

4. Two stages of advance are proposed. The first stage is to be brought into operation as soon as the necessary arrangements can be made. The second stage presents a broad basis of the constitution for adoption after the next General Election and in the light of that Election if, following an affirmative vote by the Legislative Council, they are recommended to the Secretary of State by the Chief Minister. On the assumption that the second stage is implemented after the next General Election, it would be expected that during the period between the next two General Elections or what has been called the Second Stage, if all goes well and if it seems generally desirable, Mauritius should be able to move towards full internal self-government.

5. It is not possible at this stage to suggest what should be the precise status of Mauritius after the attainment of full internal self-government. It is the general wish that Mauritius should remain within the Commonwealth. Whether this should be achieved as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries, are matters which should be considered during the next few years in the light of constitutional progress generally.

6. The changes proposed are:-

First Stage

(1) The Leader of the Majority Party in the Legislature would be given the title of Chief Minister.

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(2) The Governor would consult the Chief Minister on such matters as the appointment and removal of Ministers, the allocation of portfolios and the summoning, proroguing, and dissolution of the Council. It would be understood that in general he would not be bound to accept the Chief Minister's advice but that he would act on the advice of the Chief Minister in the appointment or removal of Ministers belonging to the Chief Minister's party.

(3) An additional unofficial ministerial post would be created. The new Ministry would have responsibility for Posts and Telegraphs, Telecommunications, The Central Office of Information and the Broadcasting Service.

(4) The Colonial Secretary would be re-styled "Chief Secretary".

Second Stage

(1) Executive Council

(a) The Council would be called the Council of Ministers.

(b) The Chief Minister would be given the title of Premier.

(c) The Premier would be appointed by the Governor in accordance with the conventions obtaining in the United Kingdom; that is to say, the Premier would be the person who, in the opinion of the Governor, was most likely to be able to command the support of the majority of members of the Legislature.

(d) The Council would not be a purely Majority Party government but as at present would include representatives of other Parties or elements which accepted the invitation to join the Government and the principle of collective responsibility.

(e) In appointing Ministers from groups other than the Premier's Party, the Governor would act in his discretion but would consult with the Premier and such other persons as he deemed fit to consult.

(f) The Financial Secretary would cease to be a member of the Council.

(g) Provision would be made for the post of Attorney General to be filled by an Official or by an unofficial Minister. In the former case the holder would cease to be a member of the Council but would continue to be available to attend meetings as an Adviser. In the latter case it would be necessary to create a new official post of Director of Public Prosecutions who would be solely responsible in his discretion for the initiation, conduct and discontinuance of prosecutions and would in this respect be independent of the Attorney General.

(h) The Chief Secretary would continue to be a member of the Council and would become in addition to his substantive appointment Minister for Home Affairs.

(i) An Unofficial Deputy Minister for Home Affairs would be appointed.

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(2) Legislative Council

(a) The Council would be re-named the Legislative Assembly.

(b) The Assembly would contain 40 elected members. The maximum number of nominated members would be increased to 15. It is contemplated that two or three of these appointments should be held in reserve.

(c) The Speaker would be elected by the Legislative Assembly from among its members but this provision would only become effective on the retirement of the present Speaker.

(d) The Financial Secretary and (if the post were held by an Official) the Attorney General would cease to be members of the Legislative Assembly.

(e) The Governor in his discretion would summon, prorogue and dissolve the Assembly after consultation with the Premier.

(3) The Public Service, Police Service and Judiciary

(a) The Public Service and Police Service Commissions and the proposed Judicial and Legal Service Commission would remain advisory to the Governor. The Governor would however be required to consult the Premier in respect of certain appointments viz. Permanent Secretary (or by whatever title the senior administrative officer in a Ministry is described) and Heads of Departments.

(b) The Chairman and members of the Commissions would continue to be appointed by the Governor in his discretion.

(c) The Membership and procedure of the Commissions, in the second stage, would so far as possible be conducive to the development of these bodies in such a way as to enable them to become fully executive.

(d) During the life of the Legislative Assembly following the next General Election the Service Commissions would become executive. At this stage, while the Chairman and Members of the Commission would continue to be appointed by the Governor in his discretion, he would be required to consult the Premier in respect of those appointments.

(e) The appointment of the Chief Justice would remain as at present.

(4) External Affairs, Defence and Internal Security

(a) These matters would remain within the responsibility of the Governor who would however consult with the Premier about these matters.

(b) The operational control of the Police and Special Force would continue to be the responsibility of the Commissioner under authority of the Governor.

(5) Human Rights

The Constitution would include provision for the safeguarding of human rights and fundamental freedoms and for the redress of infringements of these rights and freedoms in the courts.

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7. The Independent Forward Bloc and the Parti Mauricien, for reasons which they gave in full to the conference, were unable to accept the Secretary of State's proposals.

8. The Muritius Labour Party considered that the proposals did not provide the measure of advance which they were fully justified in claiming. They were, however, prepared to accept them, if reluctantly, as a compromise, on the recommendation of Her Majesty's Government, in the best interests of Mauritius.

9. The Muslim Committee of Action did not consider that the proposals adequately safeguarded the interests of the Muslim community. Reluctantly, however, and as a compromise, they too were prepared to accept them in the general interest of Mauritius as a whole.

10. The two independent members considered that it would not be wise in present circumstances to go beyond the proposals put forward by the Secretary of State. They recognised that some measure of advance was inevitable and as the electorate would be given an opportunity of expressing its views before the second and more important stage was introduced, they too accepted them.

11. The Secretary of State informed the Conference that while it was clear that unanimous agreement could not be reached, in his view a sufficient measure of acceptance had been indicated to justify his recommending the adoption of his proposals.

12. Certain delegates proposed the creation of a "Council of State" or "high-powered Tribunal". The functions and composition of such a body would, however, present problems of some complexity and would need careful study. The Secretary of State proposed to address a despatch to the Governor giving his considered views on this, after consultation with the Constitutional Commissioner. The Secretary of State would at the same time indicate the arrangements which could be made to ensure that the Information and Broadcasting Services should continue to operate on a non-partisan basis.

13. It was agreed that consideration should be given at a later stage to the question whether a visit to Mauritius by the Constitutional Commissioner, Professor de Smith, would be valuable in examining in greater detail the broad conclusions of the Conference and considering particular aspects which had not come within its scope.

July 7, 1961

/ Note to Editors:- Elections to the Mauritius Legislative Council were held in March, 1959 with the following results:

Mauritius Labour Party	23 seats
Trade Union candidates	2 seats
Muslim Committee of Action	5 seats
Independent Forward Bloc	6 seats
Parti Mauricien	3 seats
Independent	1 seat
Total	40 seats

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ANNEX B

I have the honour to address you on the subject of the future constitutional development of Mauritius. During my recent visit I had extensive discussions with the Premier and the leaders of all the parties represented in the Legislature. I am most grateful to them and to many others who were good enough to give me their views on the problems which now confront the people of Mauritius.

2. The overriding impression with which I was left was the need to end as quickly as possible the present period of uncertainty. Divergent views are current as to the direction which future constitutional development should take; and it is understandable that until firm decisions can be reached, based upon the widest possible measure of agreement, there should persist a malaise which has doubtless contributed to recent civil disturbances, of which I have learned with distress, and which are foreign to the reputation for goodwill and orderly behaviour which Mauritius has earned over many years.

3. You will recall that it was agreed at the talks held in London under the Chairmanship of Lord Lansdowne in February 1964 that the next conference should be held "during the third year counting from the elections held in October 1963, i.e. at any convenient time after October 1965". It happens that I should not be free, because of other commitments, to preside at a Conference in October, though I could do so in the early part of September. I should be grateful therefore if, on my behalf, you would convey to the Premier, and to the other leaders of Parties represented in the legislature, an invitation to attend a Constitutional Conference in London during September, and suggest to them that Tuesday, 7th September would be an appropriate date for the opening session. I should welcome your early recommendations as to the numbers of representatives which the various Parties should bring.

4. With regard to the Agenda of the Conference, paragraphs 4 and 5 of the 1961 Communique indicate the range of matters for discussion. It will be for delegates to advise me as to whether it is the wish of the people of Mauritius to go ahead, in the words of paragraph 5 of the communique "as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries"; and I wish to make it plain that no proposals for the constitutional future of the island are ruled out in advance.

5. It does appear however that consideration of the question of the ultimate status of Mauritius has now reached the point where specific alternatives are emerging. The main task of the Conference should therefore be to endeavour to reach agreement on this status, the timing of accession to it, whether such accession should be preceded by consultation with the people, and if so in what form. The Conference will of course also consider the changes in the constitution required by full internal self-government, it being understood that these may well be affected by the final view reached on the question of future status. The electoral system and any constitutional changes which this might involve would also have to be decided upon and Professor le Smith's report will provide a useful basis for discussion.

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6. Before leaving Mauritius I expressed to you, and to the leaders of the main parties separately, the urgent hope that they would use the period before the Conference for serious thought and discussion with one another, so as to reach agreement locally, where possible, and to identify the more difficult points which would need to be resolved at the Conference. I hope that the all-party Government may find it possible to subscribe to a single document setting out the areas of agreement and disagreement. You undertook to do all you could to further preliminary discussions to this end, and I trust that it will be possible to do much useful preparatory work in this way. I believe that if the Party leaders will co-operate with you in setting practical discussions of this kind in motion, that will of itself do much to reduce the tension which has been so evident.

7. In connection with these preliminary discussions a number of particular points arise. In regard to the Labour Party's proposals, I note that a desire has been expressed for a continuing close link with Britain; if by this is meant some special relationship with Britain over and above the relationship all members of the Commonwealth have with each other, I am sure that it would be valuable if before the Conference the implications of such a relationship could be worked out in some detail; similarly, if the Labour Party contemplated suggesting further safeguards for minorities, it would I am sure be helpful if these could be formulated now. As regards the Parti Mauricien's proposals, reference has been made to both "integration" and "association", and some of their detailed proposals appear more akin to the former, others to the latter. It would I am sure be of assistance if further clarification of the Parti Mauricien's wishes could be obtained and if the distinction between the concepts of integration and association could be recognised. As regards the Independent Forward Bloc and the Muslim Committee of Action, these parties would no doubt also welcome further clarification of the Labour Party's and the Parti Mauricien's proposals and, in defining their own particular wishes, would no doubt wish to consider how best these might be reconciled with the main alternatives which so far appear to be under discussion.

8. In the short remaining period before the Conference a heavy responsibility rests on everyone in Mauritius, and particularly on the Party leaders; the Press, and all who are in a position to influence opinion, to think of the interests of Mauritius as a whole, and to avoid doing or saying anything that might increase tension between sections of all communities.

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ANNEX C

STATEMENT BY THE SECRETARY OF STATE

"I should like to begin by thanking you all for accepting my invitation to come to this conference. This is a moment to which I have looked forward with pleasure for nearly a year, and still more eagerly since my visit to your idyllic country in April.

I feel now that I can welcome you, not just formally and politically, on behalf of my colleagues and myself, but also in terms of personal friendship as one who knows and loves the people of Mauritius and who knows and respects their leaders.

May I therefore welcome you all very warmly to this conference on the constitutional future of your country. I only wish I had been able to provide the same overwhelming reception for everyone of you that you arranged for me when I drove from the Airport to Le Reduit.

This is a conference which the people of our two countries, bound closely together for over 150 years, will watch with eager interest, praying that there will emerge from it a generally acceptable solution which will give Mauritius a secure, prosperous and happy future. When there is so much strife in the world it is incumbent upon us all to narrow the areas of disagreement and to remove possible causes of friction. And I know that in the talks ahead we shall all of us keep before us one clear goal - quite simply, what is best for Mauritius and her people as a whole.

Before I refer to the subject matter of the conference may I make two personal points. First, I know that everyone around the table will have shared my delight that the Premier should have been honoured by Her Majesty The Queen. It is an honour, Mr. Premier, which was richly deserved and which delighted your friends throughout the Commonwealth who hold in high esteem your statesmanship and wisdom.

I should also like to say how sorry I have been to learn that some of my friends here have experienced ill-health since we last met. I am very glad to see Mr. Koenig, your Attorney General and leader of the Parti Mauricien, Mr. Ringadoo, Minister of Education, and Mr. Devienne, Minister of State, with us today and I hope that their health is fully restored, and that the proceedings of our conference will not be so arduous as to put any undue strain upon them.

This conference has its origin in the series of constitutional talks held under the chairmanship of Mr. Macleod, in 1961. The constitutional advances agreed upon then have been carried smoothly into effect with general agreement and goodwill. The 1961 talks, and the London talks eighteen months ago on the formation of the present all-party Government, looked forward to the present conference.

What emerges from these facts of recent history, however, that I would like principally to stress is that the background against which this conference is being held is one of gradual and steady progress achieved by discussion and agreement. Mauritius is a sophisticated and politically sensitive community. Despite many differences, it has always been possible for the leaders of the various parties and communities in the end to reach agreement, and I have every confidence that this enviable record will continue an unbroken one when we conclude our present labours.

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Ever since I visited you in April, I have stressed both in public and in private that I would not prejudge in any way the outcome of the present conference. No solutions have been ruled out in advance. I adopted this point of view partly because I do not think that it is right that the British Government, although it has ultimate constitutional responsibilities, should attempt to lay down in advance constitutional solutions for highly developed communities many thousands of miles away - those days are far behind us: but also I took this line because I know of Mauritius's record of working out solutions by discussion and negotiation between her political leaders. I felt, and still feel, that this is the best possible way to reach durable agreements on constitutional matters. For this reason, too, I urged upon you when I visited Mauritius, and have since continued to press upon you, the necessity for discussing the issues arising and endeavouring to reach agreement amongst yourselves.

This still remains my position. I still regard it as being of primary importance that you in the Mauritius Delegation should agree between yourselves upon the constitutional steps you want your country to take. You who live in Mauritius and who represent the various communities that make up its population are the best judges of how you can live together in peace and friendship which I know is what you all wish.

I conceive my role at this conference and that of Her Majesty's Government as being one of counsellor and friend. We in the Colonial Office, as you know, have a good deal of experience of constitutional conferences and of constitutions, in practice; of means of meeting particular situations and particular problems; and of devising machinery which can resolve doubts and set fears at rest. We shall seek to help in this way during this conference. Between us I hope that we can ensure that Mauritius's multiplicity of races, far from being a source of weakness, is, as it should be, a source of strength.

In these few opening remarks I shall not attempt to discuss the various constitutional steps which will be before us at the conference. We shall have to go into the implications of the possible courses in considerable detail. The basic issues we shall have to tackle are well enough known to you all and to the world at large.

I will only say now that I regard it as being of the utmost importance that our discussions at this conference should end in an agreement on the course to be pursued which can be wholeheartedly supported by all the parties represented here. Only in that way can the plan agreed upon, whatever it may be, be honestly advocated by all of you, the political leaders, to your constituents, the people of all the communities which make up the population of Mauritius.

If we can succeed in this we shall have done well, and the people of Mauritius will have cause to be thankful for what between us, we have achieved on their behalf."

STATEMENT BY SIR R. SEEWOOSAGUR RAMGOOLAM

"On behalf of the Mauritius Labour Party and in my own name I wish to thank you, Sir, for the very warm welcome you have extended to us. We are also grateful to you personally for having called this conference so that we may remove uncertainty, and colonialism and bring about independence to the people of Mauritius.

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The proposals of the Mauritius Labour Party have been embodied in a memorandum which has been communicated to you. They represent a summary of our views on the constitutional changes which are required for the effective establishment of independence with guaranteed safeguards for the minorities. The Mauritius Labour Party which, by its constitution and actual working, represents a complete cross-section of Mauritian society, has received a clear mandate for independence from the people of Mauritius at the last three general elections. You have planted the Rule of Law in Mauritius and are now being invited to complete the process by the establishment of full democracy.

The Mauritius Labour Party wants the independence of Mauritius within the Commonwealth with a Governor-General appointed by Her Majesty The Queen, and with a Cabinet form of government. It is hoped that Her Majesty will be graciously pleased to become Queen of Mauritius.

The Mauritius Labour Party accepts the automatically operated best-loser system and at the same time it is prepared to consider any alternative which would secure adequate representation of the Muslim and Chinese minorities. We are also in favour of the creation of an ombudsman.

At this stage it is not necessary for me to go into a detailed examination of our proposals which are most orthodix and in line with the constitutional status of other countries which have acceded to independence within the Commonwealth, but I would like to say that the memorandum of the Mauritius Labour Party adumbrates the main principles governing our stand at this constitutional conference.

As you have said, Mr. Secretary of State, we are meeting here as friends and as a family, and we are hopeful that goodwill, understanding and wisdom will prevail at this conference and that Mauritius will emerge from it as an independent nation. To my mind it is incumbent upon the British people to help us in this march forward.

In concluding, I share with you the feeling of joy that my friend the Attorney General, my oldest friend of the Assembly, has now recovered and would wish that he will be even better as the conference proceeds. I would like to say the same for my friend the Minister of Education, Mr. Ringadoo and my friend the Minister of State, Mr. Devienne.

Finally, Sir, I am very sensible of the congratulations that you have given on the occasion of my having received the Knighthood from Her Majesty.

With these words I think I have nothing more to add except that I am personally hoping that all will go well ahead."

STATEMENT BY THE HON. J. KOENIG, Q.C.

"I would like to thank you on behalf of my colleagues and myself for the kind words addressed to us, and I should like at the same time to thank my friend, Sir Seewoosagur Ramgoolam, for the very nice words he addressed to me.

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We, Mauritians, have been loyal subjects of Her Majesty since 1810. We have stood by Britain in the dark days of two World Wars and have, in a modest but unstinting way, played our part in the defence of democracy and of the free world.

If we contend that de-colonisation there must be, we discard independence as being fatal to the prosperity and the peaceful and harmonious development of Mauritius as part of the free world.

We claim that it is the general wish of the people of Mauritius that as a substitute for independence, close constitutional associations with Great Britain should be maintained within the framework of a new pattern. We believe that the people of Mauritius must in any event have the right to express their preference in a free referendum.

The United Nations Charter recognises our right to self-determination and we are confident, Sir, that this right will be readily conceded to us by Great Britain."

STATEMENT BY THE ON. A. R. MOHAMED

"On behalf of my party, I associate myself with my other friends who have just been speaking to thank Her Majesty's Government for having kindly asked us to be here to decide the future of our Colony, in other words, of our country. Sir, you have just spoken about our past association with Her Majesty's Government, and, on behalf of the Muslim population of Mauritius, I would like to say it is our real wish that our past association of 150 years with the British Government will continue for many more centuries to come. Speaking as a delegate to this conference, I consider it my bounden duty to declare, and declare it very clearly, that the Muslims of Mauritius have always co-operated with others for the good of the country, and they are ready to co-operate in the future. We are not against any political and constitutional progress of our country provided such progress does not mean the oppression of any community in Mauritius, and because of this and other reasons I also want to make it clear that we will have to see that our political and other rights are safeguarded and that we be left neither to the mercy of, nor be forced to depend upon, the charity of others."

STATEMENT BY THE HON. S. BISSOONDOYAL

"I have not much to say on this occasion apart from thanking you for the very magnificent hospitality you have accorded to all the delegates from Mauritius. I have to emphasise the thankfulness of my party for the visit both of you, Sir, and of Professor de Smith, and when I refer to Professor de Smith I am referring to the proposal for the appointment of an ombudsman.

Before resuming my seat, I will ask this Government to see to it that no mischievous report reaches Mauritius as it did last time and that a strict impartiality will be observed. I say this because I see the man whom I believe to be responsible for that the last time is present in this house."

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ANNEX D

THE CONSTITUTIONAL FRAMEWORK

Fundamental rights

The Constitution will include a Chapter providing for the fundamental rights and freedoms of the individual which will follow closely Chapter 1 of the existing Constitution. /

2. The Chapter on fundamental rights will contain such modifications as are necessary to secure that any religious, social, ethnic or cultural association or group will have the right to establish and maintain schools at its own expense, subject to any reasonable restrictions which may be imposed by law in the interests of persons receiving instruction in such schools, and that a parent will not be prevented from sending a child to such a school merely on the ground that the school is not a school established or maintained by the Government.

3. Derogations may be made from the provisions protecting fundamental rights by the Mauritius Government and legislature in relation to a state of war or other public emergency but only to the extent and in accordance with the procedure set out below:-

(a) Derogations from the fundamental rights will only be permissible under a law during a public emergency and will be limited to derogations from the right to personal liberty or the protection of freedom from discrimination which are reasonably justifiable in the circumstances of the situation.

(b) A period of public emergency for this purpose will be a period when Mauritius is at war or when the Queen's Representative, acting on the advice of Ministers, has issued a proclamation declaring that a state of public emergency exists.

(c) When the Legislative Assembly is sitting, or when arrangements have already been made for it to meet within seven days of the date of the proclamation, the proclamation will lapse unless within seven days the Assembly approves the proclamation.

(d) When the Legislative Assembly is not sitting and is not due to meet within seven days, the proclamation will lapse unless within twenty-one days it meets and gives its approval by a resolution supported by at least two-thirds of all the members.

(e) The proclamation, if approved by resolution, will remain in force for such period not exceeding six months as the Assembly may specify in the resolution.

/ It was noted by the Conference that the provisions in Chapter 1 of the existing Constitution containing protection against discrimination did not preclude the enactment of laws applicable to Muslims only relating to marriage, divorce and the devolution of property; the Conference accepted in principle that steps should be taken towards the introduction of Muslim personal law in respect of these matters into Mauritius.

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(f) The Assembly will be empowered to extend the operation of the proclamation for further periods not exceeding six months at a time and a resolution for this purpose will also require the support of at least two thirds of all the members of the Assembly.

Provision will be made for the periodic review of the case of persons who have been detained in derogation in the right of personal liberty by an independent and impartial tribunal and a detained person will have the right to information as to the ground on which he is detained, to consult a legal representative and to appear in person or by a legal representative before the reviewing tribunal.

4. The Queen's Representative

The Queen's Representative will be appointed by Her Majesty and, subject to Her Majesty's pleasure, will hold office during his period of appointment.

5. The functions of the Queen's Representative will be discharged during a vacancy, an illness or absence of the representative by such person as Her Majesty may appoint, or if there is no such person as Her Majesty may appoint, or if there is no such person appointed in Mauritius, by the Chief Justice.

6. The Queen's Representative will, in the exercise of his functions, act on the advice of the Council of Ministers or an individual Minister acting with the general authority of the Council of Ministers except in cases where he is required by the Constitution or a law to act on the advice of some other person or authority or to act in his personal discretion. The chief minister will keep the Queen's Representative informed concerning matters of government.

7. The Council of Ministers

There will be a Council of Ministers which will be collectively responsible to the Legislature. The Council of Ministers will consist of a chief minister and not more than 14 other ministers; subject to this limit, the number of ministers will be determined from time to time by the Queen's Representative on the advice of the chief minister.

8. The Queen's Representative, acting in his personal discretion, will appoint as chief minister a member of the Legislative Assembly who appears to him likely to command the support of the majority of the members of the Assembly. The ministers, other than the chief minister, will be appointed from among the members of the Assembly on the advice of the chief minister.

9. The Queen's Representative will be empowered to remove the chief minister from office if a vote of no confidence in his government is passed in the Legislative Assembly and he does not within 3 days resign or advise a dissolution, and also, following a general election, where the Queen's Representative considers that as a result of the election the chief minister will not be able to command a majority in the new Assembly. Any other minister will vacate office if the Queen's Representative revokes his appointment on the advice of the chief minister, if the chief minister goes out of office in consequence of a vote of no confidence or on the appointment of any person to be chief minister. The chief minister and any other minister will vacate office if he ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution or if, at the first meeting of the Assembly following a dissolution, he is not a member of the Assembly.

10. The chief minister will preside in and summon the Council of Ministers and portfolios will be allocated to ministers on his advice.

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11. There will be provision in the Constitution for the appointment of a minister to carry out the functions of the chief minister when the chief minister is unable to act because of illness or absence from Mauritius. Such an appointment will be made by the Queen's representative on the chief minister's advice unless it is impracticable to obtain this advice because the chief minister is too ill or is absent, in which case the Queen's representative will make the appointment without obtaining advice.

12. The Constitution will provide for the appointment of Parliamentary Secretaries, whose number will not exceed five. A Parliamentary Secretary will be appointed on the advice of the chief minister from among the members of the Legislative Assembly and will hold office on the same terms as a minister, (other than the chief minister).

13. The Legislature

The Legislature will consist of Her Majesty and the Legislative Assembly. The Legislative Assembly will consist of elected members. The Constitution will provide for the electoral system†.

14. The provisions for the franchise and for the qualifications and disqualifications for election to the Legislative Assembly and for the Speaker and Deputy Speaker will follow the corresponding provisions in the existing Constitution. The official language of the Legislative Assembly will be English but any member will be able to address the chair in French.

15. The Constitution will provide for the establishment of an Electoral Boundaries Commission which will review the boundaries of the constituencies every ten years or, if the Commission considers it necessary after the holding of a census, and to make recommendations to the Legislative Assembly. The members of the Commission will be appointed by the Queen's representative on the advice of the chief minister after the latter has consulted the leader of the opposition. The principles which the Commission will be required to apply will be specified in the Constitution. The recommendations of the Commission as to the alteration of the boundaries of the constituencies will be submitted to the Legislative Assembly which may approve them or reject them but may not alter the recommendation; if approved by the Assembly, they will become operative upon the next dissolution of the Legislature.

16. The Constitution will also provide for an Electoral Commissioner who will be a public officer and will be appointed by the Judicial and Legal Service Commission. The functions of the Electoral Commissioner will be to supervise the compilation of electoral registers and the holding of elections. The Electoral Commissioner will have security of tenure similar to that of a judge, i.e. his retiring age will be prescribed by the Constitution and he will not be removable except on the grounds of inability or misbehaviour and after there has been an enquiry by a tribunal consisting of persons who are or have been judges and the tribunal has recommended his removal. Any proceedings for the removal of the Electoral Commissioner will be initiated by the Judicial and Legal Service Commission.

17. The office of leader of the opposition will be established by the Constitution. Appointments to this office will be made by the Queen's representative acting in his personal discretion.

†See paragraph 8 of the Report

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from among the members of the Legislative Assembly and he will be guided by provisions in the Constitution as to the person to be selected for appointment to this office. The Queen's representative, acting in his personal discretion, will have power to revoke the appointment of the leader of the opposition if he ceases to fulfil the qualifications specified in the Constitution, and the office of leader of the opposition will also become vacant if another person is appointed to the office after a dissolution of the Legislature, or if he ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution.

18. Bills passed by the Legislative Assembly will be assented to by the Queen's representative on the advice of the Council of Ministers.

19. The life of the Legislature will be 5 years but there will be provision under which the Legislature may extend its life during any period of war for 12 months at a time, up to a maximum of 5 years. The power of the Queen's representative in relation to the dissolution of the Legislature will be exercised on the advice of the chief minister, but the Queen's representative will have power in his personal discretion to dissolve the Legislature if the Legislative Assembly passes a vote of no confidence in the government and the chief minister does not either resign or recommend a dissolution, and the Queen's representative will also be required to dissolve the Legislature if the office of the chief minister is vacant and the Queen's representative considers that there is no prospect of his being able, within a reasonable time, to appoint a chief minister who can command a majority in the Legislative Assembly.

20. <u>The Judicature</u>

The Constitution will continue to provide for the Supreme Court. The judges of the court will be a Chief Justice, a senior Puisne Judge and other Puisne Judges. The qualifications for appointment will be prescribed in the Constitution, and will follow the present qualifications.

21. The Chief Justice will be appointed by the Queen's representative in his personal discretion after consultation with the chief minister. The senior puisne judge will be appointed by the Queen's representative on the advice of the Chief Justice. The other judges of the Supreme Court will be appointed by the Queen's representative on the advice of the Judicial and Legal Service Commission.

22. The security of tenure of the judges of the Supreme Court will be protected by provision on the same lines as exists in the present Constitution. The procedure for removing a judge will be initiated by the Queen's representative, acting in his personal discretion, in the case of the Chief Justice and by the Chief Justice in the case of the other judges of the Supreme Court.

23. There will be a Judicial and Legal Service Commission established by the Constitution. The Commission will be composed of the Chief Justice (as Chairman), the senior Puisne Judge, the Chairman of the Public Service Commission and an appointed member selected from persons who are or have been judges. "The appointed member of the Commission will be

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Annex 64

appointed by the Queen's representative on the advice of the Chief Justice; he will hold office for a period of 3 years and will be removable only on the grounds of inability or misbehaviour after a tribunal consisting of persons who are or have been judges have investigated any complains against the member and recommend his removal; the procedure for removing the appointed member will be initiated by the Queen's representative on the advice of the Chief Justice. The Commission will have the power to make appointments and exercise powers of discipline and removal in respect of the same offices as are now included in Schedule 2 to the existing Constitution, (with the exception of the Director of Public Prosecutions).

24. The Constitution will provide for the Supreme Court to have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. It will also confer on the Supreme Court jurisdiction to supervise civil or criminal proceedings before all subordinate courts, with power to issue the necessary orders, etc. for the purpose.

25. The Constitution will provide for an appeal as of right to the Privy Council from final decisions of the Supreme Court on questions as to the interpretation of the Constitution, and will also include provision for rights of appeal from the Supreme Court to the Privy Council in other cases (which will follow the existing rights of appeal to the Privy Council from decisions of the Supreme Court in ordinary civil and criminal cases).

26. There will be included in the Constitution rights of appeal from the subordinate courts to the Supreme Court. These rights of appeal will include appeals from decisions of the subordinate courts on the interpretation of the Constitution and minimum rights of appeal in ordinary civil and criminal proceedings based on the rights of appeal which exist at present under Mauritius Ordinances.

27. <u>The Director of Public Prosecutions</u>

The Constitution will establish the office of Director of Public Prosecutions who will have independent powers in relation to criminal prosecutions corresponding to those vested in the Director by the existing Constitution. A person will not be qualified to be or act as Director unless he is qualified for appointment as a Supreme Court judge. The Director will be appointed by the Judicial and Legal Service Commission. His security of tenure will be similar to that of a judge.

28. <u>The Public Service</u>

There will be a Public Service Commission which will be composed of a Chairman and four other members. Members of or candidates for election to the Legislative Assembly or any local authority will be disqualified for appointment. Appointments to the Commission will be made by the Queen's representative acting in his personal discretion after consulting the chief minister and the leader of the opposition. The term of office of the members of the Commission will be 3 years. The members of the Commission will be removable in the same manner and in the same circumstances as the appointed member of the Judicial Service Commission, except that the procedure for removal will be initiated by the Queen's representative acting in his personal discretion.

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29. The Public Service Commission will have powers of appointment, discipline and removal in respect of all public offices (other than those coming under another Service Commission or those offices for which other provision is made in the Constitution). The Commission will be authorised to delegate any of its powers to a member of the Commission or a public officer.

30. Permanent Secretaries will be appointed by the Public Service Commission, but the Commission will be obliged to inform the chief minister of any proposed appointment and the chief minister will have the right to veto the appointment. Transfers between the offices of permanent Secretary which carry the same emoluments will be made on the advice of the chief minister.

31. The retirement benefits of public officers will be guaranteed by the Constitution against unfavourable alteration. Reduction or withholding of the pension of a public officer will require the approval of the appropriate Service Commission.

32. The Police

The Chief of Police will be appointed by the Police Service Commissioner after consultation with the chief minister and he will have security of tenure similar to that of a judge. The procedure for the removal of the Chief of Police will be initiated by the Police Service Commission.

33. The Constitution will place the police force under the command of the Chief of Police, and will provide that, in the exercise of his power to determine the use and to control the operations of the police force the Chief of Police will be under an obligation to comply with general directions of policy with respect to the maintenance of public safety and public order given him by the responsible Minister; in the exercise of his command of the force in other respects the Chief of Police will act on his own responsibility and will be independent. The organisation, maintenance and administration of the police force will be the responsibility of Ministers.

34. There will be a Police Service Commission which will consist of the Chairman of the Public Service Commission as Chairman and three other members who will be appointed by the Queen's representative in his personal discretion, after consulting the chief minister and the leader of the opposition. Members of the Commission, other than the Chairman, will hold office for a period of 3 years. They will be removable in the same manner and on the same grounds as the appointed member of the Judicial Service Commission. The procedure for the removal of a member of the Commission will be iniated by the Queen's representative in his personal discretion.

35. Subject to the arrangements specified above for the Chief of Police, the Police Service Commission will have powers of appointment, discipline and removal in respect of all police officers. The Commission will be authorised to delegate its powers of discipline and removal to the Chief of Police or any other officer of the police force, but any decision taken by an officer to whom powers are delegated to dismiss a police officer will require the confirmation of the Commission.

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36. The Ombudsman

The Constitution will establish the office of Ombudsman. Appointments to this office will be made by the Queen's representative in his personal discretion after consulting the chief minister, the leader of the opposition and the other persons who appear to the Queen's representative to be leaders of parties in the Legislative Assembly. The Ombudsman will hold office for a period of four years and will be removable only on the grounds of inability or misbehaviour after a tribunal consisting of persons who are or have been judges have investigated any allegation against him and have recommended his removal; the procedure for removing the Ombudsman will be initiated by the Queen's representative in his personal discretion.

37. The Ombudsman will have jurisdiction to investigate complaints regarding the acts, omissions, decisions and recommendations of specified public bodies and other officers which affect the interests of individuals or bodies of persons. He will be entitled to act upon his own initiative or upon receiving a complaint from an individual or a body and matters may also be referred to him for consideration by ministers and members of the Legislative Assembly. The bodies which the Ombudsman will be authorised to investigate will include Government Departments, their officers, tender boards, the police and prison and hospital authorities. The personal acts and decisions of ministers and decisions of the Service Commissions will be excluded from investigation by the Ombudsman.

38. The investigation of the Ombudsmen will be carried out in private and what occurs during the course of an investigation will be absolutely privileged. The Ombudsman will not be required to give anybody a hearing save where it appears to him that there are grounds for reporting adversely on the conduct of the department, organisation or person concerned. There will be powers to examine witnesses and also powers vested in the appropriate Government authority to prevent the disclosure of information on the grounds that it prejudices defence, external relations or internal security or that it might divulge the proceedings of the Council of Ministers. The Ombudsman will be entitled to refuse to investigate any complaint that is more than six month's old or on the ground that it is vexatious or too trivial or that the complainant has insufficient interest in the matter and he will be enabled to discontinue an investigation for any reason that seems fit to him. He will be precluded from investigating any matter in respect of which there is a statutory right of appeal to or review by a court or tribunal. However, he will not be precluded from investigating a matter merely because it will be open to the complainant to impugn the measure, act or decision in the matter as a violation of the constitutional guarantees of fundamental rights.

39. The Ombudsman will be entitled to report unfavourably on any decision, recommendation, act or omission on the ground that it is contrary to law, based wholly or partly on a mistake of law or fact, unreasonably delayed or otherwise manifestly unreasonable. He will address his report, recommending any remedial action that he thinks proper, to the department or organisation concerned. If no adequate remedial action has been taken within a reasonable time, he will be empowered to make a special report to the Legislative Assembly. The principla functions of the Ombudsman will be included in the Constitution, the supplementary provision being made in an ordinary law of Mauritius.

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40. Financial procedure

The Constitution will provide for a procedure with respect to the appropriation and expenditure of public monies, which will ensure the control by the Legislature of Mauritius of public money. The Constitution will accordingly establish a Consolidated Fund into which (with certain exceptions) there will be paid all revenues of Mauritius and out of which (with certain exceptions) all expenditure will be met. Estimates of expenditure expected to be incurred in a financial year will be laid in the preceding financial year before the Legislature for its approval and will be included in an appropriation law to be passed by the Legislature. Except in the case of expenditure charged on the Consolidated Fund and certain other cases, no money will be withdrawn from the Consolidated Fund except under the authority of an appropriation law. The Constitution will provide for the presentation of supplementary estimates and the enactment of supplementary appropriation laws, where this is necessary, and will also establish a Contingencies Fund out of which payment may be made to meet urgent and unforeseen needs.

41. There will be a Director of Audit who will have the function of auditing all public accounts and reporting on them to the Legislature. The Director of Audit will be appointed by the Public Service Commission after consultation with the chief minister and the leader of the opposition and will have security of tenure similar to that of a judge.

42. The salary and conditions of service of the Queen's representative, judges of the Supreme Court, Members of the Service Commission, the Director of Public Prosecutions, the Chief of Police, the Director of Audit, the Electoral Commissioner and the Ombudsman will be protected in the same manner as the salary and conditions of service of judges are protected under the existing Constitution.

43. The Prerogative of Mercy

The prerogative of mercy will be exercised by the Queen's representative on the advice of a special committee. The members of the committee will be appointed by the Queen's representative acting in his personal discretion. The Constitution will require that capital cases should be taken into account at a meeting of the special committee.

44. Alteration of the Constitution

The legislature of Mauritius will have power to alter the constitution. The procedure will be as follows:-

(a) A Bill for an amendment to the provisions of the constitution (other than the entrenched provisions specified below) will require the support of not less than two-thirds of all the members of the Legislative Assembly to pass the Assembly.

(b) A Bill for the amendment of the entrenched provisions of the constitution will require the support of not less than three quarters of all the members of the Legislative Assembly to pass the Assembly.

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Annex 64

45. The entrenched provisions of the Constitution will be those relating to:-

(a) The establishment of the Legislature and its power to make laws, the electoral system, Annual Sessions, the life of the Legislature and its dissolution;

(b) Human Rights;

(c) The judicial system (including appeals to the Privy Council);

(d) The Public Service and the Police;

(e) The Ombudsman;

(f) The Director of Public Prosecutions;

(g) The position of the Crown and the Queen's representative;

(h) The method of altering the constitution.

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ANNEX E

CITIZENSHIP

The Constitution should provide for the following classes of persons automatically to acquire citizenship of Mauritius:

(a) All persons born in Mauritius, whether before or after Independence Day.

(b) All persons born outside Mauritius of a father born in Mauritius.

In the case of persons alive on Independence Day, both (a) and (b) would be subject to the proviso that they were then still citizens of the United Kingdom and colonies.

2. The Constitution should confer a right to acquire Mauritius citizenship on application on all women who have at any time been married to a citizen of Mauritius or to a person who would have become a citizen of Mauritius automatically on Independence Day had he still been alive.

3. The Constitution should either automatically confer citizenship or a right of registration on the following classes of persons -

All persons naturalised or registered in Mauritius as citizens of the United Kingdom and colonies, and

All persons born outside Mauritius of fathers in this category,

providing that in both cases they were still citizens of the United Kingdom and colonies on Independence Day.

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Annex 65

U.K. Colonial Office, *Despatch No. 423 to the Governor of Mauritius*, PAC 93/892/01, FO 371/184529 (6 Oct. 1965)

y/02/98 18:37 ☎0171 823 8437 MAURCOM --- FOREIGN AFFAIRS ⎙003/014

Our Ref. PAC 93/892/01

MAURITIUS

No. 423

COLONIAL OFFICE,
London, S.W.1.
6 October, 1965.

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of UK/US Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers - this record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr. Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i) - (viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be negotiated between the British and Mauritius Governments before independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).

I have the honour to be,
Sir
Your most obedient
humble servant,

(for Secretary of State)

GOVERNOR,

SIR JOHN RENNIE, K.C.M.G., O.B.E.,

Annex 66

U.K. Foreign Office, *Secretary of State's Visit to Washington 10-11 October 1965: Defence Facilities in the Indian Ocean* (7 Oct. 1965)

SECRET

Additional Brief

SECRETARY OF STATE'S VISIT TO WASHINGTON

10 - 11 OCTOBER, 1965

DEFENCE FACILITIES IN THE INDIAN OCEAN

Talking Points

We are grateful for the generous American contribution (a half-share of a total of up to £10m.) towards the cost to be incurred in detaching the Chagos Archipelago from Mauritius. We are pressing on with further action as a matter of urgency.

2. A decision to cancel the U.S. requirement for a communication station on Diego Garcia, the only facility immediately planned, might lead to difficulties. We hope that if it should have to be cancelled some other immediate project can be substituted for it. We ourselves have no immediate plans to build on any of the islands, although various projects are being considered.

3. We count on United States support in the United Nations and elsewhere to defend this project against criticism with which we may be faced once it becomes public. We hope to keep it confidential for the moment, at least until the agreement of the Seychelles and Mauritius Governments has been formally confirmed.

/Background Note

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Background Note

The Secretary of State will recall that at the end of the Mauritius Constitutional Conference last month Sir S. Ramgoolam and a majority of Mauritian Ministers present agreed in principle to the detachment of the Chagos Archipelago (including Diego Garcia) in exchange for £3m. compensation. It is expected that the formal agreement of the Mauritian Government will be secured shortly and that the Seychelles Executive Council will not raise serious difficulties over the detachment of Aldabra, Farquhar and Desroches (and the settlement of other outstanding problems including the long outstanding question of the terms on which a U.S. tracking station in the Seychelles should operate) in exchange for a civil air field on Mahé (the main island of the Seychelles group) at an expected cost of about £3m. Additional compensation for resettlement of the inhabitants of the islands chosen for defence facilities, for loss of coconut crops, etc., will also have to be paid in each case.

2. We were able to give this good news to a delegation of American officials led by Mr. Kitchen, Deputy Assistant Secretary of State for Politico-Military Affairs, at the end of discussions held in London on 23 and 24 September to consider the administrative, legal and financial details of the defence proposals. It was agreed at the end of these discussions that the Colonial Office would press on with securing the formal agreement of the Seychelles and Mauritius authorities and start work on the complicated administrative measures once this agreement had been obtained. Mr. Kitchen warned us during the discussions that they were about to embark on a review of their world-wide communications requirements including the proposal communications station on Diego Garcia in the Chagos Archipelago. The implication is that it

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may prove cheaper to develop a satellite communications system than to rely on land stations such as that planned for Diego Garcia. Mr. Kitchen added however, that the U.S. Government were no less interested than before in the defence possibilities of the islands.

P.U.S.D.
7 October, 1965

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Annex 67

Letter from T. Smith of the U.K. Colonial Office to E. Peck of the U.K. Foreign Office, PAC 93/892/01, FO 371/184529 (8 Oct. 1965)

NOT Seen by Mr Peck

SECRET

COLONIAL OFFICE
GREAT SMITH STREET, LONDON S.W.1
Telephone: Abbey 1266 Ext.

13 OCT 1965
Z4/181/G

Your reference
Please quote PAC 93/892/01

8th October, 1965

Dear Ted,

Defence facilities in the Indian Ocean

I enclose a copy of a formal Secret despatch we sent to the Governor of Mauritius on the 6th October covering the final agreed record of the Lancaster House meeting of September 23rd at which my Secretary of State secured the agreement of leading Mauritius Ministers to the detachment of the Chagos Archipelago.

2. The intervening time since that meeting was held has been spent in securing, on the Secretary of State's instructions, the agreement of Sir S. Ramgoolam and his colleagues to the record. In the event, this was not a very easy proceeding, and we have had to agree to the stipulations recorded in paragraph 22, some of which are perhaps rather tiresome - though by no means as much so as in the wording originally suggested by the Mauritians. As the despatch makes clear, the next move is for the Governor to secure formal confirmation of the Mauritius Government's willingness to agree to our taking the necessary legal action for detachment. This of course arises because the Governor originally broached the subject with the full Council of Ministers, and our talks in London were only with the main party leaders and an Independent Minister, Mr. Paturau, and, in the last and critical meeting, without the leader of the Parti Mauricien Mr. Koenig, who had walked out of the Conference earlier in the day and no doubt thought it tactically wise, from the point of view of future political campaigning in Mauritius, not to be involved in the final ~~bargain~~ agreement.

3. The Governor - and Sir S. Ramgoolam and the Ministers who support him - may not find it an easy task to secure the formal concurrence of the Council of Ministers which we require: but we are confident that, since the leading political parties representing almost 70% of the votes at the last election are committed, and since in many ways the Parti Mauricien have hitherto made a point of the importance they attach to a continuing British presence in and around Mauritius, confirmation will be forthcoming. You, and the others to whom I am sending copies of this letter, will see what is said in the despatch about the various stipulations in paragraph 22 of the record. The main problems will arise over (iv), (v) and (vi), and we shall be considering how best to take these up with the Americans. I hasten to add that neither we nor Sir S. Ramgoolam and his colleagues immediately concerned have any

/hope

E. H. Peck, Esq.,
Foreign Office.

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hope of extracting concessions from the Americans, e.g. over sugar imports. Our Ministers and officials, and the Economic Minister at the U.S. Embassy in direct conversations with the Mauritians, spent a lot of time explaining exactly why concessions on sugar are not practicable. My impression is that Sir S. Ramgoolam wanted to have stipulations of this kind in from the point of view of their effect on his colleagues back home in Mauritius. At all events we shall have to go through the motions with the Americans but not everybody will be very surprised if, on some issues, they achieve no results. On the other hand where (one would imagine) the Americans can help, e.g. perhaps over wheat and rice, and such matters as navigational and meteorological information etc., it will be very much in the interests of us all if they contrive to do so with reasonable generosity. It might be a good idea to discuss these matters in the new Cabinet Office Committee some time.

4. I will of course keep you informed on developments in the Mauritius context. Meanwhile, we must be getting on with the Seychelles side about which I recently wrote.

5. I am sending copies of this letter to Nicholls, Treasury, Holton and Burlace, Ministry of Defence, Harris Ministry of Overseas Development and Champion of Commonwealth Relations Office.

Yours ever

Trafford Smith

(Trafford Smith)

SECRET

Annex 68

Telegram from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4104, FO 371/184529 (27 Oct. 1965)

CONFIDENTIAL

FROM FOREIGN OFFICE TO NEW YORK
(United Kingdom Mission to the United Nations)

Cypher/OTP

FILES

No. 4104
27 October, 1965

D. 23.00 27 October, 1965

IMMEDIATE
CONFIDENTIAL

Addressed to U.K.Mis. New York telegram No. 4104 of 27 October,
Repeated for information to: Mauritius (Personal to Governor)

U.K.-U.S. Indian Ocean Defence Proposals.

We are concerned lest any hostile reference to these proposals in the Fourth Committee might jeopardize final discussions in the Mauritius Council of Ministers, which it would be difficult for local reasons to hold before 5 November.

2. Please let us know if you think that this subject is likely to be raised in discussion on miscellaneous territories and if so when. We wish, if at all possible, to have completed local negotiations before the question is raised in New York

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Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697, FO 371/184529 (28 Oct. 1965)

2

TOP COPY

CONFIDENTIAL

FROM NEW YORK TO FOREIGN OFFICE

(United Kingdom Mission to the United Nations)

RECEIVED IN
REGISTRY No. 39
29 OCT 1965
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TRUSTEESHIP DISTRIBUTION

Lord Caradon
No. 2697
28 October, 1965

D. 1647 28 October, 1965
R. 1707 28 October, 1965

IMMEDIATE
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BUILD

Addressed to Foreign Office telegram No. 2697 of 28 October.
Repeated for information to Mauritius (Personal).

Your telegram No. 4104: Indian Ocean Defence Proposals.

Discussion of miscellaneous territories may begin early next week. The question of our proposals might well of course be raised at any time in context of Mauritius or the Seychelles. It is impossible to make any guess about when these particular territories will be discussed, as speakers will be at liberty to talk about any of the thirty or so territories in the miscellaneous list during discussion of this item.

2. Item could of course be delayed, e.g. by prolongation of Rhodesia debate or resumption of discussion on Aden. But the Indian Ocean point might still be raised in the Aden context also. So far there has been no sign of this.

Foreign Office pass routine Mauritius telegram No. Personal 1.

[Transmitted to C.O. for onward transmission to Mauritius.]

29 OCT

ADVANCE COPIES:

Private Secretary
P.U.S.
Mr. Greenhill
Hd. United Nations Dept.
Resident Clerk

XXXXX

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U.K. Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister*, FO 371/184529 (5 Nov. 1965)

SECRET

Enter Z

Prime Minister

DEFENCE FACILITIES IN THE INDIAN OCEAN

At their 21st Meeting on 12 April the D.O.P. Committee invited me to initiate discussions with the Mauritius and Seychelles Governments about the proposals for U.S./U.K. Defence Facilities in the Indian Ocean set out in OPD(65)68. The Mauritius Government raised various difficulties which were reported to the Committee; but at the end of the Mauritius Constitutional Conference in September agreement was reached with the Premier, Sir Seewoosagur Ramgoolam, and a majority of Ministers present, on terms which the Committee approved at their 41st meeting on 23rd September.

2. The proposals are briefly as follows. The islands of the Chagos Archipelago, a dependency of Mauritius, and the islands of Aldabra, Farquhar and Desroches, part of the Seychelles group, are to be put under direct British administration and made available for U.S. and U.K. defence facilities. Compensation consisting of £3m is to be paid to the Mauritius Government and a civil airfield which is expected to cost about the same amount, constructed in the Seychelles. A further sum is to be paid for compensation and resettlement to the commercial and private interests concerned. H.M.G. and the U.S. Government will each be responsible for the construction of facilities they require, with provision for joint use. The United States Government have agreed to share half the compensation costs up to £10 m. This fact is to be kept secret for Congressional reasons and in order to restrain the local governments from trying to put up the price. A U.S./U.K. agreement covering the use of the facilities is under discussion between officials.

3.

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3. The Seychelles Executive Council have now formally agreed to accept the arrangements proposed in exchange for the compensation offered, Mauritius Ministers have also given their formal approval, subject to official confirmation that we agree to the following points:-

(a) if the need for the facilities on the Chagos Archipelago disappears, the islands will be returned to Mauritius, and

(b) the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

The Mauritius Government had previously been told that the Archipelago will remain under British sovereignty and the British Government have taken careful note of these points. I propose to reply to their latest request that it is being further considered but that it has been necessary for the Order in Council to be made.

4. The Governor of Mauritius has also reported that Mr. Koenig and his Parti Mauricien colleagues, who were not opposed in principle to the proposals but considered that the compensation arrangements are inadequate, are now considering their position in the Government. The Governor says that if Parti Mauricien Ministers resign, it will be for local political reasons. Meanwhile they understand that no disclosure may be made of the defence discussions and they have undertaken to consult the Governor before resigning and not to make any public statements before the 12th November.

5. As the Mauritius Council of Ministers has confirmed its agreement to the proposals, it is essential that the arrangements for detachment of these islands should be completed as soon as possible.

6.

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6. From the United Nations point of view the timing is particularly awkward. We are already under attack over Aden and Rhodesia, and whilst it is possible that the arrangements for detachment will be ignored when they become public, it seems more likely that they will be added to the list of 'imperialist' measures for which we are attacked. We shall be accused of creating a new colony in a period of decolonisation and of establishing new military bases when we should be getting out of the old ones. If there were any chance of avoiding publicity until this session of the General Assembly adjourns at Christmas there would be advantage in delaying the Order in Council until then. But to do so would jeopardize the whole plan.

7. The Fourth Committee of the United Nations has now reached the item on Miscellaneous Territories and may well discuss Mauritius and Seychelles next week. If they raise the question of defence arrangements on the Indian Ocean Islands before we have detached them, the Mauritius Government will be under considerable pressure to withdraw their agreement to our proposals. Moreover we should lay ourselves open to an additional charge of dishonesty if we evaded the defence issue in the Fourth Committee and then made the Order in Council immediately afterwards. It is therefore important that we should be able to present the U.N. with a fait accompli.

8. In these circumstances I propose to arrange for an Order in Council to be made on Monday 8th November. A prepared written Parliamentary Question will be tabled on 9th November and answered on 10th November in the terms of the attached draft. Supplementary background guidance has been prepared for use with the press.

9. If we can meet the timetable set out in the previous paragraph

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Annex 70

SECRET

paragraph we shall have a good chance of completing the operation before discussion in the Fourth Committee reaches the Indian Ocean Islands. We shall then be better placed to meet the criticism which is inevitable at whatever time we detach these islands from Mauritius and Seychelles.

10. I am sending copies of this minute to our colleagues on the Defence and Overseas Policy Committee and to the Minister for Overseas Development.

ANTHONY GREENWOOD

5.11.65

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QUESTION

To ask the Secretary of State for the Colonies whether any further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

ANSWER

Yes. With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either government. Compensation will be paid as appropriate.

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Annex 71

Telegram from the Governor of Mauritius to the Secretary of State for the Colonies, No. 247, FO 371/184529 (5 Nov. 1965)

SECRET

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

FROM MAURITTUS (Sir J. Rennie)

Cypher

D. 5th November, 1965
R. 5th " "

15.30 hrs.

EMERGENCY
SECRET
No. 247

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

(1) statement in paragraph 6 of your despatch "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them.

(2) As regards (vii) undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or
(b) any payment or financial obligation by Mauritius as condition of return.

(3) In (viii) "on or near" means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also understand that if they feel obliged to withdraw from the government they must let me have (resignations) in writing and consult with me about timing of the publication (which they accepted should not be before Friday 12th November).

3. (Within this) Ministers said they were not opposed in principle to the establishment of facilities and detachment of Chagos but considered compensation inadequate, especially the absence of additional (sugar) quota and negotiations should have been pursued and pressed more strongly. They were also dissatisfied with mere assurances about (v) and (vi). They also raised points (1), (2) and (3) in paragraph 1 above.

Copies sent to:-

Cabinet Office - Mr. F.A.K. Harrison
" " - Mr. T.W. Hall
Treasury - Mr. P. Nicholls
Foreign Office - Mr. G.G. Arthur
" " - Mr. Moreland
Commonwealth Relations Office - Mr. J.G. Doubleday
Ministry of Overseas Development - Mr. I.H. Harris
Ministry of Defence - Mr. M. Holton
" " " - Mr. P.H. Moberly

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Annex 72

Telegram from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4310, FO 371/184529 (6 Nov. 1965)

TOP COPY

SECRET

FROM FOREIGN OFFICE TO NEW YORK

(United Kingdom Mission to the United Nations)

Cypher/OTP

TRUSTEESHIP DISTRIBUTION

No. 4310

D. 14.15 6 November, 1965

6 November, 1965

IMMEDIATE

SECRET

Addressed to UKMis New York telegram No. 4310 of 6 November.
Repeated for information to: Washington.

Your telegram No. 2697 [of 28 October]: Indian Ocean Islands.

Seychelles Executive Council have unanimously agreed to detachment proposals. Mauritius Ministers accepted proposals on 5 November subject to certain understandings, which will be taken up with them separately, on the reversion of the Chagos islands, if and when these are no longer needed, and on any future benefits from minerals.

2. In view of possible publicity and consequent pressure on the Mauritius and Seychelles Governments to change their minds, we are proceeding with detachment immediately. We are arranging for an Order in Council to be made on 8 November and for a prepared Parliamentary Question to be tabled on 9 November for written answer on 10 November. Text of this, together with additional guidance will be telegraphed to you as soon as possible.

3. If this operation is complete before Mauritius comes up in the Fourth Committee it seems to us that you will then be better placed to deal with the inevitable criticism. We hope therefore that you will do your best to ensure that discussion of Mauritius and other territories in the Indian Ocean is put off for as long as possible, and at least until 11 November.

4. On the assumption that the timetable in paragraph 2 above is met, we should be grateful for your urgent advice on whether you should volunteer a statement in the Fourth Committee when Mauritius and Seychelles come up for discussion, or whether it would be better to wait until the question of defence facilities is raised by other members of the Committee. You will remember that this is likely since we informed Commonwealth and other interested Governments some time ago that we intended to seek the consent of Mauritius and Seychelles to the detachment of these islands.

5. You should concert tactics with the United States Delegation, on whose support we rely in this matter. We are informing the United States Embassy and asking them to clear our guidance with Washington.

6. If the news leaks from Mauritius before the Order in Council is made and you are tackled on this subject, you should refer for instructions.

uuuuu

SECRET

Annex 73

Telegram from the U.K. Secretary of State for the Colonies to the Governor of Mauritius (No. 267) and the Governor of Seychelles (No. 356), PAC 93/892/01, FO 371/184529 (6 Nov. 1965)

SECRET

PWZ

OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

TO SEYCHELLES (The Rt. Hon. The Earl of Oxford and Asquith)

Cypher PAC 93/892/01

Sent 6th November, 1965, 03.50 hrs.

24/209

PRIORITY
SECRET (AND PERSONAL TO MAURITIUS)
No. 356

Addressed to Governor Seychelles
Repeated PRIORITY to Governor Mauritius PERSONAL No. 267

Following from Hall.

(To Seychelles) My telegram No. 355.

(To Mauritius) Your telegram No. 219.

U.K./U.S. Defence Interests.

For planning purposes we are assuming that Order in Council will be made on Monday 8th November and come into effect at once but no (repeat no) publicity will be given until Wednesday 10th November.

2. Order, which will be on general lines of British Antarctic Territories Order in Council, will in addition to detaching islands from Mauritius and Seychelles and constituting them as a separate colony:-

(a) establish office of Commissioner;

(b) provide for discharge of functions during vacancy etc. or by deputy; and Official Stamp;

(c) provide for constitution of offices including the making of appointments;

(d) empower Commissioner to make laws for the peace, order and good government of the territory subject to usual provisions regarding disallowance, etc.;

(e) provide for powers of pardon etc.; disposal of land; and establishment of courts which may sit either in territory or elsewhere;

(f) provide for continuance of existing laws without prejudice to lawmaking powers conferred upon Commissioner, for continuance and determination of court proceedings commenced before the date of the Order; and for the hearing of appeals related to such proceedings and the enforcement of judgments;

/(g)

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Annex 73

SECRET

(g) reserve full power to Her Majesty to make laws and to amend and revoke the Order.

3. Legal proceedings, particularly criminal proceedings, arising after date of Order will cause problems and it will be necessary for Commissioner to establish courts to deal with any new cases, and to provide legal sanction for the detention of prisoners, and for the execution of sentences. Early action will also be needed for the review of Mauritius law in its application to Chagos Archipelago so that Seychelles law can be substituted where practicable. If it is necessary for persons convicted of offences in the new territory to serve sentences in Seychelles, presumably it will be necessary for the Seychelles to enact legislation for the execution of those sentences.

4. It is desirable for the vacuum between effective date of new Order and enactment of laws covering matters dealt with in previous paragraph and any others which you may consider necessary to be as short as possible.

5. At a later stage there will be a number of administrative matters requiring attention (e.g. continuance of provision for education in Chagos Archipelago at present provided for Mauritius). In the meantime we hope that both you and Governor of Mauritius will provide for existing arrangements to continue subject to any necessary financial adjustments being made in due course.

6. In addition to the Order in Council Royal Instructions and a Commission will be issued on 10th November. Before assuming duties, Order requires you to take oath of allegiance and the following oath - "I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of Commissioner of British Indian Ocean Territory".

7. You will be informed by telegram as soon as Order in Council has been made. Separate telegram on publicity will follow.

(Encryption passed to Ministry of Defence for transmission to Mauritius)

Copies sent to:-

Cabinet Office	- Mr. F.A.K. Harrison
" "	- Mr. T.W. Hall
Foreign Office	- Mr. G.G. Arthur
" "	- Mr. Moreland
Commonwealth Relations Office	- Mr. J.G. Doubleday
Ministry of Overseas Development	- Mr. I.H. Harris
Treasury	- Mr. P. Nicholls
Ministry of Defence	- Mr. M. Holton
" " "	- Mr. P.H. Moberly

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Annex 74

United Kingdom, *"The British Indian Ocean Territory Order 1965"* (8 Nov. 1965)

STATUTORY INSTRUMENTS

1965 No. 1920

Overseas Territories

The British Indian Ocean Territory Order 1965

Made 8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1965

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, 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 :—

1. This Order may be cited as the British Indian Ocean Territory Order 1965. Citation.

2. (1) In this Order— Interpretation.

" the Territory " means the British Indian Ocean Territory;

" the Chagos Archipelago " means the islands mentioned in schedule 2 to this Order;

" the Aldabra Group " means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948 and mentioned in schedule 3 to this Order.

(2) The Interpretation Act 1889 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.

3. As from the date of this Order— British Indian Ocean Territory to be a separate colony.

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

4. 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. Establishment of office of Commissioner.

Annex 74

APPENDIX B—*continued*

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 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.

Oaths to be taken by Commissioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the forms set out in Schedule 1 to this Order.

Discharge of Commissioner's functions during vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such persons as Her Majesty may designate by instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section, he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section—

(a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and

(b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of Commissioner's functions by deputy.

8. (1) The Commissioner may, by instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

APPENDIX B—*continued*

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instruments under the Official Stamp of the Territory.

Official Stamp.

9. 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.

10. 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.

Power to make laws.

11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.

Annex 74

APPENDIX B—*continued*

Commissioner's powers of pardon, etc.

12. 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.

Concurrent appointments.

13. 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 atttaching to that office, be deemed to be the sole holder of that office.

Disposal of land.

14. 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.

Existing laws.

15. (1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section „ enactments " includes any instruments having the force of law.

Exercise of jurisdiction by courts.

16. (1) The Commissioner, with the concurrence of the Governor of any other colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other colony.

(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.

APPENDIX B—*continued*

Judicial proceedings.

17. (1) Notwithstanding any other provisions of this Order but subject to any law made under section 11 thereof,

(a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the islands comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;

(b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph *(a)* of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;

(c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph *(a)* or paragraph *(b)* of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section " judgment " includes decree, order, conviction, sentence and decision.

Amendment of Seychelles Letters Patent 1948 and Mauritius (Constitution) Order 1964, etc.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955 are amended as follows:—

(a) the words " and the Farquhar Islands " are omitted from the definition of " the Colony " in Article 1(1);

(b) in the first schedule the word " Desroches " and the words " Aldabra Group consisting of ", including the words specifying the islands comprised in that Group, are omitted.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964 is amended by the insertion of the following definition immediately before the definition of " the Gazette ":—

" Dependencies " means the islands of Rodrigues and Agalega, and the St. Brandon Group of islands often called Cargados Carajos; ",

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960 as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963 is further amended by the deletion from the definition of " the Colony " of the words " as defined in the Seychelles Letters Patent 1948 ".

Annex 74

APPENDIX B—*continued*

19. 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). Power reserved to Her Majesty.

(sd) W. G. AGNEW

SCHEDULE 1

Section 6

OATH (OR AFFIRMATION) OF ALLEGIANCE

I,.....do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF COMMISSIONER

I,.....do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

SCHEDULE 2

Section 2(1)

Diego Garcia
Egmont or Six Islands
Péros Banhos
Salomon Islands
Trois Frères, including Danger Island and Eagle Island

SCHEDULE 3

West Island
Middle Island
South Island
Cocoanut Island
Euphratis and other small Islets.

Note: The British Indian Ocean Territory Order 1965 was amended, as follows, by the British Indian Ocean Territory (Amendment) Order 1968:—

(a) In the definition of " the Aldabra Group " in section 2(1) the words „ as specified in the First Schedule to the Seychelles Letters Patent 1948 and " were omitted;

(b) in schedule 2 for the words—
" Trois Frères, including Danger Island and Eagle Island. " there were substituted the words—
" Three Brothers Islands
Nelson or Legour Island
Eagle Islands
Danger Islands. "; and

(c) in schedule 3 the words " Polymnie Island " were inserted immediately after the words " Cocoanut Island ".

Annex 75

Telegram from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4327 (8 Nov. 1965)

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SECRET

FROM FOREIGN OFFICE TO NEW YORK
(United Kingdom Mission to the United Nations)

Cypher/OTP

No.4327
8 November, 1965

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D. 13.18 8 November, 1965

Addressed to UKMIS New York telegram No.4327 of 8 November,
Repeated for information to : Washington [Immediate]

My telegram No.4310 [of 6 November : Indian Ocean], paragraph 2.

Following is text of P.Q. and Answer:-

Begins:

Q. To ask the Secretary of State for the Colonies whether any further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

A. Yes. With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate.

Ends.

2. Following is guidance (cleared with Americans) for use in answer to questions from the Press after the P.Q. has been answered.

/Begins:

SECRET

Annex 75

SECRET

Foreign Office telegram No. 427 to UKMIS New York

-2-

Begins:

(a) Consultation with other Governments. In addition to securing the approval of the Mauritius and Seychelles Governments, Commonwealth and other interested Governments have been informed of these plans at an earlier stage.

(b) Compensation. Appropriate compensation will be paid to commercial and private interests, as well as to the Governments of Mauritius and Seychelles.

(c) Facilities in view. Although no firm plans have yet been made either by Her Majesty's Government or by the United States Government for the construction of facilities, possibilities currently being considered are a United States communications station and supporting facilities and a Royal Navy refuelling depot, both on the island of Diego Garcia in the Chagos Archipelago.

(d) Effect on Bases in Singapore and Aden. None. The only British facility envisaged, a naval refuelling station, is of a quite different order to those in Singapore and Aden.

(e) First Step towards leaving Singapore and Aden. No connexion whatever. These facilities will be useful in themselves. Any decisions about redeployment of British forces must await the outcome of the Defence Review which is not yet complete.

(f) Anticipation of the Defence Review Decisions. No. Construction of any new facilities at British expense will of course be subject to the decision of the Defence Review.

(g) Number of Islands concerned. Islands other than Diego Garcia have been included in view of possible requirements in the long term.

(h) Choice of Islands. The islands chosen have virtually no permanent inhabitants and are well placed for communications in the Indian Ocean area.

(j) Cost sharing. In principle each Government will pay for the facilities they require.

(k) Joint use. There will be provision for joint use.

/(l) Compensation

SECRET

SECRET

Foreign Office telegram No. 4327 to UKMIS New York
-3-

(l) Compensation Costs. Compensation costs are the responsibility of Her Majesty's Government.

(m) Timing. These arrangements have been under examination for some time. Initial surveys were carried out in the summer of 1964, as was made public at the time.

(n) Other Islands. We have no plans for making similar arrangements elsewhere.

(o) Use as Staging-Posts for Ships or Aircraft. This might be possible. We have no firm plans.

Ends.

88888

SECRET

Annex 76

Telegram from the U.K. Secretary of State for the Colonies to the Governor of Mauritius, No. 298, FO 371/184529 (8 Nov. 1965)

SECRET

PW 2

OUTWARD TELEGRAM

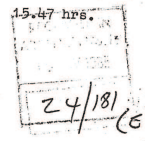
FROM THE SECRETARY OF STATE FOR THE COLONIES

TO MAURITIUS (Sir J. Rennie)

Cypher

PAC. 93/892/01

Sent 8th November, 1965 ~~15.47~~ hrs.



IMMEDIATE
SECRET
NO. 298

Your telegram No. 247.

U.K./U.S. Defence Interests.

I am glad Council of Ministers have confirmed agreement to detachment of Chagos Archipelago.

2. As already stated in paragraph 6 of my despatch No. 423, the Chagos Archipelago will remain under British sovereignty. The islands are required for defence facilities and there is no intention of permitting prospecting for minerals or oils on or near them. The points set out in your paragraph 1 should not therefore arise but I shall nevertheless give them further consideration in view of your request.

3. I note PMSD Ministers are not opposed in principle to detachment but consider compensation inadequate. For islands some 1,200 miles from Mauritius from which the Mauritius Government has never derived much if any revenue, the payment of £3 million as development aid to Mauritius in addition to direct compensation to landowners and to costs of resettling others cannot, I consider, be regarded as inadequate. With regard to the other points mentioned in your paragraph 3, the U.S. Government has been warned that they will be raised with them and as you are aware some discussions have already been held with officials in London. No firm plans have yet been made for the construction of any defence facilities on these islands and these are matters which can only be decided in detail when such plans are drawn up.

4. I trust that PMSD Ministers will agree that in all the circumstances the present proposals are in the long term interest of Mauritius and that on reconsideration they will feel able to support them. I am disturbed to see from press reports today that despite the undertaking referred to in your paragraph 2 that no disclosures would be made at this stage, PMSD Ministers have given publicity to these proposals.

5. A meeting of the Privy Council was held this morning, 8th November, and an Order in Council entitled the British Indian Ocean Territory Order 1965 (S.I. 1965 No. (to follow)), has been made constituting the "British Indian Ocean Territory" consisting of the Chagos Archipelago and Aldabra, Farquhar and Desroches islands. Copies will be sent to you as soon as prints are available. Because Parliament was prorogued today I cannot inform it until Wednesday, 10th November of the making of this Order. I

shall

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Annex 76

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shall be grateful therefore if no publicity is given to this until 15.30 hours G.M.T. on Wednesday. I am sending you separately text of my statement.

(Encyphered groups passed to Ministry of Defence (Navy) for transmission to Mauritius)

Copies sent to:-

Cabinet Office	-	Mr. F. A. K. Harrison
" "	-	Mr. T. W. Hall
Treasury	-	Mr. P. Nicholls
"	-	Mr. J. A. Patterson
Foreign Office	-	Mr. G. G. Arthur
" "	-	Mr. Moreland
Commonwealth Relations Office	-	Mr. J. G. Doubleday
Ministry of Overseas Development	-	Mr. I. H. Harris
Ministry of Defence	-	Mr. M. Holton
" " "	-	Mr. P. H. Moberly

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Annex 77

Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965)

SECRET

TOP COPY

FROM NEW YORK TO FOREIGN OFFICE
(United Kingdom Mission to the United Nations)

Cypher/OTP

TRUSTEESHIP DISTRIBUTION - NOV 1965

Lord Caradon
No. 2837
8 November, 1965
IMMEDIATE
SECRET
BUILD

D. 0312 9 November, 1965
R. 0423 9 November, 1965

Addressed to Foreign Office telegram No. 2837 of 8 November,
Repeated for information Saving to: Washington

For consideration Tuesday morning.

Your telegrams numbers 4327 and 4330: Indian Ocean Islands.

This was not raised when debate on miscellaneous territories opened to-day and Soviet references to bases were in general terms. Speakers tomorrow may pick up Press reports mentioned in your second telegram under reference and once London announcement is out matter seems almost certain to be raised.

2. References in text of announcement to creation of the British Indian Ocean Territory may focus attention on points in Jerrom's letter IRD 140/52/01 of 28 July to Brown. The statement in paragraph 2(h) of first telegram under reference that there are "virtually" no permanent inhabitants may well lead to charges of failure to carry out our Charter obligations to those who are permanent inhabitants. Moreover, our counter-arguments will have to avoid giving ammunition to Argentina which is sure to perceive analogy with Falklands (i.e. we cannot argue that Indian Ocean Territory is not a non-self governing territory in sense of Chapter xi of Charter merely because there were no indigenous inhabitants originally or because only a few of present inhabitants are permanent).

3. In the circumstances best course if you agree might be to say, if we are pressed on this point, that all questions relating to future status of the Islands, applicability or otherwise of Chapter XI, administration, etc. are under consideration and decisions have not yet been taken. This may provoke pressure and even a resolution calling on us to accept Charter obligations for the new territory but so might a declaration that we shall not accept such obligations.

4. If we could say there are (repeat are) no permanent inhabitants many of these difficulties would not arise, but use of "virtually" (see paragraph 2 above) seems to preclude this.

5. In any case any available extra information about numbers of "permanent" inhabitants on each island and their origins would be most useful.

/6. We assume

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U.K.Mis. New York telegram No. 2837 to Foreign Office
-2-

6. We assume you do not wish us to say anything about "resettlement" even if this is raised in the Committee, except to refer to paragraph 5(c) of C.R.O. telegram No. W/Circular 61 Saving of 6 July about seeing that the interests of the few local inhabitants are protected.

7. An alternative line may be against the alleged breach of paragraph 6 of resolution 1514(xv) involved in detachment (and this may somewhat direct attention from status of the new territory). This is likely to attract wide support. We would reply that Islands were administered under Mauritius and Seychelles only for convenience and that paragraph 6 is therefor irrelevant.

8. Grateful for reply to points in paragraphs 2 - 5 by noon New York time on 10 November if possible.

ADVANCE COPIES TO:-
F.O. Private Secretary
P.U.S.
Mr. Greenhill
Hd. of U.N. Dept.
C.R.O. Private Secretary
P.U.S.
Mr. Walsh Atkins
Hd. of Defence Dept.

CCCCC

SECRET

Annex 78

Telegram from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4361 (10 Nov. 1965)

SECRET

TOP COPY

FROM FOREIGN OFFICE TO NEW YORK
(United Kingdom Mission to the United Nations)

Cypher/OTP

TRUSTEESHIP
DISTRIBUTION

No. 4361
10 November, 1965

D. 1711 10 November, 1965.

IMMEDIATE
SECRET
BUILD

Addressed to UKMIS New York telegram No. 4361 of 10 November
Repeated for information to:- Washington [Immediate]

Your telegram No. 2837 [of 8 November].

Indian Ocean Islands.

We recognize that we are in a difficult position as regards references to people at present on the detached Islands since we want to avoid the territory being classes as non-self-governing within the terms of Chapter XI and also do not wish to give an argument to the Argentine over the Falkland Islands and also to some extent to Spain over Gibraltar.

2. Figures of total population are given in Parliamentary Answer. (My telegram No. 4327) They can all be classified as Mauritians or Seychellois but we know that a few were born on Diego Garcia and perhaps some of the other Islands and so were their parents before them. We cannot therefore assert that there are no permanent inhabitants however much this would have been to our advantage.

3. In these circumstances we think it would be best to avoid all references to "permanent inhabitants". We are accordingly arranging that in place of the guidance in paragraph 2(h) of our telegram No. 4327 on population the following will be used in answer to questions by the Press in London:-

Begins.

"The total population in all the Islands numbers only about 1,500 persons who, apart from a few officials and estate managers, consist of labourers from Mauritius and Seychelles employed on copra estates, guano extraction, and the turtle industry together with their dependants."

Ends.

/4. If questioned

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SECRET

Foreign Office telegram No. 4361 to UKMIS New York

-2-

4. If questioned on this subject you should reply accordingly. You can add that we have of course their welfare very much in mind and shall be discussing with the Governments of Mauritius and Seychelles the arrangements that can most suitably be made for them. As stated in the Parliamentary Answer the territory will be administered by a Commissioner and you could say that the detailed arrangements have yet to be made. You could if you think that this would be useful indicate that in presenting reports next year for 1965 on Mauritius and Seychelles we will include a statement of what these arrangements are.

5. You should know that present thinking is that inhabitants would not be removed from all the Islands until they are required for defence purposes but timing will depend on resettlement plans which have yet to be worked out. This may make it difficult to avoid an obligation to report on the territory under Article 73(e). We are most anxious however not to have to do this and are considering the matter further. In the meantime we should wish to avoid any comment on the applicability of Chapter XI. If this is raised in a way which requires some answer you should say that it would be premature to deal with the question until detailed arrangements for the administration of the territory have been worked out. If a resolution is tabled calling on us to accept Charter obligations for the territory you should seek instructions but we hope this can be avoided.

6. Your paragraph 6. We agree; see also paragraph 4 above.

7. Your paragraph 7. We agree. You could also say that the two Governments have been fully consulted about and are in agreement with the new arrangements.

SSSSS

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Annex 79

Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2971 (16 Nov. 1965)

TOP COPY

FROM NEW YORK TO FOREIGN OFFICE
(United Kingdom Mission to the United Nations)

En Clair

TRUSTEESHIP DISTRIBUTION

Lord Caradon

D. 0344 17 November 1965
R. 0440 17 November 1965

No. 2971
16 November 1965

PRIORITY
BUILD

Addressed to Foreign Office telegram No. 2971 of 16 November
Repeated for information to: Mauritius Seychelles
and Saving to: Washington

Fourth Committee - British Indian Ocean Territory.

This was raised in todays debate by Tanzania, Cuba, Yugoslavia and in passing by Indian. Speakers quoted Press reports of the United Kingdom announcement of 10 November and concentrated on

(a) creation of a new 'colony';

(b) inadmissibility of detaching land from a colonial Government regardless of compensation ('hush money') paid;

(c) damage to interests of a minority even if representatives of the majority had been persuaded to agree; and

(d) violation of Resolution 1514 (xv).

2. In his general winding up statement at conclusion of today's meetings Brown included a short passage in reply to these points immediately after describing outcome of Mauritius Conference. Text is in my immediately following telegram.

Foreign Office please pass Priority to Mauritius 2 and Seychelles 1.

[Copy sent to Colonial Office for repetition to Mauritius and Seychelles]

17 Nov

PPPPP

Annex 80

Despatch from F. D. W. Brown of the U.K. Mission to the U.N. to C. G. Eastwood of the Colonial Office, No. 15119/3/66 (2 Feb. 1966)

CONFIDENTIAL

(15119/3/66)

2 February, 1966.

Thank you for your letter IRD/140/458/01 of 7 January about the Indian Ocean Territory and Article 73 of the Charter.

2. On future action by the Committee of 24 (your paragraph 1) we must certainly expect that the Committee will want a discussion on the issue. We do not know when it will come nor in what form and much will depend on the rest of the Committee's programme and on any further petitions. Although there is no sign at present of this becoming a really major issue at any rate compared with such questions as Rhodesia and Aden, there is every possibility as Lord Caradon told your Secretary of State at the meeting on 20 January, that we shall be faced with serious trouble, and much will depend on how we can present the matter.

3. It is worth noting what has happened in the Fourth Committee so far. Both the Committee discussions and Assembly resolution 2066(XX) dealt with the matter as part of the question of Mauritius. Officially no cognizance was taken of the existence of B.I.O.T. as a separate entity and indeed the resolution simply noted with deep concern that any step to detach the islands "would be" a contravention of resolution 1514 and invited us to take no action which "would" dismember the territory and violate its territorial integrity. Many delegations may not have tumbled to the fait accompli of separation. The question of adding B.I.O.T. to the list of non self-governing territories may not therefore arise immediately so directly as you suggest, and the point at issue may come up initially under either Mauritius or the Seychelles as it has in the past.

4. Secondly the point of attack, or rather warning, has so far been restricted, apart from the general "bases" issue, to the point concerning the territorial integrity of Mauritius and the Seychelles in the context of resolution 1514 and is not yet on the more serious charge of violating Chapter XI of the Charter itself, although this would come and be much more serious if it became apparent that we were doing so. Eventually we shall have to face the issue of whether we regard Chapter XI as applicable, if only when the Committee of 24 comes to report on the transmission of information under Article 73(e) for 1965. If we have not transmitted any information, this will be almost certain to attract comment and we shall be obliged to justify our position. This brings me directly to the point in paragraph 3 of your letter that

/the new

C.G. Eastwood Esq., C.M.G.,
Colonial Office.

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the new territory should not be considered as a non-self-governing territory.

5. It is extremely difficult to comment on this point on the basis of the information available - especially that in Jerrom's letter IRD 140/52/01 of 28 July last year, F.O. telegram No. 4361 to which you refer, and your letter under reply - and in particular in the absence of any firm plans about the future of the present inhabitants, the timetable for establishing the defence facilities, and the extent to which some inhabitants may remain after each island has been "militarized". It seems clear however that to begin with a considerable number, and even at the end some, of the present inhabitants will remain, and this of course causes the main difficulty from the point of view of presenting our case here.

6. On the basis of the information available it seems to us difficult to avoid the conclusion that the new territory is a non-self-governing territory under Chapter XI of the Charter, particularly since it has and will or may have a more or less settled population, however small. We cannot disclaim Charter obligations to the inhabitants because they are not indigenous, since this would destroy our case on the Falklands and Gibraltar; nor apparently would the facts substantiate a plea that the inhabitants are not permanent - even if (which is not necessarily the case) Chapter XI of the Charter were confined to permanent populations. Therefore we here feel that, however we may present the issue, the United Nations will consider that it does fall under Chapter XI; it is not in their view so much a question of our deciding whether or not to accept a Charter obligation as of our actually having one whether we like it or not. Openly to refuse to accept our obligations would of course also be in contradiction of the colonial policy which we have not only followed of our own free will, but announced time and time again here, that we proceed by consultation and consent on the basis of the paramountcy of the interests of the people concerned and in accordance with the principle of self-determination. Moreover if I understand it right we have in fact gone as far as we possibly can to safeguard the interests of the people and intend to continue to do so: given that defence facilities were required, we have looked for as unpopulated a set of atolls as we could find, consistent with military requirements, so that the minimum hardship would be caused; in order not to complicate the decolonisation of Mauritius and later the Seychelles, we have created the new territory; and we are now going to pay large compensation to Mauritius and the Seychelles and do the best we can for the inhabitants. We therefore wonder whether, in the light of the point in paragraph 4 above, it is really right to conclude that we cannot so act as to be able to present a fairly reasonable case for the thesis that our actions are consistent with our Charter obligations in respect of the new territory, and more important its people, and really right that we should ourselves deliberately give the Committee just cause for criticising us for a complete breach of the Charter, if that can possibly be avoided.

/7. It may

7. It may therefore be worth looking again at what would have to be done if we were to accept and try to discharge our Charter obligations. In theory we should have to accept the paramountcy of the interests of the people, develop self-government and free political institutions, and take into account their political aspirations; we should have to act in a manner which could be reconciled with the principle of self-determination (in view not of Chapter XI but rather of our own repeated and unqualified commitments to do so in all our territories); and we should also have to report on the territory. In practice this might not necessarily amount to more than devising some means of associating the present population pending their evacuation, and the final remaining labour force after militarization, with the administration of the islands. We would also have to devise evacuation schemes, as and when the time comes for each individual island, with suitable individual financial inducements to ensure that those who are to stay can be shwon to have done so voluntarily. Would not these measures to some extent at least be necessary for the orderly administration of the islands and of the evacuation, quite apart from our Charter obligations, even though they would be difficult? As regards reporting we shall be faced anyhow with having to explain in the Committee of 24 and the Fourth Committee what we are doing in order to answer petitioners and criticisms. Would reporting under Article 73(e) necessarily inflict any further burden or have any wider long-term implication which we could not accept?

8. We fully realise that this course may be either impossible to carry out because of the geographical separation of the islands, or be incompatible with Anglo/American military requirements, and that the acceptance of Article 73 obligations may eventually land us in trouble, and that therefore the conclusion reached in your paragraph 3 may still turn out to be the only one practicable. You may however think in view of the arguments above that it is worth looking at again. It would incidentally to some extent mitigate the difficulty of our attitude in these islands conflicting with our position over the Falkland Islands and Gibraltar - a conflict to which attention has already been drawn in the Fourth Committee.

9. Should this not be possible we entirely agree that it is worth considering what measures might be taken to reduce our vulnerability to criticism. The measures foreshadowed in your paragraph 5(1) and (2) would certainly help us to some extent, by enabling us to show that there was no local ownership of land and that all the inhabitants of the islands were legally either Mauritians or Seychellois. But to give this substance we should have to demonstrate that all these people had the full political and other rights of other Mauritians and Seychellois - including, most important, the right to vote

/and to

Annex 80

and to be represented in their parent legislatures, and to enjoy Mauritius or Seychelles citizenship - in fulfilment (until independence) of our Charter obligations in respect of those two territories. If some special arrangement could be made to enable those on the islands to exercise their votes (by post or proxy) at elections in Mauritius and the Seychelles, this would make the point more obviously valid. Again, if there are any of the inhabitants who are not accepted by Mauritius or the Seychelles as "belongers", would it be possible to consider making them full United Kingdom citizens with voting rights in the United Kingdom? In this way, we could properly claim that although we could not accept any obligations in respect of the Indian Ocean Territory as a territory, we fully accepted our obligations, including Chapter XI obligations, to the people living in the Territory and were actively discharging those obligations. Then - a point already brought out above - it would be highly desirable to avoid any action relating to the evacuation of these people, as and when this becomes necessary, which might smack of compulsion. Our position would be much better here if we could show that the people conderned had voluntarily accepted evacuation and that this was because their interests had been properly looked after in the process.

10. I should add that we are also inclined to think that the measures in your paragraph 5(1) and (2) would be worth taking even if you were able to decide that we should accept our Charter obligations as suggested earlier in this letter. They might help us to justify the eventual evacuation measures and possibly also to dodge demands under Resolution 1514 for progress towards independence. In that case the provisions made for the inhabitants to have some say in the administration of the islands would be a bonus, over and above their rights as Mauritians or Seychellois.

11. Finally the reaction here. Whatever we do we are liable to be faced with serious trouble and, whether we try to show that our actions are consistent with our Charter obligations under Article 73 or not, there will always be those who will accuse us of being in breach of them. Indeed it would not be difficult for our critics to develop the arguable thesis that detachment by itself was a breach of Article 73. Nevertheless we are inclined to think that if we were to accept our Charter obligations in respect of the new territory, or at least not say we were not doing so, the effect of the reaction would probably be mitigated, and that conversely, if we deliberately say we will not do so, it will be increased. In either event what seems to us important from our angle here is that we should have as good a case as we can to explain and that in that explanation it should be clear that we are doing our best for the, admittedly very few, inhabitants concerned.

/12. I am

CONFIDENTIAL

12. I am sorry that this is a bleak reply. Whatever you decide we shall of course do our best to defend it here and, such are the vagaries of the people with whom we are dealing, we cannot be certain that our predictions are right.

13. Copies of this letter are being sent to Sam Falle in the Foreign Office and Diggines in the C.R.O.

(F.D.W. Brown)

Annex 81

U.K. Foreign Office, *"Presentation of British Indian Ocean Territory in the United Nations"*, IOC (66)136, FO 141/1415 (8 Sept. 1966)

SECRET AND GUARD

IOC(66)136

8 September, 1966

POLITICAL AND FINANCIAL SERIES

STEERING COMMITTEE ON INTERNATIONAL ORGANISATIONS

PRESENTATION OF BRITISH INDIAN OCEAN TERRITORY IN THE UNITED NATIONS

(Note by the Foreign Office)

The attached brief has been prepared by the Foreign Office in consultation with the Commonwealth Office and Ministry of Defence.

Foreign Office, S.W.1.

8 September, 1966.

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Annex 81

SECRET AND GUARD

PRESENTATION OF BRITISH INDIAN OCEAN TERRITORY IN THE UNITED NATIONS

Documents: Hansard: House of Commons, 10 November, 1965 - Written by Mr. James Johnson to the Secretary of State for the Colonies.

B.I.O.T. Order in Council, 1965.

Brief to United Kingdom Mission - Foreign Office telegram to New York, No. 4361 of 10 November, 1965.

Fourth Committee debates of 16 and 25 November, 1965 (A/C4/SR 1558 and 1570).

General Assembly Resolution 2066(XX)

Secretariat Working Papers A/AC 109/L279 of 26 April, 1966 and Add. 1 of 10 August, 1966.

Provisional Summary Record of Sub-Committee I of the Committee of 24, 12 August, 1966 (A/AC.109/SC 2/SR 28).

I BACKGROUND

The British Indian Ocean Territory was constituted by Order in Council in November, 1965 "for the construction of defence facilities by the British and United States Governments". The islands which form part of the British Indian Ocean Territory had formerly been administered as dependencies of Mauritius and the Seychelles. £3m. compensation was agreed and has already been paid to the Government of Mauritius; in the case of the Seychelles it was agreed that a civil airfield would be constructed in compensation to the Government of that territory. There was opposition at the time in Mauritius from the Parti Mauricien on the grounds that the compensation was insufficient; it has been dormant in the last few months but could reappear as an issue in the forthcoming Mauritius elections. In the Seychelles, the leader of the Seychelles People's United Party, Mr. Rene, vociferously opposed the idea of American bases before agreement was reached with the Seychelles Government, but since then he has tried to steal credit for securing an airfield for the Seychelles and is unlikely to renew his opposition.

Geography, Present Population and Economic Activity

2. The new Territory consists of the Chagos Archipelago (formerly administered by the Government of Mauritius) and the groups of islands known as Aldabra, Farquhar and Desroches (formerly administered by the Government of Seychelles). Their populations have been estimated to be approximately 1,000 (of which about a half are found in the one island of Diego Garcia), 100, 172 and 112 respectively. (This

/population

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SECRET AND GUARD

population fluctuates and a recent United Kingdom official visitor to the Chagos Archipelago considers that the population is at present appreciably less.) The Chagos Archipelago is situated some 1,200 miles north-east of Mauritius and is in fact nearer to the Seychelles. Desroches is 120 miles south-west of the Seychelles, Farquhar 420 south-west and Aldabra is 500 miles south-west. (A convenient sketch map of United States origin, not necessarily to scale, is attached at Annex A.) Their previous administrative groupings are therefore largely an historical accident. When these islands were originally acquired by the Crown they were unpopulated but since the 19th century they have been developed privately as copra plantations on a small scale (except Aldabra, whose only economic asset is its turtle exports to the Seychelles).

3. The present population of these islands is, we believe, entirely, or almost entirely, of contract labour, or their dependants, from Mauritius or the Seychelles employed by the present owners of the land and living in housing provided by their employers and they have no interest in these islands other than in their jobs which they enter or renew on 18-month or two-year contracts. We believe that almost all of them are relatively short-term inhabitants, staying for longer or shorter periods (depending on whether they renew their contracts) but a former Colonial Secretary of Mauritius, Mr. Robert Newton, who conducted a survey of the islands in 1964 before their detachment estimated that there was a small number in one island viz. Diego Garcia who could be regarded as having their permanent homes there, either because they were second-generation inhabitants or because they have never left the island. His estimates are based on hearsay and because his is the only estimate available within the last five years, the relevant extract from his report is attached at Annex B.

Administration

4. The islands were hitherto very loosely administered from Mauritius and the Seychelles and were infrequently visited by the administrations of those two territories. Under the B.I.O.T. Order in Council 1965 the Earl of Oxford and Asquith, at present also Governor of the Seychelles is constituted the Commissioner of the B.I.O.T. and it is intended that a Resident Administrator will be appointed this year. Day-to-day administration of these islands has been in the past largely in the hands of the employers.

Future Use of B.I.O.T. and the Fate of its Inhabitants

5. No decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. Nevertheless a small British and United States party will visit Aldabra in September to survey its possible use as a site for a military airfield. The B.B.C. is also surveying Aldabra as a possible site for a radio relay station for the purpose of broadcasting to East Africa. For purely

/practical

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Annex 81

SECRET AND GUARD

practical reasons the B.B.C. and the defence survey parties will join forces. At one time the United States Government were interested in having a communications station on Diego Garcia. This requirement has now faded but they have recently expressed interest in possible naval facilities on a modest scale for which they wish to carry out a survey of Diego Garcia in late September or October, preferably with British participation.

6. There is therefore no immediate need to resettle the population of these islands but their evacuation might conceivably become necessary at six months notice should a military requirement of any of them arise. At present plans for the acquisition of the freehold rights in all these islands except Aldabra, which is occupied by a lessee of the Crown, are being considered and a Ministry of Defence representative has recently returned from a visit to these islands where he has investigated possible purchase prices with the owners. Draft legislation at present under consideration includes an immigration law, which would require that the inhabitants should be issued with entry permits and a land ordinance which would provide the Government with powers of compulsory acquisition should negotiations break down.

7. The present owners are apparently aware of the Committee of 24 interest in B.I.O.T. and according to the Ministry of Defence have pitched their prices in accordance with the political embarrassment which might ensue should negotiations break down. It is as yet too early to judge whether a voluntary settlement will be reached but there is no reason to believe that an accommodation will not be achieved.

8. The evacuation of the islands should not (so far as can be judged in the absence at present of a settled administration) cause insuperable difficulty. The Chagos Archipelago, in which there is the greatest concentration of people, are wholly owned by the Chagos Agalega Company, who also own the freehold in Agalega (which remains a dependency of Mauritius) where there are plans for expansion in copra production and where conceivably some resettlement might take place. From all accounts, none of the population would have a real interest in staying in the islands unless employers were to find them jobs there. In this sense there is no real community and the great majority should be happy with settled occupations elsewhere. The cost of their resettlement, which would need to be planned with the full cooperation of the Mauritius and Seychelles Governments would be met by Her Majesty's Government.

9. Although the separation of these islands was fully agreed with the Mauritius and Seychelles Governments no progress has so far been made in discussing the resettlement of the population in detail; nor is it really possible to make very definite plans until the appointment of an Administrator, probably this year, who could undertake the work of establishing the origin of the individuals concerned on the spot and of examining their claims. We would wish to establish that the inhabitants are all legally either Mauritians or Seychellois and one of the matters which will

/have

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have to be raised with the Mauritian and Seychelles Governments is the question of their acceptance that the individuals in question have this status and their agreement to the issue to the inhabitants of passports of their country of origin. We would then envisage the issue of temporary residence permits by B.I.O.T. for those in the Territory. We should then have established a situation in which there were no individuals with claims on B.I.O.T. or without claims on either Mauritius or the Seychelles. We envisage no difficulty with the Governments of Mauritius and the Seychelles in carrying through these processes.

II OBJECTIVES

10. The primary objective in acquiring these islands from Mauritius and the Seychelles to form the new "British Indian Ocean Territory" was to ensure that Her Majesty's Government had full title to, and control over, these islands so that they could be used for the construction of defence facilities without hindrance or political agitation and so that when a particular island would be needed for the construction of British or United States defence facilities Britain or the United States should be able to clear it of its current population. The Americans in particular attached great importance to this freedom of manoeuvre, divorced from the normal considerations applying to a populated dependent territory. These islands were therefore chosen not only for their strategic location but also because they had, for all practical purposes, no permanent population.

11. It was implied in this objective, and recognised at the time, that we could not accept the principles governing our otherwise universal behaviour in our dependent territories, e.g. we could not accept that the interests of the inhabitants were paramount and that we should develop self-government there. We therefore consider that the best way in which we can satisfy these objectives, 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.

12. An important consideration here is that one of the prerequisites of United States cooperation, financially or otherwise, is that they too should have freedom of manoeuvre and it is extremely doubtful whether they would be interested in remaining partners with us in developing facilities on these islands (no Agreement has yet been signed) if we had to regard the needs of the present transient population as paramount or if there were a legal basis for continuous scrutiny of our actions in the United Nations.

III TACTICS

13. So far, the United Nations has dealt with the subject of B.I.O.T. almost entirely in the context of Mauritius. In last year's Fourth Committee and General Assembly no

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cognisance was taken of the existence of B.I.O.T. as a separate entity and many delegations may not then have tumbled to the fait accompli of separation. General Assembly Resolution 2066(XX) dealt with B.I.O.T. en passant in the general context of Mauritius by simply noting with deep concern that any step to detach the islands "would be" a contravention of paragraph 6 of Resolution 1514(XV) and invited us to take no action which "would" dismember the territory and violate its territorial integrity. This year, however, there has already been separate mention of B.I.O.T. in the Secretariat Working Papers A/AC.109/L279 of 26 April 1966 and Add. 1 of 10 August, 1966 and the Russian representative in Sub-Committee I of the Committee of 24 has raised the subject of B.I.O.T. as a "bases" question.

14. The subject is bound to be raised again in the Committee of 24 shortly, possibly only in discussion of Mauritius or the Seychelles, or possibly in an attack on our use of the islands for strategic purposes. It is probable that a hostile resolution will be drafted. The resolution may simply deplore the fact of detachment but it may also claim that it is in contravention of the United Nations Charter and/or General Assembly Resolutions and may propose the establishment of some machinery (possibly a sub-committee or a visiting mission) to continue examination of the subject. Either in this way or (less likely) because we did not submit a separate return this year for B.I.O.T. in respect of 1965 under Article 73(e) of the Charter, we may be forced to accept or reject the application of Article 73 to the Territory this year. On the other hand, if discussion of B.I.O.T. results merely in a hostile resolution, which does not prejudice our case on the application of Chapter XI to the Territory, there may be no need to go into our attitude to the application of Chapter XI at present.

15. As a "bases" question, it would be unhelpful to make any explanation of our ideas of the strategic use of these islands and we cannot add anything to the statement that no decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. This remains our public position within or outside the United Nations though news of the joint survey party may get out at any time from now onwards.

16. Our case on the application of Chapter XI to the Territory is that for all practical purposes the territory does not fall within the scope of that chapter because it has no "peoples" or "inhabitants" as contemplated in Chapter XI. But the weakness of our case lies in

(i) a small number of inhabitants of Diego Garcia who might be regarded as a permanent population; and

(ii) the absence of voting rights in their parent countries of the Mauritians and Seychellois now resident in B.I.O.T.

/It is

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It is unhelpful to our case to draw attention to either of these weaknesses and in time when their numbers are known, when discussions about their future have taken place with the Mauritius and Seychelles Governments and when plans for evacuation and compensation have been made these weaknesses will disappear. We should therefore leave it to others to raise these matters.

17. Finally our general tactics, given the present uncertainties about use and evacuation, will better serve our objectives if we do not get drawn into a statement on our position on the application of Chapter XI, unless we are forced to do so either by direct question or where failure to do so now might prejudice our case on the non-applicability of Chapter XI in the future.

IV INSTRUCTIONS

18. If B.I.O.T. is raised as a "bases" question the Delegation should not depart from the formula that no decisions have yet been reached by either Her Majesty's Government or the United States Government about the construction of any facilities anywhere in B.I.O.T. and the Delegation should not be drawn into any discussion of this subject. Separate instructions have been sent to the Delegation about this line (reference Foreign Office letter of 27 August, Brooke Turner to Trench, Washington, copied to United Kingdom Mission New York) which do not however invalidate this formula. Further instructions will be sent if developments make this necessary.

19. If we are forced to make our position clear on the application of Chapter XI to the Territory, the Delegation should say:-

> "Chapter XI of the Charter applies to 'territories whose peoples have not yet attained a full measure of self-government'. As there are no 'peoples' in the British Indian Ocean Territory who could attain self-government it is apparent that Chapter XI has no application to that territory. Those who go to the B.I.O.T. are a migratory force who go in accordance with the demand for their labour. Their numbers fluctuate and at most reach at times 1,500. They are, as they were before the establishment of the Territory, estate managers, officials and labourers from Mauritius and the Seychelles. They may stay in the territory for greater or lesser periods depending on whether they renew their contracts or not, but this does not alter their essential character as a migratory labour force."

20. If asked about the future of the labour force the Delegation should say that no decisions have yet been taken affecting the future of those who are now in the Territory for the purposes of their work but, when decisions are taken full regard will be paid to their welfare.

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21. The Delegation should avoid any discussion of belonger rights and if presed about the numbers who have lived there for any length of time the Delegation should say (genuinely) that we do not have available any precise records of the length of stay of individual families. The Delegation should refuse to be pressed any further and if asked to find out should undertake to report what was said in the debate.

22. If pressed on the question of voting rights of the present labour force in the B.I.O.T. in Mauritius or the Seychelles the Delegation should say that the position remains as it was before these islands were separated from Mauritius or the Seychelles and that the question whether or not they can vote in an election is determined in accordance with the laws of Mauritius and the Seychelles affecting who has and who has not the right to vote there.

23. The above formulae have been drafted with care and have Ministerial authority. The Delegation should not depart from their wording therefore without seeking further instructions.

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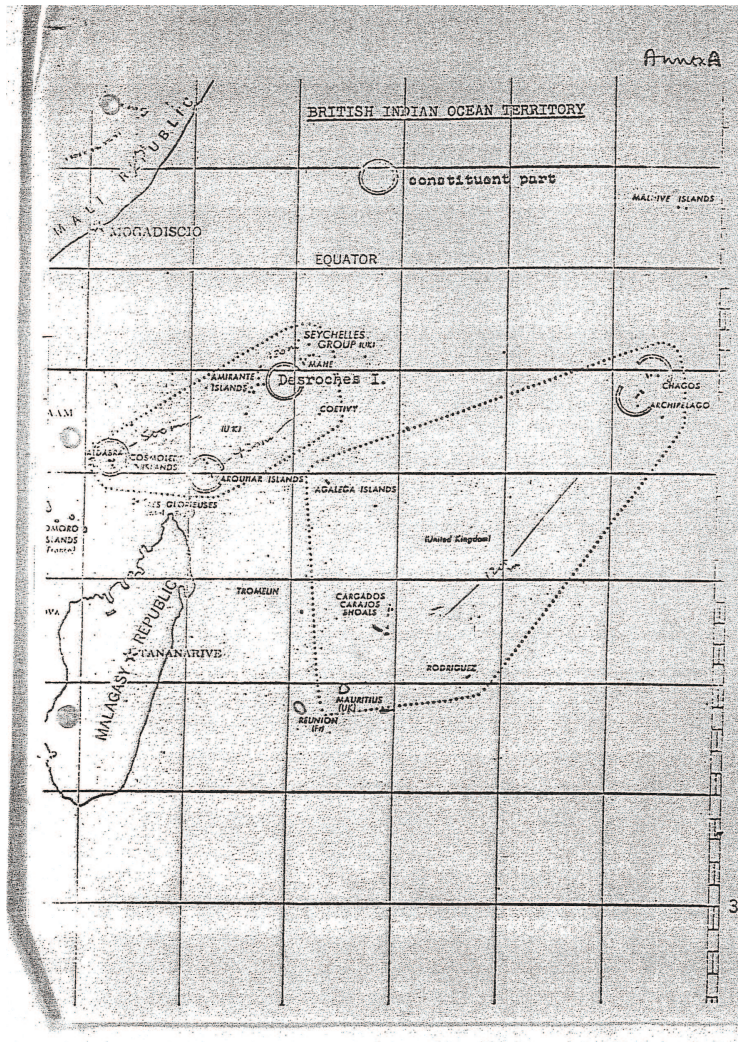

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SECRET ANNEX B

Extract from Mr. Robert Newton's Report 1964

DIEGO GARCIA

"24 ... There is certainly little trace of the sense of a distinct Diego Garcian community described by Sir Robert Scott in his book "Limuria". Sir Robert Scott holds that "the physical characteristics of the island have made the Diego Garcians more down and hard-headed than the residents in the other islands." They are said to be "more diligent in supplementing their basic rations and their cash resources than the other islanders." In the postcript to his book Sir Robert Scott discusses the impact of change and makes 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."

25. Sir Robert Scott's visits took place nearly ten years ago. It is already apparent that already little is left of the distinctive life of Diego Garcia which he described. Judging by conversations with the manager, and with others on the island, most of the inhabitants of Diego Garcia would gladly work elsewhere if given the opportunity. The doctor on Dampier, Surgeon-Lieutenant Maclean, who spoke French well and spent ten days on the island, endorsed these comments on Sir Robert Scott's observations. At the time of the survey there was little evidence of any rual sense of a distinct community evolved by the special local environment. Since four-fifths of the labour force are Seychellois under 2-year or 18-month contracts, the evocation of a distinctive attitude to life from the appearance of a chance-met individual on Diego Garcia is hazardous. Difficulties in establishing the paternity of some children was a further indication of a loose social structure - since it could not be attributed to the evolution of a matriarchal society. There are grounds for the conclusion that life on Diego Garcia evolved to meet the special conditions of the 19th century and that attachment to the island in recent years was fostered by the easy-going ways of the old company rather than to the island itself. The impact of the new company has loosened the old ties and if there is a distinctive way of life on the islands it is Seychellois rather than Mauritian being African in origin and evolved round the coconut palm.

26. Of the total population of Diego Garcia, perhaps 42 men and 38 women, with 154 children, might be accepted as Ileois. According to the manager 32 men and 29 women made relatively frequent visits to relatives in Mauritius and perhaps no more than 3 men and 17 women, including a woman of 62 who had never left Diego Garcia, could really be regarded as having their permanent homes on the island. The problem of the Ileois and the extent to which they form a distinct community is one of some subtlety and is not within the grasp of the present manager of Diego Garcia. But it may be accepted as a basis for further planning that if it becomes necessary to transfer the whole population there will be no problem resembling, for instance, the Hebridean evictions. Alternative employment on a new domicile under suitable conditions elsewhere should be acceptable."

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STEERING COMMITTEE ON INTERNATIONAL ORGANISATIONS

PRESENTATION OF BRITISH INDIAN TERRITORY IN THE UNITED NATIONS

Corrigendum to IOC(66)136

Page 1, Line 4. After "Written" insert "P.Q."

Page 1, Line 21. After "which" delete "form part of" insert "constitute".

Page 2, paragraph 3, line 2. After "or almost entirely", insert "composed".

Annex B.

Paragraph 24, line 4, delete "down" insert "downright".

Foreign Office, S.W.1.

9 September, 1966

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Annex 82

Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1872 (9 Sept. 1966)

17

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FROM NEW YORK TO FOREIGN OFFICE
(United Kingdom Mission to the United Nations)

En Clair

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Lord Caradon
No. 1872
9 September 1966

D. 0330 10 September 1966
R. 0342 10 September 1966

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Addressed to Foreign Office telegram No. 1872 of 9 September.
Repeated for information to: Governor Mauritius
Governor Seychelles
Governor St. Helena
and Saving to: Washington

(15) Commonwealth Office telegram No. Brief 55: Committee of 24, Sub-Committee I - Mauritius, Seychelles and St. Helena.

At today's Sub-Committee meeting, Jouejati (Syria) accused the Administering Power of ambiguity in stating its intentions regarding independence for the three territories. Such progress as took place was forced on the United Kingdom Government by the local inhabitants. United Kingdom tardiness in promoting progress was designed to assure the permanence of the settler minorities and to secure the use of the islands for British strategic purposes contrary to the inhabitants' wishes. The Committee should investigate the grave matter of United States/United Kingdom military plans and the creation of a new colony. The extensive powers of the Governors were indefensible and obsolete. The Committee could not accept that the territories were in any way unready for immediate self-government and independence.

2. Thiam (Mali) said internal constitutional problems were for the local people to settle, not the United Kingdom Government. To make independence conditional upon full agreement by the political parties was a manoeuvre to prolong British exploitation of its colonies. British companies plundered the resources of the territories for profits while their economies slumped. These economies should be diversified. The size of the public debt indicated the extent of their impoverishment while profits continued to flow to the United Kingdom. He quoted the United Kingdom Prime Minister's (1A) statements on defence policy East of Suez from paragraph 17 of A/AC 109/L 279/Add.1 and denounced these remarks since all foreign military bases were for aggressive purposes and were contrary to the colonial peoples' right to self-determination and independence. Britain's illegal bases in the area should be dismantled and replaced by schools and hospitals.

3. Brown (United Kingdom) spoke next (text by bag). On Biot, he recalled United Kingdom statement in the Fourth Committee that the new administrative arrangements for certain small islands represented an administrative re-adjustment worked out with the local governments and elected representatives. No decision had yet been reached by the United Kingdom or United States Governments about construction of any facilities anywhere in Biot. He then described at length constitutional and economic developments in the

/three territories,

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UKMIS New York telegram No. 1872 to Foreign Office

three territories, interjecting replies to main points made by Syrian, Mali and (at last meeting) Soviet representatives.

4. Shakhov (U.S.S.R.) in a long tirade, demanded immediate self-determination and independence for all. Whatever the United Kingdom delegation might say, newspaper reports had made it clear that there was an Anglo-American agreement to establish bases in the Indian Ocean. If this was not so, the United Kingdom should let representatives of the Committee investigate on the spot. He recalled the use of Ascension Island for the Stanleyville operation.

5. Malecela (Tanzania, Chairman), recalled discussion of the question of bases in the O.A.U. and at the non-aligned conference, Fourth Committee and General Assembly. The Sub-Committee and the Afro-Asians did not want bases set up in the Indian Ocean and African views on this should be respected. They did not wish to be involved in the nuclear struggle. He asked for an assurance by the United Kingdom and United States Governments that they would not establish any such bases. This assurance would remove much of the disagreement between the Afro-Asians and the Americans and British. It would be a service to the United Nations if such assurance could be given before the matter was taken up in the Fourth Committee. They could not respect the validity of negotiations between a colony and the colonial Power since these could not be on an equal basis. Failing assurances of the kind required, they would continue to press this point, since the reported Anglo/United States plans were a threat to the security of East Africa. On constitutional questions, he regretted that political reform, which was anyway belated, was always initiated by the United Kingdom and not by the people of the territories. The resolution of the Seychelles Legislative Council about continued association with Britain should not carry undue weight since the council was merely advisory.

6. In answer to further Syrian and Tunisian questions about Mauritius electoral system, Brown explained that the 8 special seats were designed to ensure some representation for small communities. The system, which sounded more complicated than it was, had secured general agreement from all the parties concerned.

7. The Syrian representative also asked for more information about United States/United Kingdom negotiations on bases, the nature of the facilities and the names of those in Mauritius and the Seychelles said to be participating in the negotiations.

Foreign Office please pass to Governor Mauritius No.6, Governor Seychelles No.2 and Governor St. Helena No.1.

[Repeated as requested]

SSSSS

Annex 83

Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1877 (12 Sept. 1966)

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FROM NEW YORK TO FOREIGN OFFICE
(United Kingdom Mission to the United Nations)

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Sir R. Jackling

No. 1877

D. 2112 12 September, 1966

12 September, 1966

R. 2112 12 September, 1966

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Addressed to Foreign Office telegram No. 1877 of 12 September.
Repeated for information to Governor, Mauritius
Governor, Seychelles
Governor, St. Helena
and Saving to Washington

(17) My telegram No. 1872: Committee of 24, Sub-Committee 1 - Mauritius, Seychelles and St. Helena.

At today's sub-committee meeting Sahli (Tunisia) deplored the United Kingdom's use of armed force to break the Seychelles strike and energetically condemned establishment of military bases in colonies. The United Kingdom Government should be called upon to implement Resolution 1514(XV) immediately, bring the three territories immediately to independence, renounce the dismemberment of Mauritius and Seychelles and the establishment of bases, and authorize the United Nations to send visiting missions to render any necessary assistance.

2. Mtingwa (Tanzania) called for evidence to support the United Kingdom contention that the territories had been uninhabited when first discovered. In any case their present inhabitants were entitled to independence. It was significant that dismemberment of Mauritius and Seychelles had been carried out by United Kingdom a few days before General Assembly Resolution 2066(XX). The United Kingdom had produced complex innovations for the Mauritius electoral system, but the Mauritians refused to be treated as guinea pigs for unprecedented experiments. There was no independent evidence that the people really accepted the variations on Banwell negotiated by Mr. Stonehouse. He was convinced Biot would be used for bases. The United Kingdom might assert that it was uninhabited but it belonged to Mauritius and Seychelles. It would be a first target in any nuclear attack and thus endangered the area. Ascension had been used for an attack on the Congolese liberation movement. He demanded guarantees that the territories' integrity would be respected and no troops stationed in the area. He contrasted United Kingdom refusal to use force against Rhodesia with its audacity in sending destroyers to the Seychelles to quell workers who were merely demanding bread.

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3. Janevski (Yugoslavia) said events had proved the non-aligned conference to be right in declaring that foreign bases impeded decolonisation. PMSD Ministers resigned and the Mauritius people had demonstrated in protest against British bases in Indian Ocean. The United Kingdom was not entitled to dismember the territories or to use them for military purposes.

4. Kofod (Denmark) said it was encouraging that all in Mauritius had now agreed on an electoral system and most on the need for early independence. Denmark's similar electoral system had long worked well. The sub-committee's recommendations should welcome Mauritius's progress towards independence and should not ignore the special circumstances of Seychelles and St. Helena nor the wishes of their peoples.

5. The Chairman said sub-committee aimed to approve conclusions and recommendations on the three territories by 20 September.

Foreign Office pass Governor Mauritius 7, Governor Seychelles 3, Governor St. Helena 2.

[Repeated as requested.]

xxxxx

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U.N. General Assembly, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Report of Sub-Committee I: Mauritius, Seychelles and St. Helena*, U.N. Doc. A/AC.109/L.335 (27 Sept. 1966)

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GENERAL
ASSEMBLY

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27 September 1966

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SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

REPORT OF SUB-COMMITTEE I

MAURITIUS, SEYCHELLES AND ST. HELENA

Rapporteur: Mr. Rafic JOUEJATI (Syria)

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INTRODUCTION

1. The Sub-Committee considered Mauritius, Seychelles and St. Helena at its 28th, 29th, 30th and 32nd meetings held on 12 August, 9, 12 and 19 September 1966.

2. The Sub-Committee had before it the working papers prepared by the Secretariat (A/AC.109/L.279, Add.1 and Add.1/Corr.1).

3. In accordance with the procedure agreed upon by the Special Committee, the Chairman invited the representative of the United Kingdom of Great Britain and Northern Ireland to participate in the consideration of the three Territories. Accordingly, the representative of the United Kingdom participated in the 29th, 30th and 32nd meetings of the Sub-Committee.

CONSIDERATION BY THE SUB-COMMITTEE

A. Statements by members

4. The representative of the Union of Soviet Socialist Republics recalled that the situation in Mauritius, Seychelles and St. Helena had been studied very thoroughly by the Sub-Committee, the Special Committee and the General Assembly in 1964. That study had revealed the true situation in those Territories and had shown that the administering Power had not applied to them the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples but, on the contrary, had done everything possible to retard their attainment of independence.

5. The economic and social status of the inhabitants of the islands was deplorable. The administering Power had deprived them of the wealth which was theirs by right and, by granting concessions to foreign monopolies, had made it impossible for them to progress economically. In Mauritius and Seychelles, for example, two thirds of the arable land had been turned over to groups of planters. Without land, the inhabitants were forced to seek work on the plantations at starvation wages or else rent land. The economy was still very largely based on a single crop, which made the Territories entirely dependent on the metropolitan country. The inhabitants' standard of living was declining. The population was reduced to despair, and discontent was growing daily. In May 1965, serious

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disturbances had broken out in Mauritius, where the economic situation was steadily deteriorating, and the administering Power had used the Army to suppress the protests. In June 1966, a strike had been called in the Seychelles and the United Kingdom Government had brought in military units from Aden to disperse the strikers and prevent them from expressing their discontent. It was thus apparent that the administering Power was ignoring the recommendations of the General Assembly and the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Special Committee and the General Assembly should therefore continue to study the question and formulate recommendations calling upon the United Kingdom to take prompt action to enable the Territories to attain independence immediately in accordance with the provisions of General Assembly resolution 1514 (XV).

6. The negative attitude of the administering Power was based on strategic considerations. The establishment of the new British Indian Ocean Territory, which would form the basis of a United Kingdom-United States security system, was a threat directed against the new countries of Africa and Asia, and it fully justified the fears expressed by the non-aligned countries at the Cairo Conference. The inhabitants were opposed to the idea of transforming the Territories into defensive bastions intended not only for the suppression of the nationalist movements in the islands themselves but also for use by the colonialists against those who were fighting for freedom in that part of the world. A petition (A/AC.109/PET.321) from the President of the Seychelles People's United Party protested against the construction of a military base, and, according to paragraph 33 of document A/AC.109/L.279, demonstrations had been held in Mauritius for the same purpose. According to The Times of London of 14 February 1966, an air base was to be built on Ascension Island; an article published in the American magazine Time on 19 December 1965 had stated that certain nearby atolls might be used as a base for submarines equipped with Polaris missiles. The Indian people, among others, were aroused at the prospect that new hotbeds of aggression would be created in the Indian Ocean, for those plans threatened not only the independence of certain peoples but also world peace. According to paragraph 34 of the document in question, the United Kingdom Government did not propose to modify its scheme to convert the islands into a military base. The United Kingdom was thus in effect

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hurling a challenge at the United Nations, for it was not only doing nothing to apply the Declaration embodied in resolution 1514 (XV) but also failing to respect the territorial integrity of the islands and defying the provisions of the resolution calling for the dismantling of military bases. One had only to read the Press to see that the United Kingdom was being encouraged by the United States and other imperialist Powers; during the Washington talks held earlier in the year between the United Kingdom Foreign Secretary and the United States Secretary of State concerning the development of military bases, the Australian Government had announced that large sums were to be allocated for military construction in Papua and New Guinea.

7. In order to eliminate colonialism as quickly as possible from Mauritius, Seychelles and St. Helena, his delegation suggested that the Sub-Committee should recommend the Special Committee to take decisions to the effect that: (1) the right to self-determination and independence of Mauritius, Seychelles and St. Helena and their dependencies should be reaffirmed; (2) elections should be held on the basis of universal adult suffrage; (3) following such elections, representative bodies exercising full powers should be established; (4) all land should be restored to the indigenous inhabitants; (5) the right of the indigenous inhabitants to dispose of all the natural resources of their Territories should be preserved; (6) military bases should be removed; (7) all agreements imposed on the Territories which limited the sovereignty and fundamental rights of the peoples concerned should be abrogated; (8) enterprises of the metropolitan country should refrain from any actions prejudicial to the integrity of the Territories; (9) any use of military bases should be condemned.

8. His delegation would support any recommendations which the Special Committee might adopt with a view to attaining those ends.

9. The representative of Syria noted that, despite the clear and straightforward recommendations made by the Sub-Committee in 1965 and subsequently adopted by the Special Committee, the question of Mauritius, Seychelles and St. Helena had to be taken up once again, because the administering Power, notwithstanding its disclaimers, was not yet willing to transfer full powers to the democratically elected representatives of the inhabitants. He did not believe that the reason for the delay was a desire for a better preparation for independence and self-determination. In fact, the administering Power had made but small contribution

to accelerating the process of emancipation; it surrounded the idea of independence with all sorts of conditions which cast doubt on its good faith. The reforms which had been introduced in recent years were due entirely to the initiative and toil of the indigenous Government. In reality, during 156 years of British rule, nothing significant had been done to provide for the welfare of the masses of the people, who were exposed to extremely unfavourable meteorological conditions, to spread education or to prepare in the Territories cadres sufficiently enlightened to assume the responsibilities of government, development and industrialization.

10. He submitted that the United Kingdom Government's motives were twofold: to assure the permanence of the privileges of the tiny minority of settlers, and to use the Territories for strategic purposes against the wishes of the people of those islands and of the surrounding areas. Syria regarded the information given by the USSR representative on the Anglo-American plan to establish military bases in the Garcia Islands as extremely serious; the Special Committee should thoroughly investigate the matter and weigh its gravity.

11. Why, after all, did the administering Power wish to maintain the obsolete institution of the Governor, who was foreign to the country and foreign to its culture, its outlook and its aspirations, who appointed and dismissed unbound by the advice of the Public Service Commission, who robbed the indigenous representatives of their legitimate right to care for their own internal security and external affairs and who, while he was supposed to act in accordance with the advice of the Executive Council, was nevertheless authorized to act against its advice?

Why should more than one quarter of the national representatives be nominated by the Governor, and not elected by the people, and why should the Governor, and the representatives themselves, select the Speaker of their Assembly? Why should he have the last say on expenditure, when the island needed large funds for development? Why should bills require his assent and, worse still, why could a bill rejected by the Legislative Council be put into effect by him if he considered it expedient?

Of course, the administering Power had a ready answer to those questions: the country was not yet independent, it was only in the experimental stages of

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internal self-government. Naturally, the administering Power, invoking apparently plausible reasons of balance, objectivity and reason, wanted it to be believed that the Territories were not ready for independence and self-determination. The Special Committee was very sceptical about the alleged pace of preparation undertaken by the administering Power; moreover, it firmly believed that the problems of poverty, under-development, illiteracy, cleavage between rich and poor and social injustice could not be solved by the administering Power, but would be overcome by the inhabitants themselves when they were independent and could freely decide their own future, their own form of government and the best way of meeting their own needs and when they would receive assistance from the community of nations in equality, equity and dignity. Credence should be given to the Chief Minister, Mr. Ramgoolam, when he asserted that the country should have achieved independence by the middle of 1964, and not to the administering Power, which invoked the need for a process of constitutional progress as a pretext for the continued denial of legitimate rights to the peoples in question.

14. The representative of Mali stated that the situation in Mauritius, Seychelles and St. Helena was a subject of serious concern to his Government. In Mauritius, there was a racial problem which the administering Power had kept alive with a view to perpetuating its domination, in accordance with the principle "divide and rule". It was in obedience to that principle that the United Kingdom Government had appointed the Banwell Commission to make recommendations on the electoral system.

15. Mali believed that the constitution of a country and all related questions were essentially matters for that country's people to decide. The administering Power had no right to make self-government and independence for the Territory conditional on full agreement among the political parties concerning a constitution which did not meet the legitimate aspirations of the indigenous inhabitants. In his view, the setting up of the Banwell Commission was simply a manoeuvre designed to perpetuate the United Kingdom presence in the Territory simply in order the better to exploit its wealth and its people; for while the attention of the Mauritians was centred on constitutional problems, the British companies were continuing to pillage the country, whose economy was in a catastrophic condition. Mauritius could not be considered in isolation in that connexion; attention must

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also be given to conditions in Seychelles and St. Helena, whose climate, owing to their geographical position, was ideal for diversified cultivation. Yet sugar plantations covered a total of 215,800 acres and tea plantations 6,600 acres, leaving only 17,600 acres for other food crops, and the Mauritians, and for that matter the inhabitants of Seychelles and St. Helena also, were forced to import food-stuffs from the United Kingdom and elsewhere. Thus, the decline of the Mauritian economy noted in the working paper was not surprising. In the fourth quarter of 1965, the public debt had amounted to 264 million rupees, or 18 million rupees more than in the corresponding quarter of 1964. That loss to the Territories swelled the excessive profits of the British companies, and that was why the administering Power was refusing to allow self-government and independence for the Territories. Sugar exports had fallen from 334.2 million rupees in 1964 to 289.7 million rupees in 1965, while the profits of the British companies were on the increase. Meanwhile there was heavy unemployment in the island and the Government was advising the indigenous inhabitants to go abroad to work, so that it could make greater military use of the island. He remembered the statement made by the petitioner concerning the intention of the United Kingdom and the United States to turn the island into a military base for aggression. It was interesting to recall the United Kingdom Prime Minister's recent statement that any Power called upon to participate in United Nations peace-keeping operations would have to be on the spot or in a position to go there, and that the United Kingdom could not ignore the fact that its partners wanted it to be able to exert enough influence in Asia and Africa to neutralize existing or potential centres of infection. According to the Prime Minister's own words, the United Kingdom Government had sought to abandon the system of large military bases in populated areas and to establish itself in areas which were virtually devoid of indigenous inhabitants and from which its forces would be able to move to the theatre of operations rapidly and at minimum expense. That statement, especially if it was recalled what had happened in Ascension Island two years previously, needed no comment.

16. Mali was opposed to military bases which were meant for aggression and which prevented the peace-loving peoples of the Territories, notably Mauritius, Seychelles and St. Helena, from enjoying their right to self-determination and

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independence. Consequently, his delegation again appealed to the administering Power to fulfil its obligations by enabling the indigenous people to attain independence, in accordance with their freely expressed desire, in the best conditions. The constitutional problem should not prevent the granting of self-government in the near future, since the Territory must attain independence as soon as possible. The establishment of the military base in the area was an unlawful act. The United Kingdom should dismantle the base and replace it with hospitals and schools, which the people certainly needed much more.

17. The representative of the United Kingdom said he assumed that the statement made by the Soviet Union representative at the 28th meeting of the Sub-Committee on 12 August, as it appeared in the provisional summary record, would be extensively rewritten. The new arrangements for the administration of certain small islands represented an administrative readjustment freely worked out with the Governments and elected representatives of the Territories concerned. No decisions had yet been reached by either the United Kingdom Government or the United States Government on the construction of any facilities anywhere in the British Indian Ocean Territory.

18. Since the representative of the Soviet Union had suggested that the Sub-Committee should recommend the Special Committee to take steps to ensure that all land was restored to the indigenous inhabitants of those Territories and that the rights of those inhabitants to dispose of the natural resources of the islands were preserved, he recalled that the United Kingdom delegation had already pointed out that the first human inhabitants of Mauritius and the Seychelles had come from France and those of St. Helena from the United Kingdom. He wondered whether the indigenous inhabitants to whom the representative of the Soviet Union was referring were the dodos and tortoises - the sole occupants of the islands before the Europeans had arrived.

19. At the twentieth session of the General Assembly, the Fourth Committee had discussed the question of Mauritius. The Electoral Commission, established in December 1965, under the chairmanship of Sir Harold Banwell, had recommended in February 1966 that there should be twenty three-member constituencies for Mauritius and one two-member constituency for Rodriguez, giving a total of sixty-two seats to be filled by direct suffrage. Five additional "corrective"

seats would be filled, to be allocated, one at a time, to the party which had the highest average number of votes per seat won; a "good loser" candidate of that party, belonging to the community least well represented, would then be declared elected. These "corrective" seats, however, would be awarded only to parties which had secured 10 per cent of the total poll and had won at least one constituency seat. Also, under a "variable corrective", any party with 25 per cent of the votes should have its seats increased up to 25 per cent if necessary by the appointment to the Legislature of the requisite number of "good losers". The United Kingdom Government had accepted the Banwell Commission's recommendations in full, but the three parties forming the Coalition Government had protested. Only the leader of the Opposition party, the Parti Mauritien Social Democrate, had welcomed the report. Most of the opposition had been directed towards the "correctives", i.e., the measures designed to provide assurances to minorities on the island that they would be adequately represented in Parliament and therefore that the main clauses of the Constitution should not be amended without their agreement.

20. In the course of a visit to Mauritius by a British Minister, full agreement among all political parties had been reached on a system of seventy seats in twenty three-member constituencies; sixty members would be elected by block voting (each voter being obliged to cast his full three votes). Two members would be elected for Rodriguez by block voting. In addition, there would be eight "best loser" seats. The first four such seats would be reserved, irrespective of party, for communities under-represented in the Legislative Assembly after the constituency elections. The remaining four "best loser" seats would be allocated on the basis of party, without any qualifying requirement for a minimum number of seats or votes. That system would guarantee the fair distribution of seats among the various communities, on the one hand, and the different parties, on the other. Registration was due to begin on 5 September, but because of Ramadan the elections could not be held before February 1967. If a majority of the new Legislature favoured independence, Mauritius would therefore be able to achieve independence after six months of internal self-government, i.e., during the summer of 1967.

21. Pursuant to the Banwell Commission's recommendations, a team of observers from Commonwealth countries had been established under the chairmanship of

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Sir Colin McGregor, formerly Chief Justice of Jamaica. Some of them would be present in Mauritius from the outset of the registration of electors.

22. The establishment of the Banwell Commission had not been in any sense a delaying manoeuvre, as the representative of Mali had implied, because agreement had finally been reached and independence was conditional upon the outcome of the elections. That had been the most appropriate procedure, because of the divisions of opinion concerning the ultimate status of the Territory. The United Kingdom Government continued to regard independence as the right solution and would take all possible steps to ensure that Mauritius became independent as soon as possible.

23. He pointed out in connexion with the paragraphs of document A/AC.109/L.279/Add.1, which referred to economic conditions in Mauritius, that 1963 had been in some respects an exceptional year with a record production of sugar and very high exports because of the international sugar shortage during that year. In fact, the receipts from sugar exports in 1964, although lower than those in 1963, had still been well above those in 1961 and 1962. Again, sugar production in 1965 had shown an increase compared with 1964. The Mauritius and United Kingdom Governments had taken measures to maintain the pace of economic development in Mauritius. In addition to receiving grant funds ($US6.7 million allocated for development for 1965-68 and nearly $13 million in further grants and loans for cyclone reconstruction), it should be remembered that Mauritius enjoyed an outlet at guaranteed preferential prices under the Commonwealth Sugar Agreement (currently more than £47 a ton compared with the world price of about £17); the preferential price applied to an estimated 75 per cent of Mauritius sugar exports.

24. With regard to the Seychelles, he drew attention to the main developments since July 1964 and in particular to the exchange of dispatches between the Colonial Secretary and the Governor, a useful summary of which was to be found in document A/AC.109/L.279 (para. 75). The Legislative Council had asked the United Kingdom Government for a response to its proposal that the Territory should remain British or be integrated with Britain. The Colonial Secretary had replied acknowledging the Council's desire for no change in the present relationship and suggesting that the Territory should now drop the minor qualifications for voting and move to universal suffrage. He also suggested apportioning departmental

responsibilities to non-official members of the Executive Council and the appointment of a Constitutional Commissioner who would visit the Seychelles and consult all shades of opinion, including parties and individuals, before reporting on the future constitutional evolution of the Territory. The Commissioner had accordingly been appointed and had visited the Seychelles and submitted his report, which was under consideration. A strike had taken place in the Seychelles, but the strikers had returned to work, having accepted an interim-wage award equivalent to an 11.1 per cent increase. His delegation thought that that information should answer the Syrian representative's questions concerning low wages in the Seychelles.

25. The Seychelles were receiving under the Colonial Development and Welfare Acts increased assistance in grants, part of which had been allocated towards development schemes ($3.36 million for 1966-68) and the remainder towards the Seychelles budget.

26. There had been a number of major economic and social developments in St. Helena since 1964, which were briefly described in document A/AC.109/L.279/Add.1. Government labourers had received a pay increase of 90 per cent with effect from July 1965. That had caused the collapse of the flax industry but had not caused unemployment, owing to the other employment opportunities available.

27. The Governor of St. Helena had transmitted to the Colonial Secretary a dispatch in which he had referred to consultations which had taken place with a representative cross-section of the community in regard to possible further constitutional advance. The Advisory Council had adopted a resolution welcoming the proposed revisions of the Constitution and asking the United Kingdom Government for approval. Under the proposals, which had been almost unanimously agreed among the inhabitants of the Territory, the Advisory Council would be replaced by a Legislative Council which would include four additional elected members, bringing the total number of these to twelve. The Council would also have six nominated non-officials and two nominated officials. The Council would enact legislation, the Governor possessing certain reserve powers for use in exceptional circumstances. He would appoint committees of the Council as appropriate and delegate powers and departmental responsibilities to them. Those committees would include special experts as necessary and a majority of members drawn from the Legislative Council. The Executive Council would consist of two officials and the chairmen of the Legislative Council committees. The Public Service would remain the responsibility

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of the Governor. The Governor had expressed his belief that those changes would enable the people of the Territory to take a much more effective and responsible part in the regulation of their own affairs.

28. The Territory already had universal adult suffrage and elections had been held in 1963. Significant and progressive developments had thus taken place in the political and constitutional evolution of the three groups of islands, in each case with the full participation and in consultation with the peoples of the Territories themselves and their democratically elected representatives.

29. The representative of the Union of Soviet Socialist Republics said that the United Kingdom representative's statement was intended only to confuse and to keep the United Kingdom Government from having to say what it intended to do to carry out the resolutions of the General Assembly and the Special Committee. The United Kingdom representative had spoken at length about the constitutional changes, the establishment of an electoral system and appropriate legislation, as though such matters were central to United Kingdom policy. The USSR delegation wished to state categorically that the changes in the Constitution were a matter for the people alone to decide and to ask the United Kingdom to cease manoeuvring to prolong colonial domination and to remove all obstacles to its termination, for it was time to grant the peoples the independence to which they were undeniably entitled.

30. The United Kingdom representative had tried to refute the USSR delegation's remarks by saying that no agreement had been signed between the United Kingdom and the United States regarding the financing of the base in the Chagos Archipelago, but he had been careful to say nothing about the fact that work had already started on the base. The USSR delegation had not invented those facts; the information mentioned in the Special Committee and the Sub-Committee had been published in the United Kingdom and United States Press and could easily be checked. Indeed, the Press had revealed that the United States was bringing pressure to bear on their partners to remain east of Suez and carry out their obligations there. Those "obligations" were to police that part of the world. There had been reports in the United States and the United Kingdom Press that talks had taken place between the United States and the United Kingdom and an agreement had been signed giving responsibility for most of the bases east of Suez to the United States, which undertook to pay for the installation of the base in the Chagos

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Archipelago. It was difficult to see why the Press of the two great Western Powers should publish the information if no such agreement had been signed. If the United Kingdom persisted in its denials, it would be easy to demonstrate the truth by sending a mission of inquiry to the spot, as the Syrian representative had proposed; but the USSR delegation feared that the news was well-founded and that all the information about the base was correct.

31. As to the original inhabitants of Mauritius, the turtles and the dodos, the United Kingdom had not told USSR representatives anything they had not known and they had replied to its comments. As the United Kingdom delegation had brought up the subject of ornithology, however, he would remind it that other birds than dodos, birds with a larger wing-span, now swept over the Non-Self-Governing Territories, and were used by the colonialists to terrorize the subject peoples. There had been talk quite recently about those that had flown over Ascension Island. The United Kingdom representative had apparently been instructed to repeat the specious arguments that had been advanced the previous year, but there was certainly much more to be said about those modern birds, a species which was neither extinct nor becoming extinct; the 1965 and 1966 summary records were very instructive on the subject.

32. The representative of Mali said that although the electoral system described by the United Kingdom representative, which the administering Power wished to introduce into Mauritius, was very complex - he himself had difficulty in understanding it properly - he welcomed the fact that the report of the Banwell Commission had been approved by all the political parties and that the elections would enable the Territory to attain independence beginning in the summer of 1967.

33. The representative of Syria agreed with the representatives of the USSR and Mali that the fundamental question was how the United Kingdom intended to apply General Assembly resolution 2069 (XX).

34. The possibility of the United Kingdom and the United States installing military bases caused concern in Africa and the Middle East, particularly as bases of that kind had recently been the starting point for acts of aggression that had been condemned by the United Nations. The representative of the administering Power had stated that there was no agreement between the two countries at present, but negotiations were apparently under way; he would like to know whether the indigenous population was represented in the negotiations, and if so by whom.

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35. Constitutional development must be freely decided on by the inhabitants. The representative of the administering Power had said that when representatives had been elected by the electoral system it had proposed, they would decide the question of independence. He would like to know when the Legislative Assembly which was to be elected would meet and take such a decision. He also wondered how the problem of the different ethnic groups was to be overcome by the proposed electoral system.

36. As he had pointed out earlier, Mauritius was subject to economic difficulties because of its bad climate; and the local housing was not sufficient protection from the elements.

37. The representative of Tunisia wondered what might be the advantages of such a complicated, not to say peculiar, electoral system as the one proposed for Mauritius and described by the United Kingdom representative. Would national unity really be possible under such a system? Would not elections on the basis of universal suffrage be preferable?

38. The representative of the United Kingdom said that the proposed electoral system for Mauritius was not so complicated as some members of the Sub-Committee thought. Of the seventy seats provided for, sixty-two were to be filled by normal universal suffrage; only the remaining eight were "best loser" seats and were intended to ensure that the minority groups would be represented in the Legislative Assembly. As everyone knew, the system, proposed by the Banwell Commission, had been accepted by all the political parties of the island, after two unsuccessful experiments and after action by the Secretary of State for the Colonies. Replying to the Syrian representative's question, he said that he had already stated in his report that the Legislative Assembly would meet immediately after the elections, or about February 1967; Mauritius would then be able to ask for independence if it so wished.

39. The representative of Syria asked whether the eight "best loser" seats would be filled by representatives of the island's Chinese and Muslim population.

40. The representative of the United Kingdom replied that it had been decided not to set aside special seats for particular minorities or communities, but that the new electoral system had been framed so as to ensure their fair representation. The new system was less complicated than might appear and above all it commanded general agreement among all the Mauritius political parties.

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41. The representative of Tunisia recalled that the question of Mauritius, Seychelles and St. Helena had already been considered by the Special Committee and had also been the subject of General Assembly resolutions 2066 (XX) and 2069 (XX). Those resolutions reaffirmed the inalienable right of the people of those Territories to freedom and independence and invited the administering Power to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV).

42. Recalling that the United Kingdom representative had outlined the future of the islands at the previous meeting, he expressed the hope that the proposed electoral system would not have the effect of accentuating racial differences in the Territories but might, on the contrary, promote the interests of the various sectors of the population. Nevertheless, a serious economic and social problem remained. The main features of the economy of Mauritius, Seychelles and St. Helena, which was rudimentary and colonial in nature, were a heavy loss of revenue, the impossibility of increasing employment and the impossibility of bringing payments into balance, because exports were less than imports. The situation was so unsatisfactory that 3,250 workers had gone on strike in the Seychelles on 13 June 1966, and the administering Power had had to use troops to break the strike.

43. In addition, while resolution 2066 (XX) invited the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, it was clear that such dismemberment had already taken place. On 10 November 1965, the Secretary of State for the Colonies had stated that new arrangements had been made, with the agreement of the Governments of Mauritius and Seychelles, for the administration of the Chagos Archipelago and of Aldabra, Farquhar and Desroches. Those Territories, which had formerly been administered by the Governments of Mauritius and Seychelles respectively, were now called the British Indian Ocean Territory, and the United Kingdom and United States Governments would be able to construct defence facilities there. The administering Power had therefore dismembered Mauritius and Seychelles in order to set up a military base on the islands. The establishment of such bases in countries which were still colonized was reprehensible in every respect, and he recalled that his own country had experienced the same problem with the base of Bizerta. The Sub-Committee should therefore recommend to the Special Committee that it should invite

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the administering Power to take steps to implement resolution 1514 (XV), to lead the populations of the islands to independence, to abandon the plan to dismember Mauritius and Seychelles and to install military bases there, and to permit and encourage the sending of United Nations visiting missions to the Territories.

44. The representative of the United Republic of Tanzania said that the United Kingdom representative's statement at the previous meeting seemed to mean that, because they had been uninhabited when the French and the English had arrived, Mauritius, Seychelles and St. Helena belonged to nobody. Without going into detail on that matter, he believed that the inhabitants of the islands, whatever their origin, were none the less subjected to colonial domination. It was precisely that domination, depriving them as it did of the right to choose their own form of government, which the Government of the United Republic of Tanzania condemned. There had been nothing new in the statement of the United Kingdom representative: he had merely avoided the main issue, the obligation to allow the populations of those Territories to exercise their right of self-determination. There could be no possible doubt on that matter: that obligation was one of those laid upon the administering Power both by resolution 2066 (XX) on Mauritius and by resolution 2069 (XX) on, inter alia, the Seychelles and St. Helena. So far as the latter Territories were concerned, resolution 2069 (XX) also requested the administering Power to allow United Nations visiting missions to visit the Territories, and to extend to them full co-operation and assistance. Those were perfectly natural requests and there should be no difficulty in implementing those resolutions if the administering Power were to honour its obligations and respect the decisions which the General Assembly had taken in accordance with the Charter. But what had happened since the adoption of those resolutions? The Chagos Archipelago had become part of the new British Indian Ocean Territory. That decision had been taken scarcely a month before the adoption of General Assembly resolution 2066 (XX), which invited the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity. The present situation therefore made it highly unlikely that Mauritius would accede to independence in 1966, as had been envisaged. Instead of implementing the General Assembly resolutions, the United Kingdom Government had endeavoured to delay the important steps which it should have taken by forming an electoral commission, which had

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produced what might be called a scientific constitution. The strong opposition to that strange constitution was therefore quite natural, and indeed it was most unlikely that the United Kingdom Government had ever expected the Mauritians to accept it. In that connexion, the agreement which had been reached between the Under-Secretary of State for Colonies and opposition representatives in Mauritius was of no significance because there was no evidence that the discussions had been held freely. The United Kingdom Government should remember, however, that every time it had endeavoured to draw up the constitution of one of its former colonies without taking due regard of the interests of the population, those constitutions had always come to nought and had been replaced by genuinely democratic instruments.

45. The manner in which the British Indian Ocean Territory had been set up and the haste with which it had been done could not but engender suspicion. His delegation had reason to believe that the Territory was to become a military base. Apart from the threat posed by such bases to neighbouring countries in the event of war, the example of Ascension Island, which had been used by mercenaries as a base for attacking the Congolese freedom-fighters, could not be forgotten. The Special Committee should therefore aim at guaranteeing the territorial integrity of Mauritius, Seychelles and St. Helena, and ensuring that they would not be used for military purposes.

46. The economic situation of those Territories was scarcely satisfactory at the moment. There had been a considerable decline in both agriculture and industry, which in 1964 had represented 24 and 15 per cent, respectively, of the gross national product of Mauritius, while unemployment was increasing rapidly. Monoculture should therefore be abandoned on Mauritius, as well as on Seychelles and St. Helena, if social disturbances were to be avoided. While it was doing nothing to stop the Southern Rhodesian Government from depriving 4 million Africans of the right to rule their own country, the United Kingdom Government had seen fit to send two warships to the Seychelles to compel strikers to resume work.

47. In conclusion, he hoped that reason would prevail and that the administering Power would eventually leave the peoples of Mauritius, Seychelles and St. Helena to rule their country as they wished.

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48. The representative of Yugoslavia recalled General Assembly resolution 2066 (XX) on the question of Mauritius, in which the Assembly had, in particular, invited the administering Power to take no action which would violate the integrity of the Territory; the Assembly had likewise adopted resolution 2069 (XX) concerning a number of small Territories, including Seychelles and St. Helena. It seemed that, in spite of the provisions of those resolutions, the administering Power had not only failed to take effective measures for ensuring the independence of those Territories, in accordance with the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples, but it had even undertaken some measures contrary to those provided for in the Declaration.

49. His delegation considered that the development of those Territories was still very slow, because of the interests which the administering Power hoped to preserve there as long as possible. As early as 1964, the Conference of Non-Aligned Countries, held in Cairo, had condemned the intentions expressed by imperialist Powers of establishing military bases in the Indian Ocean, holding that such bases would constitute a threat to the new Afro-Asian countries and impede the process of decolonization. The course of events had shown that the Conference had been right, for in November 1965 the United Kingdom had decided to establish the new British Indian Ocean Territory as the site of defence bases for the United Kingdom and the United States of America. In spite of the resignation of three Ministers of the Mauritius Social Democratic Party and the protests raised in Mauritius following that decision, the administering Power had not changed its position on the establishment of those bases, as was evident from the statement of the United Kingdom Defence Secretary, contained in the Secretariat working paper (A/AC.109/L.279, para. 34).

50. As it had already stated, his delegation held that the United Kingdom was not entitled to dismember the Territory of Mauritius for the purpose of military installations. It considered that the Sub-Committee was duty bound to recommend to the Special Committee that the peoples of the Territories in question should accede without delay to independence, in accordance with their freely expressed wishes and with the provisions of the Declaration contained in resolution 1514 (XV). It further thought that the problem of the establishment of military bases through the dismemberment of Mauritius should be given particular attention, in accordance with the provisions of resolution 2066 (XX).

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51. The representative of Denmark expressed his satisfaction that the Territory of Mauritius was to accede to independence the following year, in accordance with the agreement established at the Constitutional Conference in London in September 1965. Following negotiations between the administering Power and the island's three main political parties, the electoral provisions made in the original draft Constitution, which had aroused some criticism by the parties, had been modified and subsequently approved by all concerned. In that connexion, the electoral system drawn up for Mauritius might seem at first to be unduly elaborate, but a similar and equally elaborate system had been functioning in Denmark for a long time, to everyone's satisfaction. Experience had shown that the system fulfulled its purpose perfectly, which was to assure fair and equal representation of all voters. The elections which were to take place on Mauritius would ensure the establishment of an autonomous Government and subsequently, after an interval of six months, accession to independence. The economic and social situation in the Territory seemed satisfactory, thanks to the determined efforts made by the authorities and the people to overcome the severe difficulties due to the losses caused a few years ago by two cyclones. Moreover, the authorities had been trying for some years to diversify the island's economy, which, at present, depended largely on its sugar production. The Danish Government thought, therefore, that the Territory of Mauritius could advance confidently towards independence, and it was looking forward to maintaining the best of relations with the new State.

52. With regard to Seychelles and St. Helena, his delegation considered, as it had often stated, that it was for the people of those Territories, and for them alone, to determine their constitutional future. The size, population and economy of those Territories might justify the adoption of special constitutional arrangements, which should not be ruled out, provided they met with the support of the population.

53. His delegation thought that in its report to the Special Committee, the Sub-Committee should express its satisfaction with the considerable progress made by the Territory of Mauritius on the path towards independence and should express the hope that the forthcoming elections would be another proof of the population's desire to accede to independence. With regard to Seychelles and St. Helena, the Sub-Committee's recommendations should take account of the special circumstances

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prevailing in those Territories and should, therefore, not contain any proposals which might be incompatible with those circumstances and perhaps with the wishes of the population concerned.

B. Conclusions

54. The study of the situation in Mauritius, Seychelles and St. Helena shows that the administering Power has so far not only failed to implement the provisions of resolution 1514 (XV) in these Territories, but has also violated the territorial integrity of two of them by creating a new territory, the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, in direct contravention to resolution 2066 (XX) of the General Assembly.

55. The Sub-Committee notes with regret the slow pace of political development in the Territories, particularly in Seychelles and St. Helena. This has delayed the transfer of powers to democratically elected representatives of the people and the attainment of independence. Key positions of responsibility in the administration of the Territories seem to be still in the hands of United Kingdom personnel.

56. The Sub-Committee notes with deep concern the reports pointing to the activation of a plan purporting among other things to establish military bases in Mauritius and Seychelles as well as an air base on Ascension Island, a plan which is causing anxiety in the Territories concerned and among people in Africa and Asia and which runs contrary to the provisions of resolution 2105 (XX) of the General Assembly.

57. The electoral arrangements devised for Mauritius apart from being complex in themselves seem to have been the subject of great controversy between the various groups and political parties. Regarding the Seychelles, the Sub-Committee regrets that people are still deprived of the right of universal suffrage.

58. The economy of the Territories, particularly Mauritius, is characterized by diminishing revenue, increasing unemployment and consequently a declining standard of living. Foreign companies continue to exploit the Territories without regard to the true interests of the inhabitants.

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C. Recommendations

59. The Sub-Committee recommends that the Special Committee reaffirm the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination and independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples. The administering Power should therefore be urged again to allow the populations of the three Territories to exercise without delay their right of self-determination.

60. Any constitutional changes should be left to the people of the Territories themselves, who alone have the right to decide on the form of government they wish to adopt.

61. Free elections on the basis of universal adult suffrage should be conducted in the Territories as soon as possible. The elections should lead to the establishment of representative organs which would choose responsible governments to which all powers could be transferred.

62. The administering Power should be called upon to respect the territorial integrity of Mauritius and Seychelles and to insure that they would not be used for military purposes.

63. In fulfilment of the provisions of paragraph 12 of General Assembly resolution 2105 (XX), the administering Power should be called upon to refrain from establishing military bases in the Territories.

64. The Special Committee should recommend to the General Assembly to state categorically that any bilateral agreements concluded between the administering Power and other Powers affecting the sovereignty and fundamental rights of the Territories should not be recognized as valid.

65. The administering Power should be called upon to preserve the right of the indigenous inhabitants to dispose of all the wealth and natural resources of their countries. It should be urged to undertake effective measures in order to diversify the economy of the Territories.

D. Adoption of report

66. This report was adopted by the Sub-Committee at its 32nd meeting on 19 September 1966. The representative of Denmark stated that certain parts of the conclusions and the recommendations of the report did not conform with his delegation's opinion as expressed in the Sub-Committee's meeting on 12 September 1966 (see paragraphs 51-55 above). His delegation therefore could not support all the conclusions and recommendations of the report.

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Government of the United Kingdom and Government of the United States, *Agreed Minute*, FO 93/8/401 (30 Dec. 1966)

CONFIDENTIAL

Agreed Minute

In the course of discussions leading up to the Exchange of Notes of 30 December 1966, constituting an Agreement between the Governments of the United Kingdom and the United States concerning the use of the islands in the British Indian Ocean Territory for defence purposes the following agreement and understandings were reached:

I With reference to paragraph (2) (a) of the Agreement, the administrative measures referred to are those necessary for modifying or terminating any economic activity then being pursued in the islands, resettling any inhabitants, and otherwise facilitating the availability of the islands for defence purposes.

Where any United States requirement is for land owned by the United Kingdom Government but in the possession of a lessee of that Government and it will be necessary for notice of termination of the lease to be given by or on behalf of that Government to the lessee, there will be adequate notice of the United States requirement for the purpose of enabling the United Kingdom Government to give the lessee six months' notice of the termination of the lease or such less period of notice as may be specified in the lease. This paragraph shall not, however, apply in the circumstances envisaged in paragraph (2) (c) of the Agreement.

II With reference to paragraph (2) (b) of the Agreement, the approval in principle by both Governments before either constructs or installs any facility is required only for construction or installation of major new developments. Such developments would be of the order of an air staging base, a fleet support installation, or a space tracking station. The mutually satisfactory arrangements between appropriate administrative authorities would be sufficient for improvement or reasonable expansion of approved facilities already constructed or installed.

III With reference to paragraph (2)(c) of the Agreement, the types of measures considered appropriate by the British authorities during periods of emergency use by the United States will be indicated to the United States authorities and will be reflected by the latter in any planning for emergency use. In the event of such emergency use of an inhabited island, the implementation of measures taken by the United States authorities to ensure the welfare of any inhabitants may be monitored by British personnel.

/When

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When temporary emergency use is required, the administrative authorities of the two Governments will agree upon the arrangements (if any) regarding such temporary use which may in the circumstances be appropriate.

IV With reference to paragraph (6) of the Agreement, the Governments of the United States and the United Kingdom agree to define the terms and conditions for use in exceptional circumstances by commercial aircraft of military airfields in the Territory, as follows:-

(i) Such use shall be limited to technical stops by British and United States commercial aircraft only;

(ii) the United States Government has indicated its agreement to such use following consultation on an expedited basis at the time, provided for in paragraph (6) of the Agreement, for the purpose of making practical arrangements;

(iii) if, however, a third government should in the view of the United Kingdom make an effective challenge, in pursuance of international instruments relating to civil aviation, to the United Kingdom's action as sovereign power in denying the use of an airfield, then it is agreed that civil use by British and United States commercial aircraft shall be suspended for such time as in the view of the United Kingdom Government the effective challenge is maintained;

(iv) the above provisions would not preclude the use of military airfields by civil aircraft operated by or on behalf of either Government for governmental purposes, which is covered by the service-level arrangements provided for in paragraph (5) of the Agreement.

V Paragraph 2 (b) (iii) of Annex II to the Agreement does not debar any person who has a civil claim against the United States Government or any person for whose acts or omission that Government is responsible from bringing a civil claim in a British court under British law in any circumstances in which it would otherwise be open for him to do so.

VI In the light of circumstances prevailing in the Territory at the commencement of the Agreement and the use to which it is contemplated the islands will be put, no formal provision has been included to cover the status of the members of the United States Forces and other personnel (except with regard to

/jurisdiction,

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jurisdiction, customs duties, and taxes) and certain defence activities of the United States pursuant to the Agreement. The lack of formal provisions in these respects will not operate to restrict such defence activities of the United States authorities. If at any time during the continuance of the Agreement it appears to the United Kingdom Government or the United States Government necessary, having regard to any change in the use of any development in the circumstances of the islands, to make formal provision for those matters, an Agreement will be concluded containing such of the provisions of the Seychelles Tracking Facility Agreement as appear necessary to the two Governments, with any necessary modifications, and such other provisions as appear necessary to the two Governments.

Chalfont. Alfred Bruce.

LONDON

30 December 1966

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Annex 86

United Kingdom, *Minute from M. Z. Terry to Mr. Fairclough - Mauritius: Independence Commitment*, FCO 32/268 (14 Feb. 1967)

SECRET 19B

Mr. Fairclough

Mauritius: Independence Commitment

You showed me your minute of today's date about the above in draft and asked me to let you have the "facts and figures" referred to in paragraph 3(i) to (iv).

2. I understand that Mrs. McColl and Mr. Gathercole are producing a note for the U.K. Mission to the U.N. about the effects on the Mauritius economy of the fall in the price of sugar. When completed this should provide the material required under paragraph 3(i). I have myself today prepared a brief on the financial position which will serve the purpose of paragraph 3(ii). As regards paragraph 3(iii) I wonder whether there is not perhaps some confusion. I understand that the future of the Commonwealth Sugar Agreement is being reviewed for reasons which have nothing whatever to do with our possible entry in the Common Market. My understanding is that the review has emerged from the hard thinking which has been going on over the past year or two about our overseas aid commitments: and that the Treasury in particular want the C.S.A. to be dropped because it conceals indirect aid to Australia running into several millions of pounds per annum for which there is no conceivable justification: the idea being that aid given to aid-worthy Commonwealth countries through the C.S.A. should in future be given on a direct Government to Government basis (which would alas! be less effective so far as small colonial territories are concerned). I understand however that it is a deadly secret that the C.S.A. is under review and that this could not be mentioned outside Whitehall circles. As regards (b) of your paragraph 3(iii) I understand that it is the case that if Mauritius were still a colony if and when Britain enters the Common Market it would get better treatment for its sugar than if it were already an independent country. In the latter event it seems that it might virtually be excluded from European markets since there is already a sugar surplus within the Common Market. I have however asked Mr. Johnson if he could add anything on this point has agreed to prepare a note on this point.

3. As regards the question of increased support for the P.M.S.D. (your paragraph 3(iv)) I do not think there are any firm facts and figures which can be produced. It is undoubtedly true that over the past year or so the P.M.S.D. have been making a determined attempt to broaden the basis of their support and to appeal to all communities. As an example the Governor mentioned in his latest monthly report that a leading member of the Muslim community had recently joined the P.M.S.D. and it is to be assumed that he would carry a certain number of Muslim voters with him. Apart from this however it is not possible to give anything as firm as "facts and figures". Most believe that there is little doubt that the P.M.S.D. has succeeded up to a point in winning the support of some proportion of the Indian communities (particularly the younger members and also those with a financial stake in the economy); and apparently large numbers of Indians attend the P.M.S.D. political meetings. It is however essentially a matter of crystal-gazing to try and assess to what extent these efforts will be reflected in the results of the next general election. There are no means of testing public opinion in Mauritius by such means as opinion polls or by-elections. Some argue that the large number of new young voters on the electoral registers is bound to increase the number and the proportion of the votes won by the P.M.S.D. in the next general election. Others claim that whatever the outward signs may be during the pre-electoral period it will be a question of "squaring the ranks" when the

/time comes and

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SECRET

time comes and that the vast majority of the Indians will vote on straight communal lines whatever view they may take of particular election issues (even including independence). In the absence of external tests of the movement of public opinion there are virtually no firm facts and figures which can be adduced: it is essentially a matter of waiting for the P.M.S.D. claims to be put to the test of the general election.

4. In general it seems to me quite impossible for H.M.G. to retract at this juncture the clear and unqualified undertaking given at the 1965 Conference, that we would grant independence if this were asked for by a simple majority vote in the new Assembly returned by the next general election. I am told that it was a Cabinet decision that this undertaking should be given (I am at present trying to trace the relevant Cabinet papers) and that in addition H.M.G.'s decision to come out publicly in favour of independence for Mauritius was part of the deal between our own present Prime Minister and the Premier of Mauritius regarding the detachment of certain Mauritius dependencies for Biot.. I cannot believe that U.K. Ministers generally would be prepared to go back on this decision. To do so would not only cause "a tremendous rumpus in Mauritius" as suggested in paragraph 6 of your minute but would damnus in the eyes of the Commonwealth and indeed of the world as a whole. Since the 1965 undertaking was given we have frequently been asked both at Commonwealth Meetings and at the U.N. what our intentions are in regard to Mauritius: and we have repeatedly stated in unequivocal terms that, in the terms of Mr. Greenwood's pronouncement, we are prepared to grant independence if this is asked for by Mauritius in the manner indicated after a general election. I doubt whether we would even do ourselves much good with the P.M.S.D. by retracting this ~~after~~ repeated undertaking because they (like the rest of the world) would be forced to conclude that our undertakings were not worth the paper they were written on.

5. As regards the particular arguments in paragraph 5 of your minute I would like to say that I cannot see any validity in the argument in sub-paragraph (i). It is a considerable exaggeration and distortion of the facts to say that the registration arrangements were not in accordance with the local law. There probably were omissions from the registers on which the 1959 and 1963 elections were conducted but under a voluntary system of registration it is to be expected that those omitted are the most apathetic and politically indifferent members of the adult community. In Mauritius it would almost certainly be mainly Indians (probably Indian women) who were excluded so that if we were to use this argument we would have to conclude that if all the potential voters had been included on the registers and had exercised their votes the only result would have been to strengthen the support given to Ramgoolam. For the same reason I do not think that there is any validity in the point in your paragraph 5(ii).

6. For the reasons indicated it seems to me quite out of the question that we should at this juncture retract our freely given and unqualified undertaking regarding independence for Mauritius. It is true that circumstances have changed since the undertaking was given and in particular that because of the deteriorating economic and financial position of Mauritius, and the renewed possibility of Britain entering into the Common Market, the interests of Mauritius might be better served by remaining a colony or becoming an Associated State on the West Indian pattern. It is however open to the electorate of Mauritius to judge these issues for themselves. Independence will obviously be the main issue in the forthcoming election and if the P.M.S.D. have any sense they will continue to put across

/to the people

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S E C R E T

to the people (as they have already been doing) the economic disadvantages of independence. We have however publicly left the choice to the Mauritius electorate. It is really too late in the day for us to assert that the electorate of Mauritius cannot be relied on to judge what is in the best interests of the country and to insist that "mother knows best".

7. For rather different reasons from your own I therefore entirely agree that the only circumstance in which we could possibly suggest that the question of independence should be reconsidered is if the general election results in a very narrow majority (of seats and/or votes) for the Independence Alliance. If the Independence Alliance win by only a narrow majority it seems to me that there is a very strong risk that the P.M.S.D. (if they have any sense) will stage disturbances of some kind. In such a situation, and particularly if there is an actual or threatened breakdown in security, there would be some basis for H.M.G. to suggest that all parties should get round the table again to reconsider the position.

M Terry

(M.Z. Terry)
14 February 1967

S E C R E T

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Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 60 (21 Apr. 1967)

Annex 87

Mr Baltrod

This point may be worth noting by you – there is no Charter requirement applicable to Mauritius + Seychelles. RW Heller 26

By Bag SAVING TELEGRAM /iv

(32)

John

Is he confusing 1514 + the Charter, or is there a Charter requirement?

NEW YORK (U.K.MISSION TO THE U.N.) TO FOREIGN OFFICE

Telno. 60 Saving 21 April, 1967

UNCLASSIFIED Mr Braden Tyrrell 24/5

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copy (BIOT) MrB 28/4

Article 2(4) ?

It is Art 2(4): but this depends on a confusion between "state" and "territory" or "people"

Addressed to Foreign Office telegram No. 60 Saving of 21 April, repeated for information Saving to Governor Mauritius as paras No. 3, Governor Seychelles No.3, New Delhi No. 6 and Washington to avoid No. 165.

My telegram No. 56 Saving: Committee of 24: Sub-committee I – Mauritius, Seychelles, St. Helena.

At yesterday's meeting Diakite (Mali) questioned the assertion that constitutional progress in the territories represented even partial implementation of Resolution 1514. The Charter requirement of respect for territorial integrity had not been observed. The decision of the Mauritius Conference had imposed unnecessary delays and conditions before independence (e.g. elections and a resolution of the new house). The electorate was only a small proportion of the population, the high proportion of persons under age 21 being disenfranchised. The electoral system contained unusual features whose real object seemed to be to distort election results.

MrB 16/5

2. Miss Sinegiorgis (Ethiopia) said little had been done to implement numerous United Nations resolutions. Delays in holding elections in Mauritius were regrettable and she appealed to the United Kingdom to hold these elections forthwith. There was hardly any political or economic advance in the other two territories. The Deverell report on the Seychelles wrongly excluded independence as a potential final status since the people of Seychelles were anxiously awaiting full independence.

3. Jouejati (Syria) requested more information about the kilowatt output and uses of hydro-electric stations in Mauritius. Why should there be unemployment when a vast development programme could employ everyone? On BIOT he asked if the so-called facilities which had been constructed had the truly free consent of the Mauritian people who owned the islands. Was there wage discrimination between Europeans and indigenous inhabitants?

4. In reply Shaw (United Kingdom) made the following points:-

(a) The need for elections before a decision on independence in Mauritius stemmed from disagreement between Mauritian parties at the 1965 Conference about the desirability of independence and the need for popular consultations on this issue.

/ (b) The delay

MrB 4/5

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(b) The delay in elections resulted mainly from disagreement over the electoral system. On timing of elections he quoted the joint statement of 20 December 1966.

(c) On the voting age in Mauritius he recalled that the 1965 Conference had agreed to keep the existing franchise qualifications unchanged. This was thus a decision of the elected leaders in Mauritius. 21 was an accepted mimimum age for the franchise in many parts of the world.

(d) On possible wage discrimination he pointed out that there were no indigenous peoples, and no such distinction between sections of the population.

(e) No decisions had been taken on facilities in BIOT.

5. Diakite repeated his objections to any precondition for independence which looked like a manoeuvre for delay. Independence could have been granted straight after the Conference. The exclusion of voters under 21 favoured the Europeans and thus the PMSD which opposed independence.

6. In reply Shaw again explained the justification for requiring elections in Mauritius before a decision on independence and pointed out that the PMSD derived support for its anti-independence platform from those of African descent as well as from Europeans and others. A resolution by the legislature was a normal democratic procedure when a country was deciding its ultimate status.

7. Ustinov (USSR) supported Mali's points especially on the voting age. The United Kingdom had obviously not decided to abandon its military plans for BIOT and these were causing growing concern in many countries including India.

8. Shaw commented that the voting age was less important than the fact that the people of Mauritius enjoyed a choice of candidates and alternative party policies. It was for the Indian delegation to make known the Indian Government's views.

Lord Caradon

Recd. 22 April

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U.N. General Assembly, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Report of Sub-Committee I: Mauritius, Seychelles and St. Helena*, U.N. Doc. A/AC.109/L.398 (17 May 1967)

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UNITED NATIONS

GENERAL ASSEMBLY

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A/AC.109/L.398
~~17 May 1967~~

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

REPORT OF SUB-COMMITTEE I

MAURITIUS, SEYCHELLES AND ST. HELENA

Rapporteur: Mr. Rafic JOUEJATI (Syria)

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INTRODUCTION

1. The Sub-Committee considered Mauritius, Seychelles and St. Helena at its 35th to 39th meetings held on 5, 13, 18, 20 April and 10 May 1967.

2. The Sub-Committee had before it the working papers prepared by the Secretariat (A/AC.109/L.374 and Corr.1 and 2).

3. In accordance with the procedure agreed upon by the Special Committee, the Chairman invited the representative of the United Kingdom of Great Britain and Northern Ireland to participate in the consideration of the three Territories. Accordingly, the representative of the United Kingdom participated in the 35th to 39th meetings of the Sub-Committee.

CONSIDERATION BY THE SUB-COMMITTEE

A. Statements by members

4. The representative of the United Kingdom gave an account of developments which had occurred since the twenty-first session of the General Assembly in the three Territories under consideration.

5. In Mauritius, constitutional discussions between the United Kingdom and representatives of the different political parties in the Territory had already set the stage for independence. At the end of the constitutional conference of September 1965, Mr. Greenwood, the Secretary of State for the Colonies, had announced that Mauritius would achieve independence if a resolution asking for it was passed by a simple majority of the new Assembly resulting from a general election to be held under a new electoral system. In the course of 1966, a special commission had studied the question of the future electoral system and had recommended that the island should be divided into twenty three-member constituencies and one two-member constituency plus five extra "corrective" seats. In that way, the interests of the main sections of the diversified population of Mauritius would be fairly represented. As those recommendations had given rise to disagreements among the political parties, the number of "corrective" seats had been raised to eight and the arrangements for such seats modified to take account of both party and community considerations, and agreement had been reached between all concerned.

5. Thereafter, in September 1966, the preparation of new electoral registers had been initiated in the presence of a team of Commonwealth observations drawn from India, Malta, Jamaica and Canada. The registers had been published in January 1967 and included one-third more voters than previous lists. The matter now rested with the Government of Mauritius and general elections would be held on the basis of universal adult suffrage at a date still to be set. The Parliamentary Under-Secretary of State for the Colonies had said in the House of Commons in December 1966 that it was desirable that elections should be held at the earliest practicable time. Since the 1965 Constitutional Conference had agreed on a six-month interval between full internal self-government and independence, it would be possible, if a majority elected at the future general elections favoured such a step, for Mauritius to achieve independence six months after the elections. There were differing views among the political parties about the ultimate status of Mauritius, but it was for the people to express its views by democratic means. As stated in paragraph 21 of the Sub-Committee's report for 1966, a team of observers from Commonwealth countries would observe the elections.

7. With regard to the Seychelles, he recalled that following an initiative by the Legislative Council about the Territory's future relationship with the United Kingdom, a constitutional adviser had recommended the establishment of a single Council of twelve to fifteen members with both executive and legislative functions, elected on the basis of universal adult suffrage, as a major step towards full internal self-government. The next elections were to be held in October 1967, and the legal instruments, including the new Constitution, required to implement the various proposals were being prepared.

8. The labour disputes which had occurred in 1966 had been resolved by a general wage increase of 20 per cent. A Government Labour Officer and a Trade Union Officer had also been appointed with the aim of improving labour relations.

9. Substantial progress had been made in St. Helena. On 1 January 1967, the former Advisory Council had been replaced by a Legislative Council, and a system of committees giving the members of the Legislative Council departmental responsibilities had been established; the Executive Council had also been reformed to include the chairmen of those committees in place of the former official members. Elections to the new Legislative Council would take place, as before, on the basis

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of universal adult suffrage, not later than 1 January 1968. The Council would consist of twelve elected members out of a total of fourteen, instead of eight out of a total of sixteen as at present.

10. The three Territories under discussion had certain features in common: they all were small, had limited resources and were far from the main lanes of communication. In other ways they were different: Mauritius had 750,000 inhabitants and St. Helena only 4,600. These differences were bound to be reflected in the type of political institutions the Territories developed and also perhaps in their ultimate status. He emphasized that since the last session of the Special Committee, each of the three Territories had made substantial progress towards self-government and a final decision on their eventual status.

11. The representative of the United Republic of Tanzania said that the situation in the Seychelles recalled the arrangement proposed by the United Kingdom for certain Caribbean Territories: the administering Power was contemplating a procedure which violated the legitimate interests of the population and contradicted the various pertinent General Assembly resolutions, including resolution 1514 (XV) of 14 December 1960.

12. Document A/AC.109/L.374 and Corr.1 and 2 showed that the colonial Power was reluctant to implement the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples: a colonial Governor had been sent to the Territory to advise on the future colonial status of the Seychelles and had recommended three possible courses: (a) that the Territory should achieve only nominal independence guaranteed by treaty relations with a suitable Power; (b) some form of free association with the United Kingdom; and (c) some form of close association or integration with the United Kingdom. In the first case, it was clear that the colonial Power was not prepared to withdraw from the Seychelles and to concede unfettered independence. The second course would constitute a direct violation of the inalienable right of the people to achieve the independence it demanded. Finally, integration would be a violation of the territorial integrity of the Seychelles, as stated in General Assembly resolution 2069 (XX) of 16 December 1965.

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13. The economic situation in the Seychelles remained gloomy and was accentuated by the Territory's colonial status. In a Territory in which there had been a continued decline in agriculture and industry, it was highly regrettable that most of the arable land was being given to foreign monopolies in the form of concessions. He recalled that that aspect of the situation was to be the subject of special study by the Sub-Committee.

14. In Mauritius, too, there had been hardly any progress. At the preceding session, the Tanzanian delegation had stated that the United Kingdom Government was endeavouring to delay the attainment of independence and circumvent the wishes of the people. By its resolutions 2069 (XX) and 2066 (XX) of 16 December 1965, the General Assembly had called upon the administering Power to dismantle the existing military bases and refrain from establishing new ones in the Territories under its domination. It had also invited that Government to take no action which would dismember the Territories or violate their territorial integrity. The United Kingdom Government had, however, completely ignored the Organization's decisions. On 25 March 1967, The Times of London had reported the measures adopted by the United Kingdom in its new Indian Ocean colony created in November 1965, which was to be used for military purposes by the United Kingdom and United States Governments.

15. He protested against the creation of the new colony, which constituted a violation of the legitimate interests and inalienable rights of the inhabitants. It also showed how the colonial Powers were trying to impede independence by such devices as the concessions they granted to foreign monopolies. It was through such monopolies that the new colony had been set up and military installations established. The dismemberment of a Territory violated the express provisions of operative paragraph 6 of General Assembly resolution 1514 (XV) and those of the United Nations Charter. Moreover, the creation of the new colony and the establishment of military installations also ran counter to the declared wishes of the peace-loving peoples of Africa and Asia. It could be regarded as a hostile act against those peoples, who were in the immediate vicinity of the military installations in the Indian Ocean.

16. It must be recognized that with regard to Mauritius, the Seychelles and St. Helena, the administering Power had maintained a negative attitude and had

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refused to implement the resolutions of the General Assembly calling upon it to speed decolonization in accordance with resolution 1514 (XV). Furthermore, the United Kingdom Government was continuing its economic exploitation of the Territories, and more and more foreign monopolies were establishing themselves there, to the detriment of the people's legitimate interests. Lastly, the United Kingdom was openly violating the principles of the Charter and the resolutions of the General Assembly by dismembering Mauritus and the Seychelles and building military installations there with the help of the United States.

17. It was not enough to reaffirm the right of peoples to self-determination and independence; immediate measures should be taken to ensure that those rights were respected. The colonial Power should without delay hold elections on the basis of universal suffrage, transfer all powers to the peoples and restore to them the land and natural resources which it had subjected to extensive exploitation. It must also desist from selling to private companies whole islands detached from the Territories and must instead preserve territorial and national entities. The United Kingdom's political manoeuvres to impose upon the peoples the political status it preferred must be condemned, and it must be called upon to refrain from taking any measures incompatible with the Charter and with the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Sub-Committee should also recommend the sending of a visiting mission, especially to the Seychelles.

18. The representative of Syria said that the administering Power's statements had failed to answer a number of very important questions. Had the United Kingdom implemented without delay the relevant resolutions of the General Assembly in Mauritius, the Seychelles and St. Helena, as it had been called upon to do by resolution 2232 (XXI) of 20 December 1966? If not, why not? The Sub-Committee must also know whether the administering Power had changed its attitude with regard to the sending of a visiting mission and whether it was prepared to co-operate with the Sub-Committee in the matter.

19. The General Assembly had expressed some concern regarding the preservation of the territorial integrity of colonial Territories. Did the administering Power still harbour its intentions, and did it realize that the establishment of military bases ran counter to the resolutions of the General Assembly and could not but create international tension and conflict?

20. The United Kingdom had stressed the poverty of Mauritius, the Seychelles and St. Helena and the inadequacy of their resources. But what was it doing to utilize their hydroelectric potential or to remedy the growing unemployment or the balance-of-payments deficit? Had it endeavoured to diversify the economy of Mauritius, as the Prime Minister of Mauritius had repeatedly asked it to do, or was it adhering to the terms of the Commonwealth Sugar Agreement? It was surprising that the United Kingdom, a technologically advanced country and a great source of capital, should permit the Territories under its administration to suffer from shortages of capital and technical skills, as indicated in the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2).

21. The Mauritius Legislative Assembly had called for an end to the discriminatory practices to which the workers in the sugar industry were being subjected. What measures had been taken to protect those workers? He would like particularly to have full information on the role of the Taxpayers and Producers Association.

22. The Sub-Committee should be better informed concerning the new electoral system in Mauritius and the coming elections. Would they be based on universal suffrage, and when would they take place? It was also desirable to know the role of the parties, to determine the extent to which they genuinely represented the people or, on the contrary, represented special interests. Most important of all, the elected representatives of the people should have adequate powers and the Governor should no longer play an unduly large role.

23. In conclusion, he hoped that the United Kingdom would stop giving the impression of wanting above all to safeguard the privileges of the settlers and to serve strategic interests which were of no concern to the people and that it would display a readiness to help the peoples under its administration to free themselves from discrimination and subjection.

24. The representative of the United Kingdom said that he wished to reply at once to some of the questions asked by the Tanzanian and Syrian representatives and that he would comment on other points later.

25. The Tanzanian representative had said, concerning the three courses envisaged in paragraph 28 of the constitutional adviser's report (nominal independence, "free association" and close association or integration), that they would be imposed on the population of the Seychelles and excluded any real independence.

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Page 3 of the document on the Seychelles, however, contained a statement by the Secretary of State for the Colonies noting that the adviser had wished to consider not final solutions but the progressive establishment of constitutional machinery aimed precisely at permitting the people to decide their ultimate status. The adviser himself stated in paragraph 27 that he had concerned himself with immediate measures. As to the elections in Mauritius, he referred the Syrian representative to paragraphs 20 and 21 of the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2), which indicated, inter alia, that in the view of the United Kingdom Government, it was most desirable that the elections should be held at the earliest practicable time and that neither the United Kingdom Government nor the Government of Mauritius had been responsible for the fact that it had been impossible to keep to the time-table originally planned. The completion of the register of electors should in principle make it possible to hold elections in 1967.

26. He would have to consult his Government concerning the sending of a visiting mission if that was in accordance with the Special Committee's views.

27. The representative of the United Republic of Tanzania said that, according to the United Kingdom representative, the proposals in paragraph 28 of the constitutional adviser's report on the Seychelles were not final. Inasmuch as the people of the Seychelles had expressed a wish to achieve independence rapidly, the solutions outlined in that paragraph could only create confusion and were, in fact, an insult to the people of the Territory. As to the "political inexperience" of the electorate and the candidates, which the adviser noted with regret in paragraph 34, he wondered if it was not attributable to the fact that the United Kingdom was preventing the people from exercising their rights. Moreover, paragraph 47 shows clearly that the "free association" formula was regarded as final.

28. The possible solutions envisaged by the United Kingdom revealed the latter's neo-colonialist intentions. The administering Power had never shown any willingness to implement General Assembly resolution 1514 (XV) and had taken care, in its statement, to make no mention of complete independence.

29. The representative of Syria asked whether the Legislative Assembly to be chosen in the elections which, according to the representative of the administering Power, were to be held in 1967, would really be in a position to decide the future of Mauritius by adopting a constitution and leading the Territory to independence if that was the wish of the population, or whether, on the contrary, it would be a passive body, content to pass minor legislation under the control of the Governor.

30. The representative of the United Kingdom, replying to the Syrian representative, said that the Legislature could lead Mauritius to independence, if the majority of its members so desired, after six months of self-government. The forthcoming elections would therefore be more than a mere formality.

31. The "free association" formula which the Tanzanian representative had criticized could not, in any case, be imposed. It was for the people of the Seychelles, acting through their representatives, to choose their ultimate status. However, it should not be forgotten that the people were divided, some wanting independence, some association, and others integration, and that the Territory's two political parties, the Seychelles Democratic Party (SDP) and the Seychelles People's United Party (SPUP), had different programmes in that regard.

32. The representative of Syria said that the current debate was enabling the Sub-Committee to form a clearer idea of the situation. He asked the United Kingdom representative whether, if most of the representatives opted for independence, Mauritius would become independent in 1968. The forthcoming elections were of the greatest importance, and it seemed advisable that United Nations observers should be present.

33. The representation of the United Kingdom confirmed that, under the present arrangements, not more than six months would elapse between the general election and the attainment of independence, if that was what the newly elected legislature wanted. On this basis independence could take place by 1968, subject to the views expressed by a majority of the Legislature after the general election. The Government of Mauritius had agreed to the presence of Commonwealth observers to verify the electoral registers and supervise the voting procedures. If a formal request were made that the Sub-Committee should also send observers, he would have to consult his Government before replying.

34. The representative of the United Republic of Tanzania observed that the United Kingdom representative had still not stated definitely whether his Government's policy was one which would permit the Seychelles and Mauritius to

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achieve full independence. Study of the documents as well as information available to him indicated that the people wanted full independence at an early date. He also wished to know when the machinery referred to in the documents, the operation of which had already been explained, would be set up. His Government did not wish to be confronted with a fait accompli or to see the administering Power impose a point of view which was at variance with the people's desires. He also noted that the United Kingdom representative had carefully avoided mentioning the dismemberment of Territories, which was a violation of the Charter and of General Assembly resolution 1514 (XV). A specific reply on that point would enable the Sub-Committee to make definite recommendations to the Special Committee and the General Assembly.

35. The representative of Syria said that if the new elections on Mauritius were to be held in 1967, after which there was to be a six-month delay, the island would presumably attain independence in 1968. As to the question of observers, he that the United Kingdom Government would appreciate the need for a United Nations presence during the elections. Like the Tanzanian representative, he hoped that the United Kingdom delegation would clarify the question of the dismemberment of Territories.

36. The representative of the United Kingdom pointed out to the Tanzanian representative that, as the United Kingdom Government's report indicated, it was for the members of the future legislature of the Seychelles, elected by universal suffrage, to consider the Territory's future, and that there had been no decision as to its ultimate status. As to the content of the new constitutional proposals which were to be implemented in Seychelles, all relevant details were given on page 4 and in chapter V of his Government's report on the recommendations of the constitutional adviser, and in chapter V of the adviser's report. The proposed changes would take effect when the general elections were held, i.e., in October 1967 at the latest.

37. The representative of the United Republic of Tanzania said that his delegation would take note of the United Kingdom representative's explanations. The paramount question of sovereign rights had not, however, been clarified. The documents referred to gave no definite indication as to whether the United Kingdom planned to grant complete independence to the Territories in conformity with General Assembly resolution 1514 (XV). On the contrary, it appeared that the proposals in

chapter IV, paragraph 28 (a), (b) and (c), of the United Kingdom Government's report would be implemented and that a solution involving independence would be discarded, as it had in the case of the Caribbean Territories.

38. The representative of the Union of Soviet Socialist Republics said that the discussion of the situation in Mauritius, Seychelles and St. Helena by the Special Committee in 1966 had clearly shown that the administering Power had not yet implemented the provisions of General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions, that the political development of the Territories was proceeding very slowly, that the electoral arrangements devised for Mauritius had been the subject of serious controversy among various groups and political parties and that universal suffrage had still not been introduced in the Seychelles. The Special Committee had also expressed concern at the establishment of the new "British Indian Ocean Territory" and the reports that it would be used as a military base, and had called upon the administering Power to respect the territorial integrity of Mauritius and Seychelles and, in keeping with operative paragraph 12 of General Assembly resolution 2105 (XX) of 20 December 1965, to refrain from using the three Territories for military purposes. It had also called upon the administering Power to recognize the right of the indigenous inhabitants to dispose of the natural resources, and to take measures to diversify the economy, of the Territories. Those conclusions and recommendations had been confirmed by the General Assembly at its twenty-first session. In resolution 2232 (XXI) the General Assembly had, inter alia, urged the administering Power to allow visiting missions to go to the Territories to study the situation and make appropriate recommendations, and had reiterated its earlier declaration that any attempt to disrupt the national unity and territorial integrity of colonial Territories or to establish military bases and installations in them was incompatible with the Charter of the United Nations and with resolution 1514 (XV). In resolution 2189 (XXI) of 13 December 1966 the General Assembly had requested the colonial Powers to dismantle their military bases in colonial Territories and to refrain from establishing new ones.

39. All three Territories were, however, still under United Kingdom domination and United Kingdom Governors still had wide powers: in Mauritius, the Governor still appointed the Premier and most of the ministers, and in the Seychelles and

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St. Helena he presided over both the Executive Council and the Legislative Council. The people of Mauritius had long been asking for independence, but it seemed as if the administering Power still intended to delay granting it by imposing certain conditions such as that the people should first gain experience of managing their own affairs. A study of the new "Proposals for Constitutional Advance" in the Seychelles showed that they were not intended to prepare the people for independence in accordance with General Assembly resolution 1514 (XV), but rather to perpetuate United Kingdom control of the Territory, and that independence was ruled out as a solution. Under the suggested "committee system of government", the Governor, in addition to his general reserved powers, would have direct responsibility for law and order, the public service and external affairs, and it appeared that he would retain the power to appoint the non-elected members of the Legislative Council and to nominate three other members. As the representative of Tanzania had indicated at the previous meeting, the proposed new arrangement would impede the full exercise of the right to self-determination and independence by the population in accordance with resolution 1514 (XV). Of the three possible courses suggested for the Territory, the one recommended was not even "nominal independence", but some form of "free association with the United Kingdom", which indicated that the administering Power did not wish to relinquish control of the Territory. That had been confirmed by the fact that the United Kingdom representative had given no positive reply at the previous meeting to the question of whether it did indeed intend to grant complete independence to the Seychelles. It was thus clear that the administering Power was impeding the political development of the three Territories.

40. As to the economic situation in the Territories, it was still as serious as before, if not worse. They remained a source of primary commodities and cheap labour for the metropolitan country, which prevented them from developing economic relations with other countries. According to document A/AC.109/L.375 and Corr.1 and 2, as much as 73 per cent of Mauritius exports went to the United Kingdom, including most of the sugar produced, and, as the Premier of the Territory had said, progress in the diversification of the Territory's economy had been slow. A similar situation prevailed in the Seychelles and St. Helena. All three Territories

depended on a single crop, and that made economic progress very difficult. They also depended increasingly on external aid. After the prolonged domination of foreign capital the people of Mauritius were still without the means of production required to satisfy more than 10 per cent of their needs.

41. The social situation in the three Territories also continued to be distressing. There was chronic unemployment in all three and the Christian Science Monitor of 23 January 1967, described the unemployment problem in Mauritius as "hopeless". The gulf between the planters and the peasants in the Seychelles had even been admitted in the document on the proposals for constitutional advance. Furthermore, there were still no facilities for higher education in the Territories.

42. The explanation for London's constitutional manoeuvres and the delay in granting independence appeared to be that the administering Power intended to turn the Territories into military bases. In spite of the United Kingdom representative's assurances during the twenty-first session of the General Assembly that the "British Indian Ocean Territory" would not be used for military purposes, there was continuing evidence that the United Kingdom and the United States did not wish to abstain from using the new colony as an important link in their "East of Suez" policy, a policy aimed at preserving the position of the British and other foreign monopolies which exploited the natural wealth of the Middle East, southern Africa and other regions. The military installations which the United Kingdom was planning to construct in the "British Indian Ocean Territory" would be a direct threat to the countries of Asia and Africa, as the Cairo Conference of Non-Aligned States had pointed out. The Economist of 14 January 1967 had reported that the immediate aim was to station a mobile striking force in the new Territory. The United States still maintained military personnel to man rocket-tracking stations on Mahé, in the Seychelles, and on Ascension Island, which had gained lamentable notoriety as a base for United States and Belgian intervention in the Congo in 1964. There was also evidence that the United States intended to establish a communications relay station on the island of Diego Garcia.

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43. The United States was therefore acting as an accomplice of the United Kingdom in violating the General Assembly resolutions relating to the Territories. The Sub-Committee must condemn the militarist activity of the imperialist Powers, which was delaying independence, and which was clearly the reason for the United Kingdom's refusal to allow a visiting mission to go to the Territories.

44. He strongly supported the proposals made by the representatives of Syria and Tanzania at the previous meeting. Since the administering Power had failed to respond to the repeated appeals of the General Assembly and the Special Committee to grant immediate independence to Mauritius, the Sub-Committee should ask the Special Committee to recommend the General Assembly to set a time-limit for the granting of independence without any conditions or reservations. In view of the continuing use of Mauritius and Seychelles for military purposes and the creation of the "British Indian Ocean Territory" in violation of General Assembly resolutions 2105 (XX), 2189 (XXI) and 2232 (XXI), the Sub-Committee should recommend that a visiting mission be sent to the Territories to study the situation and make recommendations to the General Assembly at its twenty-second session. Lastly, the administering Power should be asked to inform the Special Committee before the opening of the twenty-second session on how the recommendations of the General Assembly and the Special Committee were being implemented, especially those concerning the immediate exercise of the right to self-determination by the population, the prompt holding of elections on the basis of universal suffrage in order to create representative organs in Seychelles and St. Helena, and the safeguarding of the people's right to dispose of their own resources and create a diversified economy. Such action would help the people of the Territories towards self-determination and independence and would show them that they had the moral support of the United Nations.

45. The representative of Yugoslavia said that, once again, the Sub-Committee must take note of the fact that the administering Power had done very little in the direction of allowing the peoples of the three Territories to decide their future status and form of government freely and democratically. The administering Power had shown that it was still not prepared to implement the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples and of General Assembly resolutions 2066 (XX), 2069 (XX) and 2232 (XXI).

46. Not only had there been no positive changes in the political and constitutional fields but all three Territories were also characterized by a steadily deteriorating economic situation. The Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2) spoke of a downward trend in *per capita* income and a rise in unemployment in Mauritius and Seychelles. The administering Power issued warnings about the deterioration in the economic and social situation but took no measures to remedy it. The chief reasons for the negative economic trends had been noted by the Sub-Committee on previous occasions: the single-crop economy, the large areas of arable land in the hands of a small number of plantation owners, and the concessions that continued to be granted to foreign monopolies under conditions which disregarded the interests of the Territories.

47. Another problem which was of extreme concern to his delegation was the violation of the territorial integrity of the Territories. The establishment of the "British Indian Ocean Territory" was contrary to the basic principles set forth in General Assembly resolution 1514 (XV) and was an indication of neo-colonialist plans mentioned in the Cairo Declaration of non-aligned countries. On 10 November 1965, the Secretary of State for the Colonies had confirmed in the House of Commons that the new Territory was to be used by the United Kingdom and the United States for the erection of defence facilities. The statement on 16 November 1966 by the Secretary of State for Defence that no plan had been made for the creation of military bases in the Territory had done little to remove the apprehensions regarding the future plans of the two Governments concerned. The fact that the reports concerning military bases had not been categorically denied, especially when it was known that certain military installations were already being constructed, was an indication to his delegation of the existence of plans which might have dangerous consequences for the whole area. According to *The Baltimore Sun*, of 7 April 1967, a spokesman for the Indian Government had stated that that Government was strongly opposed to the establishment of military bases in the Indian Ocean and would raise the matter at the United Nations. The same paper stated that the United Kingdom, in co-operation with the United States, was planning to build an air strip in the Territory in order to assist in the movement of troops and aircraft from Europe to Asia.

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48. The establishment of military bases could only be intended to check the process of decolonization and threaten the independence of African and Asian countries. The argument that the Governments of Mauritius and Seychelles had agreed to the transfer of the islands concerned to the new Territory was without substance because Mauritius and Seychelles were still not independent. The fact that the United Kingdom had been in a hurry to detach the Chagos Archipelago from Mauritius prior to the proclamation of independence spoke for itself.

49. With regard to recent constitutional developments in Mauritius and Seychelles, he could not accept the United Kingdom's contention that measures leading to the transfer of powers to democratically elected representatives of the people were being taken. In Mauritius, elections had once again been postponed. The statement published by the Commonwealth Office on 21 December 1966 was clearly intended to give the impression that responsibility for the delay did not rest with the United Kingdom. Nevertheless, it was his view that the administering Power alone was responsible for delaying the process of self-determination and independence.

50. In Seychelles, the situation was even more disturbing. There, the administering Power was insisting on a longer constitutional process on the pretext that the inhabitants lacked political experience. Sir Colville Deverell's proposals for constitutional advance, contained in the document which had been made available to members by the United Kingdom representative, were inconsistent with the provisions of relevant United Nations resolutions. Sir Colville complained that the political parties were primarily preoccupied with the question of the ultimate status of Seychelles rather than with constitutional evolution, but that was quite understandable. Sir Colville also stated that the question of the Territory's status could not be an immediate issue. Why not? Sir Colville went on to suggest three kinds of ultimate status which he said were the only possible kinds for a small, isolated island such as Seychelles. All three proposals involved some form of association or integration with the United Kingdom. In his delegation's view, the advancing of such suggestions was inadmissible in that it prejudged the people's decisions.

51. The United Kingdom apparently wished it to be believed that the measures proposed would significantly improve the constitutional situation. He could not agree with such a contention. It seemed that, under the new system, the ratio of

elected to appointed members of the Executive and Legislative Councils would be eight to seven. That means little, however, in view of the influence exercised by the Governor in the councils. The administering Power was clearly delaying the transfer of power to the democratically elected representatives of the people.

52. The following conclusions could be drawn with regard to the three Territories: (a) the administering Power had failed to implement the provisions of General Assembly resolution 1514 (XV) and other relevant resolutions; (b) it was endeavouring to delay the transfer of power to elected representatives of the people; (c) it had created a new colony out of islands detached from Mauritius and Seychelles, thus directly violating the principle of territorial integrity; (d) it was putting into effect its plans for the establishment of military bases on the so-called British Indian Ocean Territory; (e) the economic and social situation in the Territories continued to deteriorate and concessions were being granted to foreign monopolies.

53. He believed that the Sub-Committee should, on the basis of these facts, recommend that concrete measures should be taken to guarantee the rights of the peoples of the Territories to self-determination and independence. The sending of a visiting mission should be recommended, particularly to Seychelles, so that the Special Committee would not be faced with the situation it had been confronted with in the case of the British Caribbean islands.

54. The representative of Finland said that, in view of the striking differences between the three Territories under consideration in terms of political development, economic conditions, and the ethnic background and size of population, it was hard to envisage any common pattern for their constitutional advancement. The largest of the Territories, Mauritius, seemed to be well on the road to full independence. Elections were to take place in the relatively near future at a date set by the Government of Mauritius, and if the newly elected Assembly decided in favour of independence, it could be attained after a six months' transitional period. After some regrettable delay, the people of Mauritius would thus be able to express their views regarding the future status of the Territory, and it seemed that, although there were some differences among the political parties, the majority favoured progress to full independence. As it neared independence, Mauritius faced certain

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difficult problems. Further action was needed to diversify its economy, and the problems resulting from the rapidly expanding population needed to be tackled, perhaps through an expanded family planning programme.

55. Political development in Seychelles seemed to be proceeding more slowly. There had been little demand for full independence and, in view of the smallness of the Territory in size and population and of its economic situation, some special constitutional arrangement might be called for, perhaps as an interim solution. He noted with satisfaction that elections were soon to be held on the basis of universal adult suffrage and that a new constitution was being prepared. It was important, however, that plans for constitutional advance should not in any way exclude the possibility of full independence. Economic development was a problem also for Seychelles and it was obvious that the Territory needed outside help.

56. Whatever future course might be chosen by the three Territories, it was essential that the choice should rest with the freely elected representatives of the people. It was equally important that the people should retain the right in the future to choose an alternative political status.

57. The representative of the United Kingdom said that the Sub-Committee had heard many familiar assertions from the representatives of the USSR and Yugoslavia, and his delegation had had to reply to them on past occasions. They ranged from the inaccurate to the fantastic. Since the general debate was not yet concluded, however, his delegation would prefer to defer its comments on the various statements which had been made to a later meeting.

58. The representative of the Union of Soviet Socialist Republics said that his delegation had always given close attention to factual material supplied by the administering Power and derived from other sources. If the United Kingdom representative wished, he could produce the sources on which he had based his statement; they consisted mainly of United Kingdom newspapers, such as The Times and The Observer. The United Kingdom representative would find that the Soviet delegation's statements were confirmed by dispatches in such newspapers.

59. The representative of Yugoslavia said that, if his assertions were "familiar", the reason was that the colonial Power had repeatedly postponed the accession of the people to self-determination and independence. As long as that remained the case, his delegation would be obliged to repeat its arguments.

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60. The representative of Tunisia pointed out that, although General Assembly resolution 2066 (XX) concerning Mauritius had invited the administering Power to take steps to implement resolution 1514 (XV), to take no action to violate the territorial integrity of Mauritius and to report to the Special Committee and the General Assembly on the implementation of resolution 2066 (XX), and although General Assembly resolution 2069 (XX) concerning a number of Territories, including Seychelles and St. Helena, had called upon the administering Power to implement the relevant resolutions of the General Assembly and to allow visiting missions to visit the Territories with its full co-operation and assistance, it appeared from the information provided by the United Kingdom representative that no progress along those lines had been made in the three Territories under consideration. He had asserted that the changes which had taken place or which were planned were such as to hasten the implementation of resolution 1514 (XV), but that was open to question since the administering Power had not complied with the General Assembly's request to allow visiting missions to visit the Territories. The colonial period was still too fresh in the minds of many representatives for them to believe everything an administering Power said about the administration of Territories under its control. If the United Kingdom believed that it had fulfilled the obligations imposed on it by the international community, why did it refuse to allow representatives of the United Nations to visit the Territories and ascertain the truth of its statements? It was necessary for the United Kingdom to permit visiting missions if the present deadlock was to be broken. Everything that had been said during the current debate, including the statements of the administering Power, had already been said in previous years. All that the Sub-Committee could do, therefore, was to recommend the adoption of another resolution, reaffirm the inalienable right of the people of the Territories to self-determination and independence and request the administering Power once again to comply with United Nations resolutions. That represented no progress and it was the administering Power which was to blame. If United Nations representatives were allowed to ascertain conditions in the Territories, it would perhaps be easier to achieve a just and equitable solution of their complex problems.

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61. The representative of the United Kingdom, replying to questions which had been raised during the debate, said with regard to the problem of unemployment in Mauritius and the need to diversify the country's economy that it was the policy of the Mauritius Government to do everything possible to encourage the establishment of new industries and to that end a number of incentives had been provided in the shape of tariff concessions and financial assistance by the Government Development Bank. A number of new industries had already been established, or were being considered, including factories for the production of soap, margarine and edible oil, textiles and fertilizers, for the manufacture of stationery and watches, and for the processing of synthetic jewels. Discussions had been held with representatives of the United Nations Industrial Development Organization (UNIDO) on strengthening the local machinery for industrial production. In agriculture, the United Nations Special Fund and the United Nations Food and Agriculture Organization (FAO) were conducting a joint survey of land and water resources and were expected to recommend various projects which should lead to the improvement and greater diversification of agricultural production. An Agricultural Marketing Board had been in operation for the preceding three years and the Mauritius Government had just approved a number of new schemes for agricultural co-operative credit. It was clear, therefore, that the Mauritius Government was determined to do everything possible to diversify the economy of the Territory and reduce its dependence on the production of primary commodities.

62. Inevitably, the Mauritius Government, like most other developing countries, had sought, in promoting local industrialization, to attract foreign capital. It was unrealistic to regard such policies as continued concessions to foreign monopolies. His delegation knew of no arrangements for foreign investment in the Territory which were intended to operate on a monopolistic basis or in a manner contrary to the interests of the people of Mauritius.

63. The representative of Syria had referred to allegations of discrimination in the sugar industry and had asked about steps being taken to protect the workers. Conditions of employment in the sugar industry were regulated by wage councils appointed by the Mauritius Ministry of Labour and there was no discrimination

among workers in any form of employment. As to the matter of hydroelectric installations, there were at present eight hydroelectric power stations operated by the Central Electricity Board of Mauritius and a ninth was to be completed by 1969. With regard to the Seychelles Taxpayers and Producers Association, he said that that organization, as indicated in paragraph 64 of document A/AC.109/L.374 and Corr.1 and 2, had for some time ceased to exist.

64. The representative of Finland had invited attention to the problems of a rapidly expanding population and the desirability of an expanded family planning programme. There was now a much wider acceptance among all shades of religious opinion and communities in the Territory of the need for family planning and, with government support, certain voluntary agencies had already made a start.

65. With regard to the so-called dismemberment of Mauritius and Seychelles resulting from the establishment of the British Indian Ocean Territory, as alleged by the representatives of Syria and the United Republic of Tanzania, the new Territory was made up of a number of small scattered islands separated from both Mauritius and Seychelles by many hundreds of miles. The Chagos Archipelago, for instance, although previously administered as part of Mauritius, was geographically much nearer to the Seychelles. For nearly 100 years, all the islands, including Mauritius and Seychelles, had formed a single dependency, and thereafter, beginning about sixty years previously, the islands forming the new British Indian Ocean Territory had been attached either to Mauritius or Seychelles purely as a matter of administrative convenience. They could not be considered as a homogeneous part of either of those Territories in ethnic, geographical, economic or any other terms. The islands had no indigenous population, since they had been uninhabited when originally acquired by the United Kingdom Government and virtually all persons now living there were migrant workers. The administrative rearrangements which had been worked out freely with the Governments and elected representatives of the people of Mauritius and Seychelles and with their full agreement, in no sense, therefore, constituted a breach in the natural territorial and ethnic integrity of those Territories.

66. Some representatives, including the representative of the USSR, had implied that there was a conspiracy to delay independence and impede political development in the Territories in order to turn them into military bases. The clear assurances

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given by the United Kingdom Government concerning independence for Mauritius and the information provided on constitutional progress in the Seychelles spoke for themselves. The steady progress towards full self-government and decolonization was irrefutable evidence against such allegations.

67. Some delegations had also made familiar allegations that the United Kingdom Government was planning to establish bases in the British Indian Ocean Territory. The allegations had been based exclusively on press reports, which were often highly speculative, since the role of the Press in the United Kingdom was not restricted to that of a subservient reflection of government policies. Those delegations should ignore such speculative comment and accept the clear statement made by the United Kingdom Secretary of State for Defence on 16 November 1966 that his Government had no programme for creating bases in the British Indian Ocean Territory. Although the United Kingdom Government had announced as long ago as November 1965 that the islands might provide potential sites for defence purposes such as refuelling or communications facilities, no decision had in fact been taken to establish any such facilities. Such possible uses were very far removed from the bogey of military bases threatening the independence of African and Asian countries which some delegations had sought to raise.

68. On the question raised by the representative of Syria concerning a United Nations presence during the forthcoming elections in Mauritius, his delegation would be prepared to seek instructions on any specific request which the Committee might make, but he pointed out that the Banwell Commission's report had recommended that a team of Commonwealth observers should be present during the elections and that that recommendation had been accepted by all political parties in Mauritius.

69. The representative of Syria had also asked about the need to take special account of the interests of the communities in the electoral arrangements in Mauritius. He pointed out that the Territory's population was of several different ethnic origins, and that among the political groupings and parties there were bodies which claimed to represent the Hindu and Moslem communities. Under the previous system, it had been possible for as many as fifteen out of sixty-five members of the Legislature to be nominated by the Governor in order to protect under-represented sections of the community. Since it had been impossible at the

Constitutional Conference in 1965 so reach agreement on an alternative procedure, the Banwell Commission had been appointed to make recommendations which would ensure that the main sections of the population should have an opportunity to secure fair representation of their interests. It was not the United Kingdom Government which had demanded that such special arrangements should be made, but the local political parties and especially the minority communities. Under the new electoral arrangements, there would be eight "best loser" seats out of a total of seventy. Four of those would be reserved for under-represented communities irrespective of party considerations, and the other four were intended to restore the balance of party representation in so far as it had been disturbed by the previous award of four seats on a purely communal basis. The arrangement was essentially a compromise. The United Kingdom Government had throughout not wished to impose any solution and the arrangements now in operation had been generally accepted by all sides. His Government had, however, while paying every regard to local wishes, sought to discourage political parties in the Territory from appealing exclusively to particular communities. Sixty out of the seventy members in the new Legislature would be elected in three-member constituencies in which each voter was obliged to cast his full three votes and the result of such an arrangement should be to minimize communal influences. There had, of course, been universal adult suffrage in Mauritius since 1958.

70. The representative of the United Republic of Tanzania said that he would like to make some preliminary comments on the United Kingdom representative's statement. The United Kingdom representative, in attempting to justify the dismemberment of Mauritius and Seychelles, had spoken of distances of many hundreds of miles, but it might be pointed out that the islands in question were many thousands of miles from the United Kingdom. That fact showed the extent to which the United Kingdom regarded geographical proximity as a prerequisite for the existence of a nation. At any rate, the islands in question had always been treated as part of Mauritius and Seychelles. If the facts were as the United Kingdom presented them, one could only assume that the United Kingdom had been systematically misleading the United Nations in the information it had been submitting. If that was not the case, the United Kingdom must admit that it was now pursuing a policy incompatible with the United Nations Charter as well as contrary to the wishes of the freedom-loving and peace-loving peoples of Africa and Asia.

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71. The United Kingdom representative had said that military bases were not now being built on the Indian Ocean islands, but the Tanzanian delegation would like to hear it stated that the United Kingdom Government did not intend to place any military installations, equipment or personnel on the islands, since any such installations and personnel could only be intended for aggressive purposes. The establishment by the United Kingdom of military installations in the Indian Ocean must be seen as part of the military strategy of imperialism. The installations were undoubtedly intended for use against peoples engaged in the legitimate struggle for liberation. The United Kingdom had refused to use force where it was justified, to oust Ian Smith's régime in Southern Rhodesia, but was using all the military means at its disposal against the struggling peoples of Aden and other areas. He would like to be told whether or not the United Kingdom had any military personnel or installations, including military transportation facilities, on the islands.

72. With regard to the reliability of press reports, the question was whether the United Kingdom Government had denied the reports. The Times of London had reported on 25 March 1967 that the United Kingdom was in the final stages of negotiations to buy three privately owned islands in the area for defence purposes. If the United Kingdom Government did not formally deny such reports, his delegation would assume that they were true.

73. The United Kingdom representative had dwelt at length on the need for the representation of the various communities in Mauritius. The United Kingdom, ever since it had controlled Mauritius, had pursued a systematic policy of isolating one group from another, in accordance with the principle "divide and rule". Now, when the nationalists called for independence, the colonial Power claimed that the people were divided. The electoral system under which each voter would be obliged to cast three votes was one which had been tried in Tanganyika prior to its independence and had since been discarded. Such a system actually amounted to a denial of the right of vote, as he would show in more detail at a subsequent meeting.

74. With regard to Seychelles, the United Kingdom had still not indicated that it would accede to the people's demand for independence. "Decolonization" could mean anything, and the Special Committee had seen how the United Kingdom interpreted that term in the case of six Territories in the Caribbean. He would like to be told that under the policy of the United Kingdom Government the people's demand for independence would be granted.

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75. The representative of the United Kingdom, replying to the remarks of the representative of the United Republic of Tanzania, said that that representative had claimed that the islands forming the British Indian Ocean Territory were part of Mauritius and Seychelles, but the only evidence he had adduced was that the islands had formerly been treated as part of Mauritius or of Seychelles for administrative purposes. That was true, but, in his view, irrelevant.

76. He formally repudiated the Tanzanian representative's unsubstantiated charge that the United Kingdom had misled the United Nations in the information it had provided on the Territories under discussion. The United Kingdom had never withheld any information relevant to the Special Committee's work, and had indeed gone much further than was strictly required by criteria of relevance. The Tanzanian representative might disbelieve the statements of official United Kingdom spokesmen if he wished, but his counter-assertions had no basis in fact. The matter referred to in The Times report cited by the Tanzanian representative had been dealt with in a statement by the Secretary of State for Defence, on 12 April 1967, who had said that the freehold of the islands in question, which were part of the British Indian Ocean Territory, had been acquired by the Government in order to ensure that they would be available for any facilities, such as refuelling or communications, which the Government might wish to establish there. The United Kingdom had provided full information on the Territories every year from 1964 onwards. There was little purpose in continually furnishing information if it was to be continually ignored.

77. The representative of the Union of Soviet Socialist Republics said that he would like to comment on a number of matters touched on by the United Kingdom representative. That representative had asserted that the administering Power was making efforts to diversify the economy of the Territories under discussion. It was clear, however, that any such efforts had been inadequate. There was chronic unemployment on the islands, and skilled workers were obliged to emigrate to find work. In a survey carried out by Barclays Bank, it had been stated that the United Kingdom had not been vigorous enough in its efforts to help the people of the Territories to help themselves. Basic goods required to meet the essential needs of the people had to be imported.

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78. The United Kingdom representative's claim that his Government's military activities in the area were not impeding the progress of the Territories to independence would not bear examination. Preparation for self-determination must include efforts to build up the economy, and the Secretariat paper (A/AC.109/L.374 and Corr.1 and 2) showed that military activities were impeding economic development. In paragraph 114 (A/AC.109/L.374/Corr.2) it was stated that, from 1965, the major single source of income in St. Helena had been employment in "communication stations" on Ascension Island - i.e., a military base. Five flax mills which had been in operation in 1965 had been closed down, clearly because the labour force had been lured to the bases by advantages offered them and diverted from normal activities essential for economic independence.

79. The administering Power had denied that it was dismembering the Territories of Mauritius and Seychelles. Clearly the United Kingdom was ignoring General Assembly resolution 2232 (XXI), which stated unambiguously that any attempt at the disruption of the territorial integrity of colonial Territories and the establishment of military bases and installations there was incompatible with the purposes and principles of the Charter and of General Assembly resolution 1514 (XV).

80. The representative of the administering Power had cast doubt on the veracity of reports quoted from the United Kingdom Press. He did not think, however, that the United Kingdom delegation could dispute the fact that, on 15 June 1966, the British Prime Minister had indicated that it was his Government's policy to avoid establishing large bases in populated areas and instead to rely on staging posts such as those available in the Indian Ocean, where there was virtually no local population, so that United Kingdom forces could get speedily to where they were needed at minimum cost. That statement spoke for itself.

81. The assertion that the islands in question had no population of their own was questionable. The United Kingdom Secretary of State for the Colonies had stated in 1965 that there were 1,400 people living on the islands. The inhabitants certainly did not wish to see their islands handed over to the United Kingdom for use as military bases.

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82. It was asserted that the United Kingdom's military activities were not slowing progress towards independence, and that the local governments had agreed. But the agreement of governments which were not independent could not be considered valid. Under General Assembly resolution 1514 (XV), self-determination must not be subject to any conditions, and no form of pressure must be exercised on the people. Once independent, the new nations could enter into whatever arrangements they wished.

83. The representative of Yugoslavia recalled that his delegation was one of those which had raised the question of the establishment of United Kingdom military bases in the Territories. The United Kingdom representative had once again referred to the statement made on 16 November 1966 by the Secretary of State for Defence that no plan had been made for the creation of military bases in the British Indian Ocean Territory. The Yugoslav delegation did not regard that statement as a categorical denial by the United Kingdom Government, since it left open the possibility of the establishment of such bases in the future. According to the United Kingdom representative, members were basing their views on press reports, which were often highly speculative. He pointed out, however, that when he had said at the Sub-Committee's 36th meeting that the Indian Government was strongly opposed to the establishment of military bases in the Indian Ocean, he had relied on a statement by a spokesman for that Government.

84. He regretted that the United Kingdom representative had not deemed it necessary to discuss the points raised in his statement regarding the preoccupation of the political parties in Seychelles with the question of the ultimate status of the Territory. In his delegation's view, that preoccupation meant that the people of Seychelles were not interested in a prolonged process of constitutional evolution. Furthermore, his delegation considered that the changes in the ratio of elected to appointed members of the Executive and Legislative Councils did not represent a significant improvement in the constitutional situation.

85. The representative of the United Republic of Tanzania, speaking in exercise of his right of reply, said that the United Kingdom representative's second statement had served to confirm what he himself had said earlier. The United Kingdom representative had informed members that his Government had been providing information on the new colony only since 1964. However, the Sub-Committee had been in existence for some time before that year. What the Tanzanian delegation wished

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to call into question, however, was not the transmission of information but the type of information transmitted. If the Territory in question had been a United Kingdom colony, why would that country pay £3 million to Mauritius as compensation for the inclusion of certain of its islands in the "British Indian Ocean Territory"? Colonialism under any guise was a crime against humanity and military aggression was even worse.

86. At a previous meeting the United Kingdom Government had been called upon to indicate whether its policy was to lead the Territories to independence. The United Kingdom Government had ignored the demand of the people of Seychelles for unfettered independence. In his delegation's view, it was important that the United Kingdom Government should co-operate with the Sub-Committee and the Special Committee and agree to the sending of a visiting mission to Mauritius and Seychelles. It was essential that that Government should renounce its colonial policy in those Territories.

87. The representative of Tunisia recalled that a recent resolution of the General Assembly had called upon the administering Power to make it possible for the United Nations to send a visiting mission to the Territories under consideration. He stressed that the question of visiting missions was a matter of primary importance and the United Kingdom representative had not given a satisfactory reply in that regard. It was necessary for members to have a clear idea of the United Kingdom Government's position on the possibility of sending a visiting mission to Mauritius and Seychelles for the purpose of ascertaining the situation in those Territories. With regard to Mauritius, the United Kingdom representative had said that a group of observers from the Commonwealth would be invited to be present during the forthcoming elections. But he had said nothing about the Seychelles or St. Helena. In any event, what was of concern to members was the role of the United Nations.

88. The representative of the United Kingdom pointed out that the statement made in Parliament by the Secretary of State for Defence on 16 November 1966 had been in reply to a question concerning the estimated cost of establishing military bases in the British Indian Ocean Territory. The Secretary had said that as no plan had been made for the creation of such bases, he could not give any figure for the cost of such a scheme. The Soviet Union representative had referred to a statement made by the United Kingdom Prime Minister on 16 June 1966. However, a careful reading

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of that statement would not reveal any inconsistency, since the Prime Minister had spoken of the possibility of establishing facilities for refuelling and communications purposes.

89. With regard to the question of population, he had pointed out that there was no indigenous population in the British Indian Ocean Territory and that most of the people living there were migrant workers. The Soviet representative had again claimed that military activities in the area impeded constitutional development. He himself did not think that that view would be shared by the inhabitants of Malta or Singapore. In any event, his Government was not conducting any military activities in any of the Territories under consideration. The United Kingdom Government had provided a grant of £3 million to Mauritius and, in the case of the Seychelles, had undertaken to build an international airfield, which would contribute greatly to the economic development of the Territory. The Soviet Union representative had referred to figures in the Secretariat Working Paper (A/AC.109/L.374/Corr.2) and had claimed that the solution of unemployment in St. Helena was dependent on military activities. The United Kingdom delegation wished to point out that a total of 342 St. Helenians - as against 323 in 1964 - had worked on Ascension Island in 1965 and that of that total, 150 had been employed by British Government Cable and Wireless, Limited and 68 by the Ministry of Public Buildings and Works for the construction of a British Broadcasting Corporation relay station.

90. With regard to the Tanzanian representative's remarks concerning the transmission of information by the United Kingdom delegation, he wished to point out that his delegation had always provided full information on the Territories and that it was his understanding that the Sub-Committee had first begun to consider Mauritius, the Seychelles and St. Helena in 1964. Since then, his delegation had provided information on those Territories to the Sub-Committee and the Fourth Committee in 1965 and 1966.

91. His delegation took note of the comments of the Tunisian representative, and his Government would consider any request made by the Sub-Committee as a whole concerning the sending of visiting missions.

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92. The representative of the Union of Soviet Socialist Republics said, with regard to British Government Cable and Wireless, Limited, that its activities were not solely concerned with civilian operations. The United Kingdom newspaper, The Observer, had said that the cable was likely to become the main channel for relaying data back to Cape Kennedy. It was obvious that such data would be of a military nature. With regard to St. Helena and Ascension Island, he noted that the United Kingdom and the Republic of South Africa had recently held negotiations concerning the Simonstown naval base. According to a report in The Times, it had been agreed that the United Kingdom would continue to enjoy the right to fly over South Africa in the event of trouble in the Middle East. It was thus clear that those negotiations had been designed to serve the interests of the United Kingdom and to enable that country to hinder the progress of the peoples of the Middle East towards independence.

93. The representative of the United Republic of Tanzania said it was obvious that the representative of the United Kingdom and he were not speaking the same language. The representative of the United Kingdom had said that his Government had made a grant to Mauritius. Yet, according to paragraph 40 of document A/AC.109/L.374 and Corr.1 and 2, on 20 December 1966, the Parliamentary Under-Secretary of State had said that the United Kingdom had provided Mauritius with financial aid totalling £8.1 million, in addition to the compensation of £3 million paid for the inclusion of certain groups of its islands in the British Indian Ocean Territory. That showed clearly that the United Kingdom had had to pay for those islands.

94. The representative of Yugoslavia said that his delegation continued to hold the view that the statement made by the Secretary of State for Defence did not constitute a denial of any intention on the part of the United Kingdom to establish military bases in the new colony.

95. The representative of Mali noted that, in his initial statement at the 35th meeting, the United Kingdom representative had said that, in Mauritius, constitutional discussions between the United Kingdom and the representatives of the various political parties had already set the stage for independence - thus implying that there was no need for the Sub-Committee to consider whether General Assembly resolution 1514 (XV) was being implemented. That was an over-simplification of the situation. Indeed, if one examined the political and economic situation in

Mauritius, as in the other two Territories under discussion, one found that resolution 1514 (XV) was not being implemented and that basic United Nations principles were being disregarded. According to those principles, peoples had a right to self-determination and independence, decisions on constitutional changes must be left in the hands of the peoples themselves, territorial integrity must be respected and - a principle which was vital to genuine independence - the right of peoples to sovereignty over their natural resources must be guaranteed. All those principles were being flouted. In addition, military bases were being established in the Territories, despite the General Assembly decision that the establishment of such bases in colonial territories was incompatible with the United Nations Charter and resolution 1514 (XV).

96. The United Kingdom representative had gone on to say that, at the end of the Constitutional Conference held in 1965, the Secretary of State for the Colonies had announced that Mauritius would achieve independence if a resolution asking for it was passed by a simple majority of the Legislative Assembly resulting from a new general election. He found that condition surprising. He would have thought that a constitutional conference would represent the last step before independence; the requirement for new elections constituted a barrier in the path to independence. It was hard for him to conceive of a people deciding against independence, but apparently the United Kingdom hoped to ensure that the complexion of the new Assembly was favourable to it.

97. With regard to the arrangements for the elections he noted that, according to paragraph 18 of the Secretariat working paper (A/AC.109/L.374 and Corr.1 and 2) the total electorate was about 340,000, or 48 per cent of the population. Since the rate of population growth was high and the population was predominantly young, the minimum voting age of twenty-one had the effect of excluding a large part of the population, and giving the electorate an unrepresentative character. That illustrated the danger of allowing the United Kingdom to organize the elections to a body which was to vote on the question of independence.

98. Paragraph 16 of the Secretariat paper revealed that a number of seats were to be filled by the "best losers" in the elections. He found such an arrangement extraordinary, since it meant seating people who had been rejected by the electorate and thus reversing the democratic decision of the people.

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99. It was clear from the Secretariat paper that there had been no economic progress in any of the Territories and that no attempt was being made to alter the structure of the economy in order to ensure economic progress in the future. Mauritius depended essentially on the production of sugar and coffee. In view of the world market situation with regard to coffee, with severe fluctuations in prices and low price levels, coffee-producing countries were trying hard to redirect their production. It was clear that coffee provided no basis for economic development, and the situation was similar with regard to sugar. As far as employment was concerned, economic growth was not keeping pace with the rapid rise in population and chronic unemployment and underemployment resulted. No real solution to that problem was yet in sight.

100. The representative of Ethiopia said that very little had been accomplished towards implementing the provisions of relevant General Assembly resolutions in Mauritius, Seychelles and St. Helena. The Special Committee and the General Assembly had repeatedly reaffirmed the right of the people of those Territories to freedom and independence and had invited the administering Power to take effective measures to implement General Assembly resolution 1514 (XV). Yet the Sub-Committee was obliged to take up the question once again. In September 1966, the United Kingdom delegation had informed the Sub-Committee that registration for the purpose of the new elections had been due to begin on 1 September 1966 but, because of Ramadan, the elections could not be held before February 1967; it had added that Mauritius could thus achieve independence during the summer of 1967.

101. At the 35th meeting, however, in reply to a question from the representative of Syria, the United Kingdom representative had said that independence would probably be obtained in 1968. For certain reasons, the elections due to be held in February 1967 had been postponed. She regretted to have to say that her delegation was not satisfied with the reasons given for the delay. The Ethiopian delegation urged the United Kingdom Government to hold the promised elections at an early date. The people of Mauritius had expressed their wish for independence in 1965 at the London Constitutional Conference, but they were still waiting for the day of independence to arrive. Her delegation appealed to the administering Power to implement fully the Declaration on the Granting of Independence to Colonial Countries and People.

102. With regard to Seychelles and St. Helena, developments were still very slow; hardly any progress had been made in either the political, economic or social situation. As could be seen from Sir Colville Deverell's report, the situation in Seychelles remained serious. Sir Colville had expressed the opinion that, in view of the political inexperience of the people, constitutional evolution should proceed "with reasonable deliberation", and had complained that the preoccupation of the political parties with the question of the ultimate status of Seychelles was distracting attention from the more immediate matter of the next steps along the path of constitutional evolution. Whatever Sir Colville's views on the people's preoccupation with the question of the Territory's ultimate status might be, her conclusion was that the people of Seychelles were anxiously awaiting full independence. She would therefore like to see the administering Power comply with the people's wishes on the basis of General Assembly resolution 1514 (XV) and other relevant resolutions.

103. As to economic conditions, Seychelles had been unable to balance its budget without external aid since 1958, unemployment was increasing, the rate of population growth was rising and agricultural production remained static. That was a sad situation in a country soon to become independent, and her delegation urged the United Kingdom Government to take immediate steps to help Seychelles cope with its economic and social problems.

104. She had also noted that very little progress had been made in St. Helena in the economic, social and political fields. Her delegation appealed to the administering Power to implement resolution 1514 (XV) and other relevant General Assembly resolutions in respect of St. Helena. Most particularly, as far as all three Territories were concerned, it recommended that the administering Power should do its utmost to solve the educational, social and economic problems with which they were faced.

105. The representative of Syria, referring to the answers given to his questions by the representative of the United Kingdom, thought he was justified in asking what was the potential economic wealth of the Territories and to what extent that potential had been realized for the benefit of the population. There were indications that Mauritius had considerable potential in hydroelectric power, yet,

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according to the representative of the administering Power, there were only eight hydroelectric stations now in operation and a ninth under construction. He would be interested to know what the production was in kilowatts, to what use it was put and whether it was helping to raise the economic standard of the population.

106. The representative of the administrative Power had indicated that unemployment was decreasing, but he wondered why there was any unemployment at all in a place which was apparently so rich in natural resources and when a relatively extensive economic development project might absorb all available manpower, and even require more. The United Kingdom had both the capital and technical knowledge for such a project.

107. The representative of the United Kingdom had dwelt on the benign nature of the strategic installations on the islands, claiming that they were only refuelling stations. He wondered whether they had been constructed on Mauritian land with the express free consent of the people. If not, were they not impeding self-determination and independence?

108. He welcomed the assurance given that there was no discrimination in the sugar or other industries, but asked what were the salary scales for Europeans and indigenous employees and whether the latter had access to managerial positions.

109. He urged the administering Power to give replies that provided a comprehensive picture of the islands under its administration, and not merely partial answers. What was important was that the people should freely exercise their right to self-determination, that there should be social, economic and political progress and that the sovereignty of the people and the territorial integrity of their land should be respected. The Sub-Committee should not base its conclusions on the opinion of the administering Power as to what was reasonable.

110. The representative of the United Kingdom, replying to the comments made by the representative of Mali concerning the delay in granting independence to Mauritius following the 1965 Constitutional Conference and the requirement that a new Legislature should approve a request for independence, referred him to the report of that Conference, which had made it very clear that there had by no means been agreement as to whether the issue of independence had been fully considered at

previous general elections and that it had been decided by the parties represented at the Conference that steps should be taken to review the electoral arrangements before new elections were held. Two points of view had been expressed: one had been that there was no need to consult the people regarding the future status of Mauritius since their desire for independence had been demonstrated by their support in three general elections for the parties favouring independence, but that it would be appropriate to hold general elections before independence so that the newly elected Government could lead the country into independence; the opposing argument advanced had been that the question of independence had not been a prominent issue in previous general elections and it was therefore doubtful whether the voters really desired it.

111. Those had been the views not of the United Kingdom Government, but of the parties represented at the Conference. Agreement had therefore been reached on the procedure he had described and, if a majority of the newly elected Legislature so decided, independence could be granted within a period of six months. The reasons why the approval of a majority in the Legislature was required were perfectly clear to anyone familiar with democratic procedures. As he had made clear in earlier statements, the delay in holding general elections had been caused by the process of reviewing the electoral system and the initiative now lay with the Government of Mauritius. In December 1966, the United Kingdom Secretary of State for the Colonies, after discussions with the Prime Minister of Mauritius, had expressed the hope that the latter would share his wish for early elections and the Prime Minister of Mauritius had confirmed that he wished elections to be held in 1967. The United Kingdom could do no more; the initiative for holding elections lay with the Mauritians themselves.

112. On the question of the voting age, which had also been raised by the representative of Mali, the franchise arrangements had been reviewed at the 1965 Constitutional Conference and the leaders of the parties represented had agreed to leave it unchanged. It had therefore been the decision of the Mauritian representatives themselves. There was, moreover, nothing unusual in a minimum voting age of 21; that was the case in many countries.

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113. With reference to the salary scale in the sugar industry, he assured the representative of Syria that no sections of the population of Mauritius could be regarded as indigenous in the sense valid in other parts of the world. No distinction was made in the sugar industry between the Europeans and other sections of the population.

114. He repeated that no refuelling facilities had so far been constructed in the British Indian Ocean Territory and no decision had yet been taken to do so.

115. The representative of Mali said that he had been surprised by the United Kingdom representative's answer to his question concerning the delay in granting independence. In paragraph 20 of document A/AC.109/L.374 and Corr.1 and 2 it was stated that neither the United Kingdom Government nor the Government of Mauritius could avoid the subsequent delays. Internal political difficulties alone could not be the cause for the delay; one cause appeared to be the requirement that a newly elected Legislature should first approve a resolution asking for independence. He believed that after the 1965 Constitutional Conference the path to independence had been wide open. There was some doubt in his mind as to the United Kingdom's willingness to move towards the emancipation of the Territory.

116. On the question of the minimum voting age, it should be recognized that the population of Mauritius was a somewhat special case because of the age pyramid and the rapid growth of population. To give the franchise only to those over the age of twenty-one would favour the population of mixed and French descent who mainly supported the Parti Mauricien Social Démocrate (PMSD), which was in favour of preserving the links with the administering Power. That indicated what the outcome of the proposed popular consultation would probably be. In many countries the minimum voting age was eighteen. If that were adopted in Mauritius, 75 per cent of the population, instead of 48 per cent, would be entitled to vote and the majority would then consist of young people who did not belong to the land-owning class. The situation presented complex problems which should be studied carefully since the future of a nation was at stake.

117. He was deeply concerned over the strict dependence of Mauritius on coffee and sugar. A country which was about to become independent should not depend on those two products alone. Mauritius, for instance, was entirely dependent on Madagascar for rice. If something could be done to make the Territory less dependent on the

fluctuating prices for coffee and sugar, the United Kingdom should inform the Sub-Committee. It should also diversify agricultural production so that the Territory, which had a rich soil, could satisfy more of its own needs.

118. The representative of the United Kingdom said that the requirement that a request for independence should first be approved by a majority of the newly elected Legislature of Mauritius was no more than a guarantee of the democratic expression of the wishes of the people. It was true that the PMSD did not support full independence, but he pointed out that that party represented not only those of European or mixed descent but also many of African descent who were resident in the Territory. It was hoped, however, that the new electoral arrangements would cut across such communal or racial considerations.

119. In his statement at the Sub-Committee's 37th meeting, he had mentioned the various efforts being made to promote new industry and diversify the economy of Mauritius. Both the United Kingdom Government and the Government of Mauritius fully realized the need for diversification.

120. The representative of the Union of Soviet Socialist Republics agreed with the representative of Mali that the administering Power should give some thought to lowering the minimum voting age, especially since the population of Mauritius did not have a long life-expectancy. The explanation given by the United Kingdom representative was not convincing. What was good for other countries was not necessarily good for Mauritius. Some countries recognized that people already had opinions by the age of eighteen and were in a position to decide how to vote.

121. He had been glad to hear from the representative of the administering Power that there were at present no plans to establish military bases in the Territories, especially in the new colony. That would have been satisfactory if there had not been reports to the contrary. There was considerable concern in Africa and Asia on that point and there had even been discussion in the United Kingdom Parliament. He understood that the United Kingdom representative in New Delhi had been handed a statement pointing out that military preparations in the Indian Ocean were contrary to the spirit of the United Nations Charter, and the spokesman for the Indian Government, to whose statement the Yugoslav representative had referred, was very well informed about the discussions in the Special Committee, and in the United Nations in general, and he was reported to have expressed the hope that the United Kingdom Government would take those discussions into account

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and would give up any plans to establish military bases in the Territories. He still did not consider the United Kingdom statement definitive; but if it was, he welcomed it.

122. The representative of the United Kingdom pointed out that it was the elected representatives of the people of Mauritius themselves who had decided to retain a minimum voting age of twenty-one. What was more important was that in Mauritius the voters had a free choice between various political parties and a free choice of candidates.

123. He had noted the USSR representative's comments concerning India's views. No doubt when the question was discussed at a later stage by the plenary Special Committee the Indian representative would make clear his Government's position on the matter.

B. Conclusions

124. The Sub-Committee notes with regret that the administering Power has still not implemented the provisions of resolution 1514 (XV) and of other relevant resolutions of the General Assembly concerning Mauritius, Seychelles and St. Helena, and is still unduly delaying the achievement of independence by these Territories.

125. The Sub-Committee notes with regret the inadequacy of political progress in these Territories. The administering Power, through the Governor, continues to exercise vast powers, particularly in the constitutional and the legislative fields. In Seychelles, the administering Power is insisting on a longer constitutional process under the pretext that the people of the Territory lack political experience. Moreover, the new "proposals for constitutional advance" do not accelerate but, in fact, delay the transfer of power to democratically elected representatives of the people as provided for in resolution 1514 (XV) of the General Assembly.

126. By creating a new territory, "the British Indian Ocean Territory", composed of islands detached from Mauritius and Seychelles, the administering Power continues to violate the territorial integrity of these Non-Self-Governing Territories and to defy resolutions 2066 (XX) and 2232 (XXI) of the General Assembly.

127. The Sub-Committee notes with concern that, notwithstanding the denials by the administering Power, there is still evidence to indicate that the United Kingdom intends to use portions of these territories for military purposes in collaboration with the Government of the United States of America. The Sub-Committee is of the firm

opinion that such military installations create international tension and arouse the concern of the peoples of Africa and Asia, especially those in the vicinity of the installations.

128. The economic situation in Mauritius, Seychelles and St. Helena remains unsatisfactory. The Territories suffer from shortage of capital and depend entirely on few crops and external aid. Efforts by the administering Power to diversify the economy of the Territories have been inadequate. Concessions to foreign companies continue and the interests of the peoples are not safeguarded.

129. The social situation in the Territories continues to arouse concern. There is a downward trend in per capita income and a rise in unemployment in Mauritius and Seychelles. In Mauritius, the workers in the sugar industry rightly complain of discriminatory practices. There are still no facilities for higher education in the Territories.

C. Recommendations

130. The Sub-Committee recommends that the Special Committee take concrete measures to insure that the right of the peoples of Mauritius, Seychelles and St. Helena to self-determination and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples, is respected by the administering Power.

131. The Special Committee should urge the administering Power to grant the Territories the political status their peoples freely choose. The administering Power should consequently refrain from taking any measure incompatible with the Charter of the United Nations and with the Declaration on the Granting of Independence to Colonial Countries and Peoples.

132. The Special Committee should once again reaffirm that any constitutional changes must be left to the peoples of the Territories themselves, who alone have the right to decide on the form of government they wish to adopt.

133. The administering Power should without delay hold free elections in the Territories on the basis of universal suffrage and transfer all powers to the representative organs elected by the people.

134. The Special Committee should recommend that the General Assembly set a time limit for the granting of independence to Mauritius and accelerate the implementation of resolution 1514 (XV) regarding Seychelles and St. Helena.

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U.K. Colonial Office, *Minute from A. J. Fairclough of the Colonial Office to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary*, FCO 16/226 (22 May 1967)

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RECEIVED IN ARCHIVES No. 56
24 MAY 1974

Minister of State

B.I.O.T.
Anglo-U.S. Defence Agreement
Secret financial arrangements

You are already aware I believe, that there has recently been correspondence with the Americans about what should be said in reply to questions about the existence of a United States contribution towards the costs involved in establishing British Indian Ocean Territory. This has revealed a serious disagreement between ourselves and the Americans on the extent to which the secret American contribution should be concealed. The Americans, it seems, are not now prepared in all circumstances to deny that they have contributed to the cost (up to £5m. or half the cost whichever is the less) of establishing B.I.O.T.

2. The Americans have from the beginning attached the greatest importance to the maintenance of secrecy about this arrangement and the fact that they now seem to be changing their attitude is not only surprising but must be seriously disturbing for Ministers. The Minister of Defence, whose departmental votes benefit from the American contribution, is directly involved. So too, for reasons I will develop, are the Prime Minister and our Secretary of State.

3. The Secretary of State for Defence has sent the attached minute dated May 12 to the Foreign Secretary. Paragraph one of the note gives the background to the U.S. contribution and refers to some evidence that there may already have been a leakage. The likely consequences of disclosure of the American contribution are set out in paragraph 3 of the note, which in our view provides a fair though not a very full assessment of the more damaging results which may be expected.

4. From the D.T.D. point of view the following considerations need to be borne in mind.

(A) The fact that what amounted to the final acquiescence of Mauritius to the terms of the B.I.O.T. financial settlement occurred at a discussion between the Prime Minister and Sir Seewoosagur Ramgoolam in September 1965. The record of the discussion is attached.

/(B)

cc. to
S.of S.'s Pts. Off.
Sir S. Garner
Sir A. Galsworthy (A5)
Mr.Trafford Smith
Gen.McNeill
Mr.K.C. Christofas
Mr.Fair-clough

R.V.P.

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(B) The political repercussions in Mauritius of disclosure, which could be very serious indeed. The compensation agreement, although in its early stages negotiated by the M.L.P. and P.M.S.D. leaders when both were in coalition, eventually was the rock on which the alliance was wrecked. It was precisely because they held that compensation was set too low at £3m. and should have been supplemented by the Americans, that the P.M.S.D. broke with the M.L.P. to go into opposition at the end of 1965.

(C) The considerable likelihood of a demand for substantial additional compensation following disclosure together with, in all probability, renewed pressure from Mauritius on the Americans for sugar and immigration quotas.

5. In paragraph 4 of his minute the Secretary of State for Defence proposes that the Americans should be urged to agree either to continued secrecy in all circumstances, or to full admission of the facts by both Governments at their own time in voluntary statements to be agreed between them. This represents in effect an ultimatum to the Americans to agree to nothing less than a 100% denial in all conceivable circumstances. If the apparent brutality of this choice forces the Americans to agree unreservedly to secrecy all should be well. But it seems probable that the Americans would be quite unprepared to agree to an out and out denial and might prefer disclosure.

6. The line taken by the Secretary of State for Defence may well be sound in its assumption that there is no suitable middle course between concealment and truth. If, however, following this uncomprimising line leads in the end to disclosure (and this seems likely in view of the American attitude) then we must clearly do all we can to ensure that the adverse effects of disclosure, so far as Mauritius and Seychelles are concerned, are mitigated so far as this is possible.

7. It is extremely difficult to suggest means whereby, if in the end of the day full disclosure is decided upon, the adverse consequences in Mauritius (and to a lesser extent Seychelles) can be avoided. It would in any case be essential that before any disclosure were made something should be said to the Premier of Mauritius Sir Seewoosagur Ramgoolam. Bearing in mind the vehemence with which he, together with

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his ministerial colleagues, argued at the time (in September 1965) for very much larger compensation for the separation from Mauritius of the Chagos Archipelago, and bearing in mind also that the then All-Party Government broke up over the very question of the quantum of compensation, one is forced to the almost inevitable conclusion that the only way of making palatable a disclosure that in fact H.M.G. had been assisted as to 50% by the Americans would be to offer additional compensation. If this were not done, then the Premier would be held up to ridicule in the forthcoming election campaign for having been "duped" by the British and would again be attacked for having sold Chagos too cheaply in order to secure the agreement of the British Government that Mauritius should proceed to independence.

8. In all the circumstances, and if disclosure is decided upon, the only course which seems likely to avoid a major row with the present Mauritius Government and a major electoral set-back for the Premier and his Party is that he should be approached ahead of any announcement and informed that we have been able to secure agreement to some American contribution to the cost of establishing the British Indian Ocean Territory and that in these circumstances we are glad, in agreement with the Americans, to be able to go somewhat further to meet the representations made by the Premier when the matter was negotiated for a larger quantum of compensation. Since, if there were full disclosure, it would become known that the United States had in fact contributed 50% of the total costs, there is no doubt that the Premier (who very reluctantly accepted £3m. when he thought that Britain was paying in full) would expect this to be at least doubled.

9. As to Seychelles, there would also be difficulties although they would not be likely to be so acute. By way of compensation for the Seychelles island forming part of the British Indian Ocean Territory we offered to build Seychelles an airfield. We had in mind at the time a total cost of £3½m. although no figure was mentioned to Seychelles. We still have not got firm estimates for the cost of building an international airfield in the Seychelles (the report of an M.P.B.W. Survey party is awaited) but the strong probability is that the total cost would be more like double this figure. The Ministry of Defence, who bore all the establishment costs of British Indian Ocean Territory on their Vote (and also received the relief from the American contribution) have so far firmly insisted that their contribution to the cost of the

/airfield

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airfield is limited to £5½m. Our view has been that they should meet the full costs of building whatever airfield is decided upon but we have refrained from doing battle with them on this pending the receipt of the Survey Party's report and reliable estimates of cost. If the cost of building the fullscale airfield we should like to see constructed is indeed, as we expect, something of the order of £6m. to £7m., then a possible line with unofficial members of the Executive Council in Seychelles would be to say that when we offered to construct an airfield by way of compensation for their agreement to the separation of former Seychelles islands to form part of B.I.O.T., we had envisaged that this could be done at a cost of some £3m. We ~~have now found~~ think however that the cost is ~~going~~ likely to be considerably more than double this. We have however been fortunate in securing an American contribution towards the cost of establishing B.I.O.T., and in view of this will still be able to proceed with the construction of the airfield despite its greatly increased cost.

10. I am convinced that if we are to avoid strongly adverse reactions in Mauritius and Seychelles, in the event of disclosure, including plausible accusations of bad faith on the part of the British Government also (from Mauritius) on the part of the Prime Minister, we must:-

(a) inform the two governments in advance of disclosure of the situation, and

(b) offer increased compensation to them in view of the American contribution taking the form of additional cash to Mauritius and, in the case of Seychelles, continued willingness to build the airfield despite its greatly increased cost.

11. I suggest that the Secretary of State should be invited to comment on the minute of 12 May by the Secretary of State for Defence as in the attached draft.

12. In view of the absence of Sir Arthur Galsworthy and Mr. Trafford Smith and of the urgency of the matter I am submitting direct to you. I am sending copies at the same time to Defence Department and to the Secretary of State's Private Office.

(A. J. Fairclough)

Dependent Territories Division
Pacific & Indian Ocean Department
22 May, 1967

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TOP SECRET
U.K. EYES ONLY

DRAFT MINUTE
(For signature by the Secretary of State for Commonwealth Affairs)

FOREIGN SECRETARY

I am very concerned at the proposal made in paragraph 4 of the minute addressed to you on 12 May by the Secretary of State for Defence about the arrangements for compensation to Mauritius and Seychelles in connection with the establishment of the British Indian Ocean Territory. I foresee acute embarrassment in our relationship with Mauritius (which, depending upon the outcome of the forthcoming election, is likely to become a full member of the Commonwealth) and, to a lesser extent, with Seychelles, if there is disclosure of the 50% American contribution to the establishment costs of British Indian Ocean Territory.

2. My predecessors and I and officials both in the territories and in the then Colonial Office insisted throughout in discussions on the question of compensation that this was a matter between the territories and the British Government. This insistence was in the face of quite understandable demands that, since the United States was to benefit from the British Indian Ocean Territory and since both Mauritius and Seychelles were in considerable need of assistance of various sorts, the Americans should be pressed to contribute. We resisted this strongly and, as the Secretary of State for Defence points out, the Prime Minister himself flatly told the Premier of Mauritius that the

/matter

Copies to:
Prime Minister
Chancellor of the Exchequer
Secty. of State for Defence
Minister of Technology
Sir Burke Trend
Sir Arthur Galsworthy
Mr. Trafford Smith
Mr. Fairclough

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matter was one between Britain and Mauritius. There is no doubt that the Premier believed that the full amount of the compensation paid to Mauritius was being found by Britain.

3. Subsequently the Premier was vigorously attacked by the present opposition party in Mauritius for having agreed to the separation of Diego Garcia for far too little by way of compensation and the then All-Party Government finally broke up over this point. The critical election which will determine whether or not Mauritius is to become independent is due within the next few months and the question of the amount of compensation for the Chagos Archipelago is likely to be raised by the opposition party as one of the matters on which they will attack the Premier's record. If, particularly at this time therefore, it were to be disclosed that the United States had in fact indirectly met half of the establishment cost of British Indian Ocean Territory, there would be bound to be a major row with the present Mauritius Government which would certainly find such a disclosure extremely embarrassing electorally. It is wellnigh certain that accusations would be made that the British Government and the Prime Minister personally, had deliberately deceived the Mauritius Government in order to secure their agreement to the separation from Mauritius of the Chagos Archipelago at a low level of compensation.

4. For these reasons I should very much prefer to see the line so far of keeping the American contribution to the establishment costs of B.I.O.T. completely secret firmly adhered to. If however the Americans are unwilling to agree to stick to this in all circumstances, then I am inclined to agree with

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the Secretary of State for Defence that half-measures would be liable to get us into even greater complications and that in the circumstances we should try to persuade the Americans to agree to a voluntary disclosure of the arrangements. If however this were to be tolerable from the point of view of our relations with Mauritius and Seychelles, I am convinced that certain actions relating to these territories would be essential.

5. Against the background of pressure at the time on the part of Mauritius for greater compensation, the situation could in my view only be made tolerable, in the circumstances of disclosure, if additional compensation were offered. Since it would become plain that half the costs were being met by the United States, and since Mauritius only agreed with the utmost reluctance to compensation limited to £3m. when it was thought that Britain was meeting the full amount, I cannot see that anything less than a doubling of the compensation paid to Mauritius would have any chance of avoiding the adverse consequences referred to above.

6. It would be essential that the Governors of the two territories should be authorised to speak to the unofficial members of their governments before any disclosure were made. I envisage that the approaches - which would need to differ as between the two territories - should be on the following lines:-

(a) Seychelles. Unofficial members of the Executive Council should be reminded of the agreement on the part of the British Government to construct an airfield in Seychelles. At the time that this

/offer

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offer was made it was envisaged that the cost of doing so might be of the order of £3m. It now seemed likely - although precise estimates were not yet available - that the cost would be very considerably greater. We had now however been fortunate in securing a 50% American contribution to the establishment costs of British Indian Ocean Territory which was to be announced shortly and were glad to be able to confirm that, despite the greatly increased estimated cost, construction of the airfield would proceed as planned.

(b) Mauritius. The Premier should be reminded that Britain had not felt able to meet his demand for compensation of the Chagos Archipelago beyond the amount of £3m. agreed in September 1965. At that time we had expected that it would be possible to construct the airfield which we had undertaken to provide by way of compensation for Seychelles for about the same sum. We had however been fortunate in securing United States agreement to a 50% contribution to the establishment costs of British Indian Ocean Territory and this fact was to be announced shortly. At the same time the likely costs of the Seychelles airfield had mounted considerably. In the light of these factors we had been giving further consideration to the situation

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and to the level of compensation and were glad to be able to tell the Premier that in all the circumstances we were now able to increase the amount to £6m.

7. There is a further important consideration which arises and that is the question of possible international reactions if disclosure is decided upon and if, following on this, there are strongly adverse reactions from Mauritius and Seychelles. It has throughout been a central point in our defence of the arrangements made in the establishment of the British Indian Ocean Territory that the separation from Mauritius and Seychelles of the islands now forming part of the Territory was done with the agreement of the Governments of Mauritius and Seychelles. Even so, we met, and have continued to meet (strong) opposition to the whole enterprise in Commonwealth and foreign countries and in the United Nations. If, following on disclosure, there were strongly adverse reactions in Mauritius and Seychelles, we should be in a much worse position than we have so far in handling matters concerning British Indian Ocean Territory on the international scene. This is an added reason why in my view action on the lines recommended above would be necessary if disclosure of the American contribution is eventually decided upon.

8. I have not so far consulted the Governors of Mauritius and Seychelles on this matter but I think it essential to do so before any approach to the Americans on the lines of the draft attached to the minute of 12 May by the Secretary of State for Defence is made. Before doing so however, I felt it right to inform my colleagues of my views as to

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the financial implications of disclosure if serious adverse consequences in the territories (particularly Mauritius) and the resulting international embarrassment to Britain and the United States are to be avoided.

9. I have sent copies of this minute to the Prime Minister, the Chancellor of the Exchequer, the Secretary of State for Defence, the Minister of Technology and Sir Burke Trend.

Annex 90

U.K. Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1., on Thursday, 25th May 1967 at 9:45 a.m.*, OPD(67) (25 May 1967)

SECRET

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OPD(67) 20th Meeting COPY NO. 75

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

MINUTES of a Meeting held at
10 Downing Street, S.W.1.,
on THURSDAY, 25th MAY 1967 at 9.45 a.m.

PRESENT:

The Rt. Hon. Harold Wilson, MP,
Prime Minister

The Rt. Hon. Michael Stewart, MP,
First Secretary of State and
Secretary of State for
Economic Affairs

The Rt. Hon. James Callaghan, MP,
Chancellor of the Exchequer

The Rt. Hon. Herbert Bowden, MP,
Secretary of State for
Commonwealth Affairs

The Rt. Hon. Denis Healey, MP,
Secretary of State for Defence

The Rt. Hon. Roy Jenkins, MP,
Secretary of State for
the Home Department

THE FOLLOWING WERE ALSO PRESENT:

The Rt. Hon. Douglas Jay, MP,
President of the Board of Trade

The Rt. Hon. The Earl of Longford,
Lord Privy Seal

The Rt. Hon. Arthur Bottomley, MP,
Minister of Overseas Development

The Rt. Hon. George Wigg, MP,
Paymaster-General

The Rt. Hon. Frederick Mulley, MP,
Minister of State for
Foreign Affairs

Mrs. Judith Hart, MP,
Minister of State for
Commonwealth Affairs

Field Marshal Sir Richard Hull,
Chief of the Defence Staff

Air Chief Marshal Sir John Grandy,
Chief of the Air Staff

Vice-Admiral Sir John Bush,
Vice-Chief of the Naval Staff

Lieutenant-General
Sir Desmond Fitzpatrick,
Vice-Chief of the General Staff

SECRETARIAT:

Sir Burke Trend
Mr. P. Rogers
Mr. F.A.K. Harrison
Mr. R.L.L. Facer
Major-General J.H. Gibbon

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Annex 90

C O N T E N T S:

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3. BRITISH INDIAN OCEAN TERRITORY (BIOT)

The Committee's consideration of this subject (referred to in a minute by the Secretary of State for Defence to the Foreign Secretary dated 12th May 1967), and the conclusions reached, are recorded separately.

Cabinet Office, S.W.1.

25th May 1967

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CONFIDENTIAL ANNEX
(OPD(67) 20th Meeting, Item 3)

THURSDAY, 25th MAY 1967 at 9.45 a.m.

BRITISH INDIAN OCEAN TERRITORY (BIOT)

THE SECRETARY OF STATE FOR DEFENCE said that when BIOT was set up we had made arrangements to compensate Mauritius and the Seyschelles for the detachment from them of islands to form the new territory up to a total of about £10 million. The United States Government agreed to contribute half the cost of this compensation(up to a maximum of £5 million) and at the time, to avoid embarrassment in Congress, particularly requested us to keep secret the arrangements for their contribution; for this reason it had been arranged that it should take the form of their waiving part of our payments to them in connection with the development of Polaris. Until recently there had been no reason to suspect that difficulties would arise over this secret arrangement, but the United States authorities had now told us that some American scientists had become aware of the United States' financial involvement; for this reason they were now contemplating admitting in public if pressed that while no cash payment had been made they had made a "contribution" to the cost of detachment of the islands. This proposal of the United States Government gave rise to great difficulties because we had made arrangements with the agreement of the Comptroller and Auditor General to avoid drawing Parliament's attention to the transactions and we had maintained a firm line in public that there had been no United States contribution. The Prime Minister had also informed the Premier of Mauritius that this was a matter solely between ourselves and Mauritius, in rebutting his proposal that the United States should help Mauritius and the Seychelles. Mr. Christopher Mayhew MP was also aware of the transaction through his former appointment as Minister of Defence for the Royal Navy. He (the Defence Secretary) had circulated with his minute of 12th May a draft telegram to HM Ambassador at Washington containing instructions to the Ambassador for discussion with the United States Secretary of State, Mr. Dean Rusk, but this would require some modification in the light of a minute from the Commonwealth Secretary dated 24th May.

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THE COMMONWEALTH SECRETARY said that 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 that there was no question of a further contribution to them by the United States Government since this was a matter between ourselves and Mauritius, that the £3 million was the maximum we could afford, and that unless they accepted our proposals we should not proceed with the arrangements for the grant to them of independence. Subsequently the matter had become a party political issue in Mauritius and the Premier had been attacked by the present opposition party for having agreed to the separation of Diego Garcia for inadequate compensation. A critical election which would determine whether or not Mauritius was to become independent was due to be held in August and the question of the alleged inadequacy of compensation for detachment of the Chagos Archipelago would be used by the opposition to attack the Premier's record. We should therefore strongly urge the United States Government that complete secrecy should be maintained and we should not at this stage volunteer any alternative proposal. The Ambassador could be asked to report urgently on United States reactions to the proposition that secrecy should be maintained in all circumstances. If they were not willing to accept this we should then consider further what other courses might be adopted.

THE CHANCELLOR OF THE EXCHEQUER said that the Treasury Officer of Accounts, had obtained the consent of the Comptroller and Auditor General to exclude any reference to the remission of part of a Polaris payment in the relevant Votes submitted to Parliament. In view of the latest report of the United States position however there now seemed little chance of total secrecy being maintained, and the following formula had been evolved by Treasury officials which he put forward for consideration -

> "The arrangements made with Mauritius and the Seychelles about BIOT were a matter between Her Majesty's Government and the Governments of those two countries. There was no direct payment by the United States in respect of the costs of those arrangements covering such matters as the purchase of land and resettlement of some local inhabitants. BIOT is, however, intended to serve both British and American purposes and in consideration of the arrangements made by the United Kingdom the United States have made some adjustment in other fields which are more favourable to the United Kingdom than would otherwise have been the case."

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In discussion it was recognised that there now seemed to be no prospect of maintaining secrecy regarding the United States contribution. There was general agreement that the formula proposed by the Chancellor of the Exchequer provided a useful basis for an announcement. It was suggested, however, that in the last sentence the words "having regard to further capital construction, the United States have now made ...." might be inserted, to relate the contribution to the proposed construction of facilities on Aldabra.

It was also generally agreed that the British Ambassador in Washington should be instructed to inform the United States Government that if in consequence of a disclosure of their contribution which now appeared to be necessary because of the action which the United States Government had taken it became necessary to make an additional contribution to Mauritius or the Seychelles, we should expect the United States Government to bear the cost.

Summing up the discussion, THE PRIME MINISTER said that the formula suggested by the Chancellor of the Exchequer, subject to the addition of some such words in the last sentence as "having regard to further capital construction", should be further discussed by officials and agreed by the Ministers directly concerned. In discussion with the United States authorities we should seek agreement to a simultaneous announcement by the United States and ourselves on the lines indicated in discussion. The timing of such an announcement, which should preferably be after the elections in Mauritius had been held, would require further consideration. After agreement had been reached on the formula which would be used it would be necessary for the Treasury Officer of Accounts inform the Comptroller and Auditor General. The draft telegram to HM Ambassador at Washington should be revised accordingly, in agreement between the Ministers directly concerned.

The Committee -

(1) Invited the Defence Secretary, in consultation with the Chancellor of the Exchequer, the Commonwealth Secretary and the Minister of State for Foreign Affairs, to consider in the light of the discussion, the appropriate form of a public statement regarding the United States contribution.

(2) Invited the Minister of State for Foreign Affairs, in consultation with the Chancellor of the Exchequer, the Commonwealth Secretary and the Defence Secretary, to revise the draft telegram to HM Ambassador at Washington on the lines agreed in discussion.

Cabinet Office, S.W.1.
25th May 1967

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Annex 91

Mauritius Legislative Assembly, *Accession of Mauritius to Independence Within the Commonwealth of Nations* (22 Aug. 1967)

Annex 91

assistance from international sources, already guaranteed or under negotiation, will enable the voluntary agencies engaged in this work to extend and intensify their activities.

My Ministers are anxious that in an independent Mauritius young people should assume greater responsibilities and should play a more constructive part in the life of the nation. My Ministers will therefore review and strengthen the youth services of the Ministry of Education with a view to preparing the youth of the country for full and active participation in the economic and social development of Mauritius.

Honourable Members, I pray that the Blessing of Almighty God may rest upon your counsels.

At 12.20 p.m. the sitting was suspended.

On resuming at 2.12 p.m. with Mr. Speaker in the Chair.

ADMINISTRATION OF OATH TO MEMBERS

The Hon. Simadree Virsh Sawmy and the Hon. Lutchmeeparsad Badry made and subscribed the affirmation allowed by law in substitution for the Oath of Allegiance prescribed by Section 49 of the Mauritius Constitution Orders 1966 and 1967, and signed the Roll of Membership.

ELECTION OF DEPUTY SPEAKER

Sir S. Ramgoolam : Mr. Speaker, Sir, I beg to move that the Third Member for Port Louis North and Montagne Longue (Mr. P.G.R. Rault) be appointed to the post of Deputy Speaker.

The Hon. Fourth Member for Belle-Rose and Quatre-Bornes **(Mr. Forget)** *rose* and *seconded.*

Mr. Speaker : I declare the hon. Third Member for Port Louis North and Montagne Longue unanimously elected as Deputy Speaker of the House. I offer him my congratulations.

(Applause)

Mr. P. G. R. Rault (Third Member for Port Louis North and Montagne Longue) : Sir, I am most grateful to the House for their confidence and I thank you, Sir, for your congratulations. I shall do my best to be a devoted servant of the House when I shall sit in the Chair as Deputy Speaker.

ELECTION OF DEPUTY CHAIRMAN OF COMMITTEES

Mr. Rault : Mr. Speaker, Sir, I beg to propose that the Second Member for Flacq and Bon Accueil (Mr. R. Gujadhur) be appointed Deputy Chairman of Committees.

The hon. Third Member for Vacoas and Floréal **(Mr. Mason)** *rose* and *seconded.*

Mr. Speaker : I declare the hon. Second Member for Flacq and Bon Accueil unanimously elected to the office of Deputy Chairman of Committees. I offer him my congratulations.

(Applause)

Mr. R. Gujadhur (Second Member for Flacq and Bon Accueil) :

Mr. Speaker, Sir, I most sincerely thank the House for the honour it has done to me in electing me as Deputy Chairman of Committees. I trust and pray that with the full collaboration and blessings of the House and by the grace of God I shall prove worthy of the confidence that has been placed in me.

STATEMENT BY MINISTER

The Premier and Minister of Finance (Sir S. Ramgoolam) :

Public Holiday, Saturday 9th September

Mr. Speaker, Sir, I am pleased to inform this Assembly that the Government has decided that Saturday the 9th of September be proclaimed a bank, office and estate holiday on the occasion of the Marathi Festival Ganesh Jayanti and of the death anniversary of Père Laval.

SUSPENSION OF STANDING ORDER 10 (2)

Sir S. Ramgoolam : Mr. Speaker, Sir, I move that Government business be exempted at this day's sitting from the provisions of paragraph (2) of Standing Order 10.

Mr. Forget *rose* and *seconded.*

Question put and agreed to.

ACCESSION OF MAURITIUS TO INDEPENDENCE WITHIN THE COMMONWEALTH OF NATIONS

(2.18 p.m.)

Sir S. Ramgoolam : Mr. Speaker, Sir, I now move the motion standing in my name which reads as follows: —

> "That this Assembly requests Her Majesty's Government in the United Kingdom to take the necessary steps to give effect, as soon as practicable this year, to the desire of the people of Mauritius to accede to independence within the Commonwealth of Nations and to transmit to other Commonwealth Governments the wish of Mauritius to be admitted to membership of the Commonwealth on the attainment of independence."

This motion, Sir, which stands in my name is but the expression of the collective will of the people of Mauritius as expressed at the recent general elections that our country should now become an independent state within the Commonwealth and thus take its rightful place among the free nations of the world.

"The Moving Finger writes, and having writ, moves on."

Nothing will change it. This is the inexorable course of history. We are meeting today on an historic and solemn occasion. By our decision today, Sir, we shall put Mauritius on the path of her destiny. It is a day of joy for all patriotic men and women, for on this day we are taking the formal step which will confer on our people freedom and bring them into their heritage.

We give our thanks to God and to the people of Mauritius who have given to the world a shining demonstration of their determination and national unity. They have given us the mandate to go forward with courage and hope in our heart.

Today we will also remember the names of Mauritians who have made their contribution in this great march of the people for the liberation of their country. Men like Remy Ollier, Prosper d'Epinay, Sir William Newton, Eugène Laurent, Anatole de Boucherville, Gaston Gébert, Raoul Rivet and Sir Edgar Laurent himself; they have all participated in the political evolution of Mauritius.

Then we come to the great democrats Anquetil, Rozemont and Seeneevassen who are not amongst us to see the fulfilment of their valuable work. These illustrious sons of Mauritius have brought history to the feet of our struggling people as offerings to be honoured and cherished. Our heart is full of gratitude for their performances, so replete with sincerity and love for our people. They will know in their graves today that the struggle has not been in vain.

We have come a long way and it has taken us a long time doing it. It is at once the end of a journey and the beginning of another. In that journey

the utmost was asked of us, especially of those I have just mentioned and the fact that none was found wanting will be registered in the consumation of a great common endeavour — the birth of a Mauritian Nation.

This wonderful land of ours which we love so much will, in a not too distant future, be not only our land but our Fatherland for which let us hope, we shall work and live and die.

It will be a matter of no small wonder to succeeding generations that by the exercise of a diabolical political witchery, by those possessed of it that we should have been kept back from coming into our national inheritance for so long. But our friends and brothers, the common people of Great Britain themselves took also a long time to come into their own inheritance and afterwards they extended their hand of fellowship to us, and it is with their consent and agreement, action and positive help that it will fall to us to direct the future conduct of our affairs by the consciousness of a common destiny. And it would be only fitting, I say, that this day should remain ever memorable in our annals so that generations still unborn would look back on it as one from which to draw a new inspiration to be worthy of those who preceded them.

With independence there will come among the people of this country a sense of regeneration and there will arise in the hearts of our fellow countrymen a fervour and a determination to go forward and build for themselves and for future generations a strong, free, happy and prosperous Mauritius — a Mauritius which will in every way be worthy of the great traditions she had inherited from the past. We must not underrate either our achievements, Sir, or our intrinsic potentialities. Though we live on a small territory we have given ample proof of our ability to be the masters of our own destiny. We have produced men in the past of international calibre — men of profound learning and experience who by their attainments in so many different fields of national endeavour could have been the pride of any country in the world.

These men, Sir, have been the inheritors of a liberal civilisation that has been nurtured by the cultural values of both the East and the West. These men have been dreaming of a Mauritius that, had fate decided otherwise, might have achieved a greater mesure of political freedom and placed our country alongside those great dominions of the Commonwealth like Canada, Australia and New Zealand which over a century ago achieved their independence from colonial rule.

In fact, Mr. Speaker, Sir, a movement for political freedom has been afoot in this country from the early years of our history. Even during the French occupation of *Isle de France* there were movements for self-government which culminated in rebellion, and in 1794 the country became a rebel colony, revolting and disobeying the Central Government of France. For the next few years the colony became virtually independent.

The struggle continued until we came to the nineteenth and twentieth centuries. As far back as 1825 Mauritius had a Council of Government in which members had freedom of debate and an independent vote. In 1885 a Council of Government was established with 8 ex-officio, 9 nominated and 10 elected members and this composition, with very slight changes, continued until 1947.

But let me bring back hon. Members to the year 1882 when Sir William Newton and his political friends constituted the famous 17th of July 1882 Sub-Committee to study and report on the changes to be brought about in our Constitution. It would interest the people of Mauritius to know what it said, among other things, on the political affairs of Mauritius: "*Les nations, les communautés qui dédaignent le régime de la liberté, et qui se résignent à la servitude, sont fatalement condamnés à se désagreger et à périr ..*

Chacun de nous pourra travailler d'une façon plus directe et plus utile au bien de notre pays; et Maurice, émancipée, regenérée par l'énergie et le dévouement de ses enfants, prendra au milieu des possessions Britanniques un rang plus digne d'elle et de ses destinées:

Au lieu de nous ingénier à trouver des prétextes pour ne pas sortir de l'état de dépendance ou nous sommes, et de nous laisser effrayer par de vains fantômes, mettons nous résolument à l'œuvre et le succès ne tardera pas à couronner nos efforts".

At the threshold of independence it is natural that we should place on record the visions of these great men who had a sense of history and could foretell the shape of things to come.

We are about to take a momentous decision that will affect the lives and aspirations not only of Mauritians who went to the polls on August 7th but will affect the destiny of generations yet unborn. Let me also say this much that the great decision we are about to take is also the culmination of a long and painful struggle which began at the very moment Mauritius was granted an elective constitution. It will be remembered, Sir, that this took place in 1886, but even tha constitution, modest at it was, for country as advanced as Mauritius, wa opposed by the forces of reaction i this country. Ever since then ther has been a sustained and unyieldin agitation to oppose every single mov towards greater constitutional free dom for the people of Mauritiu and I am sorry to have to sa that in spite of their other qualitie the same people blinded by thei obscurantist outlook have been fight ing relentlessly against any constitu tion that would have given the peopl of this country a say in the manage ment of their affairs. Once again w find them to-day in the forefront o the agitation to oppose Independenc by all means.

It is unfortunate, Sir, that som people in Mauritius continue to believ in the superiority of a certain class when two great wars for democrac have levelled all that. In their view those whom they have branded a hewers of wood and drawers of wate should always be relegated to the posi tion of serfs. I am afraid there ha not been much change of heart sinc the time when Sir Henri Leclezi opposed a modest constitutional reform for Mauritius. This is what he sai in answer to the liberal movement o Anatole de Boucherville and others:

"*Nous avons finalement les classe inférieures, qui constituent un mélang indéfinissable, ou le sang malgache africain domine et qui nous fournit no cuisiniers, cochers, charpentiers, bou chers, portefaix, pêcheurs, bucheron boulangers, coupeurs de cannes, charre tiers et maçons. Ce sont les descendant des esclaves affranchis. En majorit ils ne savent ni lire ni écrire. Cett section est la plus nombreuse de l population générale. Comptant de 5 à 55,000 personnes, elle constitue pri de la moitié.*"

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I am afraid sentiments not very dissimilar from those that were expressed by these distinguished Mauritians are also conditioning the minds of those of our fellow Mauritians who do not want to read the writing on the wall. They fear as those before them feared that their vested interests, their feudal privileges and all that they have acquired by virtue of their position of vantage in society will be swept away by the democratic upsurge of the humble people who have toiled and laboured for the development and prosperity of Mauritius.

Perhaps it is human, Sir, to entertain these feelings. It might be said that people who have monopolised political and economic power for over a century should fight to the death before surrendering any of their feudal prerogatives. But it is also right and proper, Sir, that those of us who have been elected by the people of this country to be the guardians of their liberty and of their own birthright should see to it that a powerful minority that has wealth and economic power at its disposal should not for ever frustrate the hopes and aspirations of the great mass of the people of Mauritius. Almost half a century ago the thoughts and ideas which I am expressing now were echoed by great Mauritians. Among them I have mentioned the name of the late Anatole de Boucherville one of the leaders of the liberal movement in politics, and with your permission, Sir, I would like to quote a few lines in which he vindicated the sacred right of people to share political power with the small minority that held the country in the grip of its power. That is what Mr. de Boucherville said :

> " Votre pensée, votre idéal, votre but, c'est de faire en sorte que le groupe de population que vous appelez 'les blancs' et que vous evaluez à dix mille âmes conserve une sorte de prédominance morale, sociale et politique sur tous les autres éléments formant une population de 358,000. Lorsque l'on marche en avant, les horizons s'ouvrent, les sommets se dessinent. Lorsqu'on va à reculons, on ignore quelle fosse, quel abime on a derrière soi."

and finally, Mr. de Boucherville used these words which became almost the slogan of the Independence Party :

> " L'Action Libérale preche une triple alliance, l'alliance du Noir, du Blanc et de l'Asiatique ; alliance monstrueuse, disent les oligarques, nécessaire et juste disent les patriotes de toutes couleurs, de toutes réligions".

The leaders of the liberal movement wanted full autonomy for Mauritius.

Why should people of the upper segment of society be afraid of Independence ? Freedom has never brought misfortune to any country. We have only to look around us in the African Continent to find the revolutionary changes which have come over in those territories which were under colonial rule. Look at the transformation that has taken place in Kenya, Tanzania, and the Malagasy Republic. Within the space of a decade enormous changes have revolutionised the entire life of the people of these lands.

Their standards of living have considerably increased. They have tapped their national resources which were lying idle for centuries. They have gained access to the great currents of world thoughts and to day they are marching in unison with the rest of the world in the search of a formula for the peace, progress and happiness of all Mankind.

Independence has allowed them to make their full contribution not only to the development of their own country but to the development growth of the entire world. Independence in Mauritius too will mean a fairer opportunity for the people of Mauritius and

a better guarantee for democratic progress. Without it we cannot aspire to equality among nations.

Economic difficulties may be encountered even in a colonial territory, and these have happened in this country in the thirties and before that. No one must think here that as a colonial associated territory we can enjoy better advantages than if we were Independent.

In time of stress and economic recession, whether as a colony or an independent country, we would naturally suffer the consequences. But it would not be true to say that we would be in a position of vantage as a vassal state to face our problems. Smaller territories than Mauritius have become independent and there were no pretentious arguments against their attaining sovereignty. We know that in history, whenever there is an upsurge of the masses, there arise political divisionists who attempt to divert the attention of the people to other minor issues in order to hide the true facts of history behind such mass movements. The late President Roosevelt has very aptly described these men belonging to the dark ages when he said :

> " There have always been those who do not believe in people and who attempt to block their forward movement across history and to force them back to servility and suffering ".

This, in a sense, is what is taking place in Mauritius today. People here must be realistic and understand the vast winds of change that have swept the gloom and which have witnessed in the last twenty years the independence of one country after another. The countries of Asia and Africa have been liberated by the common consent of those powers which governed these continents and of these peoples.

This vast tide of transformation could not leave us untouched, nor could the historic march of the peoples of the world. We must realise and we must understand that the old world has perished never to return again. It has crumbled into dust and no beating of the breast or sighs of the heart can bring it back to life again. Those who oppose progress and the rule of law should realise the social revolution which has taken place in Mauritius and they should understand that we must live in the new world which has just been born in Mauritius. We are dedicated to the liberal and democratic way of life. All Mauritians should accept that, for without it there can never be a modern society in substitution for a cruel, inhuman way of life.

We must not be afraid of independence and dread it like a child without thought and preparation. Mauritius will have a changed status, but we are not severing our close connections with Great Britain and the Commonwealth. On the contrary, Sir, we will develop stronger links on the basis of partnership and mutual respect and friendship, but the relations of master and slave will give way to a new brotherhood and equality and freedom. Indeed, Sir, we are doing more than that. On independence, we are asking the Queen of England to become the Queen of Mauritius. There will be a Governor-General with extensive discretionary powers, more than those which obtain in other independent countries, which by themselves offer adequate guarantee to every section of the Mauritian community. In addition, an independent Mauritius shall come nearer to the other friendly countries specially France with which we have age old cultural and friendly ties. A new vista for international co-operation in all fields of life will open for us. Apart from British eco-

nomic aids and defence agreements, we will get other aids from the various agencies of the United Nations. All these are factors which should weigh in the balance in the assessment of independence. Mauritius will emerge as a nation.

So far, despite our efforts to live as a nation, we have been separated into several ethnic groups by those who wish to drag on their despicable existence. Independence will enable us to think as a nation, for our country will be our hope and our people our first concern. In this atmosphere of freedom and equality, a new spirit and endeavour will seize our people and in this century of hope a new Mauritius is being born, unfettered and friendly, small but with the indomitable spirit to make good with other nations. There would be no prison bars of colonialism, no discrimination between one Mauritian and another, but a united country fulfilling its own destiny.

History has proved, Sir, over and over again that once the inhabitants of a territory are in full control of their destiny, they have been able to achieve unity and to build up a national consciousness. We are all aware of the internecine conflict which raged in the provinces of North America before that country got independence. The same pattern was discernible in the other dominions such as Australia and India. "*Divide et impera*" was the guiding principle of the former imperial rulers. But once alien control had withered away the people of a country could sink their differences and work together for the attainment of a common nation. I have no doubt, Mr. Speaker, that in a like manner we also will benefit from our accession to independence.

I feel in a historic mood, Mr. Speaker, and allow me to quote the words of another distinguished Mauritian, Mr. Roger Pezzani, who, although bred on the political philosophy of Burke and Gladstone, called himself a conservative in Mauritian politics. Speaking as far back as 1926 and looking at the future of the country, he expressed himself in these words :

> "There can be no shilly-shallying. I am asking every Hon Member to realise this is a solemn day for Mauritius : it is a day when we are building up the future, when we have to be sorry for the mistakes of the past and when we have to see to it that we should not repeat them because the result in days to come would be the source of an eternal and most legitimate reproach of the growing generation to the men who now have the responsibility of making a decision. They must not think of their own happiness but of that of their children."

I have said, I think, enough in support of my contention that Mauritius should be proud to take her place among the sovereign, independent territories of the world. I make a solemn appeal to Hon. Members sitting opposite to accept the verdict of history and not to be swayed by their emotions and by their imaginary fears. Nobody should think that Mauritius, after independence, will be an island into itself and that it will be cut off from the rest of the world. On the contrary, with the help of its independent status, it will merge within the wider framework of sovereign and independent countries and we have every hope that in this new partnership, Mauritius will be in a more advantageous position to deal with all the problems that it has now to face.

We must not allow ourselves to be deluded, Mr. Speaker, by the notion that any substantial advantage will accrue to Mauritius with an association status with Great Britain. I am not going into any details of this matter today. There is a belief in some quarters that association with Great Britain means the same thing as integration with the United Kingdom. This is altogether incorrect. Association in any form will be a mistaken policy, and I am sure by now a great many of our people have realised that. Some territories in the West Indies have an association status but this gives them no privileges greater than those we are enjoying at present or we might enjoy after independence. For one thing, the citizens of these territories have no automatic entry into the United Kingdom, as the Opposition would have us believe.

We have all read the case of Mauritians who have been declared prohibited immigrants in Great Britian ; there is the recent judgment of the High Court, in London, of the case involving six Mauritians to the effect that they could not claim automatic entry into the United Kingdom, which bears testimony to the point I am making. Nor will association take us nearer to the Common Market. We have studied all this and we have realised the problems that are before this country.

Mr. Speaker, Sir, I would not like to take more time of the House and I will now like to conclude and put this motion in the hands of Hon. Members. As I said earlier on, we are standing today at the threshold of a new era. Mauritius begins today a new chapter of its history. Let us resolve that in our determination to build a better future for ourselves and our chidren we shall all be inspired by the loftiest principles of patriotism and love for our island home. We have striven for many years now to create a new sense of unity out of our rich diversity and let it be said for the glory of those of us who are fortunate to live at this hour, in the words of the poet :

"Bliss was it in that dawn to be alive".

That we Mauritians whose ancestors came from many lands have been welded together in a wider outward looking unity inspired by a common purpose and common resolve to strive for the happiness and prosperity of our fellow men.

However, Mr. Speaker, Sir, before I sit down, let me tell this to my hon. friends of the Opposition. They will be accountable to History for whatever decision they take to-day. I appeal to them to show a sense of enlightened statesmanship and take the right decision. But should they persist in their endeavour to frustrate the wishes of the people, then my duty to this House and to my country is to declare unequivocally that we shall not be browbeaten by any threat or menace and that by God's grace we will carry out thoroughly our mission and take this country to her rightful destiny.

Mr. Speaker, Sir, I move the motion standing in my name.

Mr. Forget *rose* and *seconded.*

(*Applause*)

(2.55 p.m)

M. C. G. Duval (First Member for Grand River North West and Port Louis West) : M. le président, celui qui a secondé la motion l'a fait d'une façon si discrète que je ne m'en étais pas aperçu et n'eussiez vous pas fait signe que j'aurais attendu encore que la motion soit secondée.

M. le président, il y a des morts qu'il faut qu'on tue et un de ces morts tenaces qu'il faut tuer régulièrement est celui qui consiste à nous faire croire que des discours à l'Assemblée vont changer ou faire changer le vote des membres élus ou de nos collègues. Sans doute quand les premiers Parlements avaient été convoqués, un orateur vigoureux pouvait par ses discours

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convaincre un membre pas de changer son vote, mais tout simplement de voter d'une façon ou d'une autre. Nous savons parfaitement bien que dans le monde moderne, surtout avec les Parlements où il y a deux partis, les discours ne peuvent rien changer dans le vote des membres. Aussi, n'essaierai-je pas par des arguments oratoires ou même par des faits, de changer la conviction de mes collègues de la coalition, mais tout simplement vais-je essayer de consigner pour la postérité les raisons qui nous empêchent de voter la motion qui vient d'être développée par l'hon. Premier Ministre.

M. le président, c'est mon privilège de parler non seulement en tant que *Leader* de l'Opposition mais aussi en tant que *Leader* du Parti majoritaire à cette Chambre.

An Hon. Member : Wishful thinking!

M. Duval : "*Wishful thinking*" dit un des nouveaux membres. Je répondrai par la pure arithmétique et je me contenterai d'abord d'analyser la motion du Premier, et de voir exactement ce qui est contenu dans cette motion :—

> "That this Assembly requests Her Majesty's Government in the United Kingdom to take the necessary steps to give effect, as soon as practicable this year, to the desire of the people of Mauritius to accede to independence within the Commonwealth of Nations..."

Il semblerait donc, quoique cela ne soit pas absolument clair, ce que désire l'auteur de la motion, c'est que cette année, c'est à dire, avant la fin de décembre 1967, le Gouvernement Britannique décide d'accorder l'indépendance à l'île Maurice. Non, "*as soon as practicable this year*": décembre ou à un moment avant décembre. Mais, par contre dans le discours du Trône, je vois ceci :

> "My Ministers attach great importance to the fixing of a date for Independence, in accordance with the declaration by the then Secretary of State for the Colonies at the conclusion of the Constitutional Conference in 1965".

Cette déclaration se lit comme ceci :

> "In consultation with this Government, Her Majesty's Government will be prepared to fix a date and take the necessary steps to declare Mauritius independent, after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly".

Ce rapport de la Conférence constitutionnelle de septembre, 1965, avait été agréé non seulement par le Parti Travailliste, mais par les trois partis qui forment aujourd'hui la coalition gouvernementale : le Parti Travailliste, L'Independent Forward Bloc, et le Comité d'Action Musulman. Il semblerait donc qu'il y a contradiction entre le discours du Trône prononcé au nom du gouvernement et cette motion qui est devant la Chambre aujourd'hui. Je me contenterai de dire, M. le président, et je le dirai de la façon la plus nette et la plus précise, quoique nous n'avions pas accepté à l'époque ce rapport de la Conférence constitutionnelle, nous avons depuis, lutté, déclaré que nous acceptions les règles du jeu et que si il y avait à cette Chambre une majorité d'une voix en faveur de l'indépendance, notre parti n'hésiterait pas à trouver la décision légale et constitutionnelle et à accepter la décision de la majorité à cette Chambre. Je ne me dédis point donc et j'accepte que dans les conditions définies par le rapport de Londres, Maurice devrait accéder à l'indépendance dans les six mois suivant l'autonomie intérieure, si une décision était prise par cette Chambre à une simple majorité.

Malheureusement, M. le président, la composition de cette Chambre n'est pas définitive. Je ne voudrais pas

abuser de votre permission pour faire le procès des élections législatives. Ceci n'est pas mon intention. Il y a d'autres endroits où cela doit se faire et où cela se fera. Mais ce que je dis tout simplement est ceci : que le Premier Ministre lui-même, dans une réunion publique qu'il a tenu ces jours derniers à Rose Belle et qui a été rapportée *in extenso* par les journaux "*Le Congress*", "*Le Cernéen*," et, je crois bien même, "*l'Advance*", a déclaré qu'il était absolument convaincu que la fraude avait sévi dans certaines circonscriptions électorales et que les résultats de ces circonscriptions ne devraient pas être tenus pour définitifs. Je partage absolument l'opinion du Premier Ministre sur cette question quoique nous soyons pas d'accord avec lui sur ces circonscriptions électorales ou ces fraudes et ces intimidations avaient sévi. Ce n'est d'ailleurs pas à nous de juger. Nous avons les cours de justice et c'est à elles, en temps opportun, de prendre les décisions qu'elles estiment être justes.

Je me contenterai de dire pour le moment, qu'étant donné le fait que les élections dans certaines circonscriptions seraient contestées, une décision à laquelle on arriverait, une décision absolument évidente à laquelle on arriverait aujourd'hui, à l'effet de voter la motion au nom du Premier, c'est-à-dire de demander au gouvernement Britannique de fixer une date pour l'indépendance de Maurice aussitôt que possible, cette décision pourrait bien être renversée par une décision ultérieure de cette Chambre si le peuple en décidait autrement. Il ne faudrait donc pas, M. le président, que les Mauriciens en general attachent plus d'importance qu'il n'en faut à cette décision inévitable à laquelle on va arriver aujourd'hui.

Le premier point c'est que, de toute façon, si cette decision n'était pas renversée durant les prochains six mois, il ne serait pas question de ce côté de cette Chambre de la contester, il ne serait pas question de boycottage, il serait purement et simplement question de co-opération la plus complète. Mais mes collegues etmoi-même refusons d'envisager que la decision qui sera prise aujourd'hui est définitive. Telle, M. le président, est la position absolument claire, absolument précise de mes collègues et de moi-même.

Il reste à consigner, pour la postérité, les raisons pour lesquelles nous voterons, M. le président, contre cette motion et les raisons pour lesquelles nous esperons que, dans les mois à venir, cette decision sera renversée par une Assemblée autrement constituée.

M. le président, M. l'hon. Premier Ministre a parlé beaucoup du passé. Nous avons vécu pendant 20 minutes, en 1826, en 1882, en 1960. Le Premier Ministre a declaré "*to be in a historical mood*" — je répéterai à son intention les propres paroles qu'il a citées d'Anatole de Boucherville "lorsqu'on va à reculons, on ignore quel fosse, quel abime on a derrière soi". Ce n'est pas "à reculons", M. le président, qu'il nous faut aller mais c'est vers l'avenir, ce n'est pas le passé glorieux sans doute de l'île Maurice qui devrait motiver nos decisions, mais cela doit être plutôt l'avenir de l'île Maurice.

C'est en avant qu'il nous faut regarder et non point en arrière, c'est l'avenir de toute cette jeunesse qui compte sur nous et qui a confiance en nous qu'il nous fait voir. C'est son avenir qui doit guider notre vote et non point l'ambition personnelle et quelquefois sans mesure de certains d'entre nous.

M. l'hon. Premier Ministre a beaucoup parlé mais, qu'a-t-il dit en faveur de cette independance qu'il veut nous faire demander aujourd'hui ? Nous

avons entendu parler de la prédominance sociale, morale et politique d'un clan, qui va cesser le jour où l'indépendance sera proclamée. Quel est ce clan ? Quelle est la predominance politique qui a été présente à Maurice durant les dernières années ? N'est-ce pas celle du Parti Travailliste qui a vu à chaque élection ses forces s'amenuiser jusqu'à ce qu'il perde même ce rôle qu'il a joué pendant si longtemps, celui de parti majoritaire à la Chambre? Majorité absolue, majorité relative et aujourd'hui un des partis minoritaires. N'est-ce pas sa prédominance politique qu'on a vue à travers les vingt dernières années ? Est-ce cette prédominance politique que va faire cesser l'indépendance ?

M. le president, nous avons entendu parler de la grande joie du peuple de Maurice, nous avons entendu parler des forces de la réaction qui ont monopolisé le pouvoir économique et politique depuis un siècle, nous avons entendu parler de ces forces de l'unité nationale qui allaient enfin arriver à renverser ces forces de la réaction. Quelle unité nationale, M. le président ? Est-ce que ces élections ont déterminé qu'il y avait une idée nationale décidée a détruire ces forces de la réaction et à foncer de l'avant dans l'obscurité la plus complète dans le but d'avoir du progrès ? Et on nous a aussi dit que le gouvernement ne se laisserait pas menacer, ne serait pas " *browbeaten by the threats* ". Il n'est pas question de menaces, M. le président. Il n'est pas question d'essayer d'opposer la majorité dans ce qu'elle va décider. Nous sommes si bien conscients du jeu démocratique que bien avant la date des élections nous avons déclaré être absolument déterminés à nous tenir au verdict du peuple librement exprimé. M. le président, je trouve absolument inconcevable, absolument inutile, absolument injuste envers l'Opposition, les déclarations de l'hon. Premier Ministre à l'effet que la majorité ne se laisserait pas intimider ni menacer car il n'a été question ni d'intimidation, ni de menaces, non seulement au cours de la campagne électorale, mais même après la campagne électorale. Nous reconnaissons la Constitution, nous reconnaissons les lois de l'Ile Maurice, nous reconnaissons la droit qu'à la majorité de cette Chambre de décider dans le cadre de ces lois. Il est donc absolument inutile quand on n'est pas menacé de déclarer qu'on ne se laissera pas intimider ou menacer.

M. le président, l'unité nationale qui a présidé à ces élections générales et qui a apparemment décidé que l'Ile Maurice irait de l'avant vers l'indépendance, je ne prétends pas que cette unité nationale soit absolument essentielle au point de vue politique ou constitutionnel pour que l'indépendance soit accordée à Maurice. Ce n'est simplement qu'une question morale et une question de conscience. Doit-on parcequ'on a été élu par une majorité précaire, violer les aspirations d'une minorité importante, ou plutôt violer les aspirations de minorités importantes dans le but d'aller de l'avant avec une petite majorité ? Ceci, M le président, n'est pas du ressort constitutionnel et non point du ressort légal. Ceci est simplement du ressort de la conscience des membres des partis qui forment le gouvernement, des partis de la coalition. Ils devront se poser la question en toute conscience si cela est utile, si cela est sage de se saisir d'une majorité acquise grâce à l'apport d'une communauté majoritaire, apport qui s'est manifesté sans doute avec beaucoup de loyauté dans les circonscriptions rurales, si avec cet apport, il serait sage de rejeter ainsi le vote des communautés minoritaires et d'aller de l'avant et, cela, dans l'intérêt de l'Ile Maurice. Qu'une communauté majoritaire s'oppose aux autres communautés simplement par le nombre de vote qu'elle possède est une solution constitutionnelle que les minorités rejettent Ceci est simplement une question de conscience pour les membres de la coalition qui forme le gouvernement. Quant à nous autres, nous le répétons et l'avons répété, ceux que nous représentons, les 44 pour cent qui, d'après les dernières élections, auraient voté pour le Parti Mauricien Social Démocrate, s'en tiendront, je le répète je le répéterai encore dans cette Chambre et en dehors de cette Chambre, à la décision de la majorité se si cette majorité se manifeste constitutionnellement et légalement dans cette Chambre. Si après les pétitions électorales et après les élections éventuelles, il était avéré qu'à cette Chambre, a une voix, la majorité se déclarait en faveur de l'indépendance, je me porte garant, M. le président, que ceux qui ont opposé cette évolution constitutionnelle s'en tiendront strictement à la loi et à la Constitution et n'opposeront aucune objection, ne se serviront d'aucun moyen illégal et anti-constitutionnel pour barrer la route à la majorité.

Je n'ai pas encore, M. le président, declaré pourquoi nous opposons cette evolution constitutionnelle, nous n'avons pas encore déclaré pourquoi 44% de la population jusqu'à l'heure avait décidé de s'opposer à cette evolution constitutionnelle. Je vais le faire à l'instant et j'aurai tout dit.

M. le président, dans tout ce bla bla-bla, qu'est-ce que nous avons entendu ? Nous n'avons retenu que le passé, que ce qui a été dit par Anatole de Boucherville, et là, je crois que l'hon. Premier Ministre a été inspiré par le "leader" de l'Independent Forward Bloc (*Laughter*) et à travers tout ce fatras historique, nous avons retenu que la Constitution actuelle — c'est-à dire il ne faut pas oublier, M. le président, et je doute qu'on l'ait suffisamment consigné — que cette Assemblée se réunit aujourd'hui sous le signe de l'autonomie intérieure complète. Desormais, il n'y a pas un seul outremerien au conseil des ministres et les décisions que prend le conseil des ministres ne sont sujettes à l'approbation de personne. Ce conseil se réunit sous le signe de l'autonomie interieure complète et il serait faux et injuste et absolument inutile de faire croire à la population que sous ce régime constitutionnel il y aura de la place pour ces forces de la réaction qui veulent monopoliser le pouvoir politique et économique et qui l'ont fait depuis un siècle. Ce serait absolument inutile de faire croire à une population éclairée que ce n'est pas le gouvernement de coalition qui dirige et que ce gouvernement n'a pas toutes les possibilités de prendre les décisions qui conviennent ou qu'il croit convenir au pays, sauf naturellement, celle de déclarer la guerre à la Chine, à l'Afrique ou à la Russie. Quelle est donc la Constitution sous le signe de laquelle nous nous réunissons aujourd'hui ? Un peuple libre, une assemblée législative libre, un conseil des ministres libre, libre dans la définition logique de la liberté et non point dans la définition absolument stricte de cette liberté qui nous permettrait de prendre notre place aux Nations Unies et de peser de tout notre poids dans la balance internationale avec tout ce que cela comporte de dépenses pour des ambassadeurs plénipotentiaires ou pas.

M. le president, le Parti Mauricien Social Démocrate, seul parti national comme me le rappelle un de mes collègues ou peut-être un de mes adversaires (*Laughter*) a déclaré au cours de sa campagne électorale de façon absolument nette et précise que ce n'est pas la peur d'une majorité ethnique quelconque qui le poussait

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à s'opposer à l'indépendance. Cette majorité ethnique peut tout aussi bien dans le cadre de l'autonomie intérieure manifester, si elle le désire ou le croit sage, ses velleités de domination. Ce n'est point, dis-je, cette peur d'une communauté majoritaire qui a motivé notre position, mais c'est seulement l'intérêt des Mauriciens en général et de la jeunesse en particulier.

A une époque où une Angleterre de 53 millions d'habitants se croit trop faible pour pouvoir demeurer isolée et veut s'accrocher à l'Europe de 228 millions d'habitants, à une époque où l'anglais qui se flattait de sa superbe — tout court — ou de son complexe de supériorité, à une époque où l'anglais trouve que ce splendide isolement dans lequel il se complaisait aux siècles derniers est devenu aujourd'hui un non-sens, à une époque ou l'anglais veut pour ses intérêts économiques faire partie d'un contexte plus vaste, quitte à abandonner certaines de ses prerogatives et aliener sa liberté, et limiter les pouvoirs de son propre parlement, à cette époque un petit pays de 750.000 habitants, face à des problèmes extrêmement serieux, extrêmement graves, face à 50,000 chômeurs, face à un deficit budgétaire qui ne menace que de s'accroître, face à un marché du sucre qui ne donne aucune confiance dans l'avenir, un petit pays de 750,000 habitants comme Tarascon avec son Tartarin, se déclare être le nombril du monde et se déclare être pour l'unité nationale, sans laquelle le monde ne peut plus continuer à tourner aussi rondement qu'il ne tourne. Je sais que des messages venus d'ailleurs ont attiré l'attention de notre Premier Ministre sur le fait que le monde entier attendait avec beaucoup d'espoir l'arrivée de l'île Maurice à l'Assemblée des Nations Unies, mais ce n'est pas seulement, M. le président, le coût prohibitif de ces représentations etrangères qui a motivé notre position, c'est, encore et surtout, le fait qu'en le faisant, le Mauricien perdrait son passeport britannique.

M. le président, ce qu'il y a d'intéressant dans cette joute d'aujourd'hui, c'est que la postérité pourra juger qui avait tort, ou qui avait raison, parce que Maurice s'embarquant dans l'indépendance, les résultats seront présents, les résultats seront concrets dans quelques années. Tandis que nous voyons des pays plus ou moins sages, dépendant naturellement de l'optique dans laquelle on les regarde, telles que les îles Fiji, Seychelles, Gibraltar refusent de s'engager dans cette voie de l'indépendance et préfèrent rester des citoyens britanniques. L'on nous dira à juste titre, en citant le dernier jugement de la Cour Suprême, la Chambre des Lords, que le passeport britannique que nous detenons n'est pas identique à celui que detiennent les Anglais, en ce qu'il s'agit de la loi sur l'immigration en Angleterre et pas plus que cela, c'est tout ce que la Haute Cour a décidé. Il est intéressant de noter que quand ces Mauriciens se sont trouvés en difficulté en Angleterre, ce ne sont pas les agents du gouvernemeut mauricien là-bas qui se sont dépêchés de s'occuper d'eux. Ils ont trouvé porte close partout et ce sont des amis de Maurice qui n'avaient absolument aucune espèce d'intérêt dans l'histoire, des amis de l'île Maurice qui se sont mis à aider ces jeunes Mauriciens qui se trouvaient en difficulté et qui se sont cotisés pour que l'affaire puisse aller devant la Cour Suprême et ensuite devant la Chambre des Lords. Cette affaire a décidé purement et simplement que pour la loi sur l'immigration, en ce qu'il s'agit des termes spécifiques de la loi sur l'immigration en Angleterre, le passeport mauricien n'était point considéré

comme un passeport britannique à toutes fins utiles. C'est tout ce que cette décision a établi. Mais si mes amis voulaient simplement regarder les journaux anglais, ils verraient que ce jugement n'a pas été sans soulever des protestations, non point sur le plan juridique, mais sur le plan humain en Angleterre. Mes amis n'ont qu'a se référer à des débats à la Chambre des Lords pour se rendre compte que si les colonies britanniques, que si les citoyens comme on les appelle "*of the United Kingdom and Colonies*", ou plutôt, si leur gouvernement respectif faisait pression sur le gouvernement britannique, il se trouverait beaucoup d'amis à la Chambre des Communes, et beaucoup d'amis à la Chambre des Lords pour faire prévaloir le point de vue qu'un citoyen "*of the UK and Colonies*" devrait être traité de la même façon qu'un "*citizen of the United Kingdom*" tout simplement et non point traité comme citoyen d'un pays indépendant. Cela c'est le vrai bla-bla-bla. Il est extrêmement malheureux que jamais ce gouvernement de l'Ile Maurice n'a fait des représentations auprès du gouvernement anglais pour protester contre cet état de choses, tandis qu'aujourd'hui nous voyons que Gibraltar, les Seychelles et Fiji se groupent et vont établir un "pressure group" dans le but de faire reconnaitre les droits des citoyens outremériens, appartenant aux colonies.

M. le président, comme j'ai dit, la postérité décidera qui avait raison, les preuves seront concrètes, les preuves seront présentes et le peuple pourra se rendre compte pour lui même, si comme je le prévois demain à l'entrée de l'Angleterre dans le marché commun, les liens avec le Commonwealth se trouvent completement coupés tandis que les citoyens britaniques d'outremer ou pas verront leurs liens se resserer avec la métropole, et leurs droits de citoyens britanniques être reconnus non seulement en Angleterre, mais aussi en Europe.

M. le président, je vais conclure en sériant mes arguments. D'abord, nous ne considérons pas la composition de cette Chambre comme définitive. Il nous est impossible à l'heure actuelle d'accepter que le vote de cette Chambre peut lier, d'abord constitutionellement, le vote d'une Chambre autrement constituée, comme nous l'espéront dans quelques mois. Deuxièmement si le vote de cette Chambre comme constituée aujourd'hui se maintient de telle façon à l'effet que ce vote reste une décision de la majorité, la population que nous représentons acceptera cette decision comme étant une decision légale et constitutionnelle et ne l'opposera point d'aucune façon illégale. A trois conditions, M. le président : d'abord, à l'effet que la Constitution ne soit point violée, ni dans sa lettre, ni dans son esprit ; deuxièmement, qu'aucune pratique discriminatoire communale, politique, religieuse ou autre ne soit appliquée dans aucune mesure passée par cette Chambre.

M. Forget : Il faut donc rompre avec le passé ?

M. Duval : J'essaye de comprendre ce que l'hon. Ministre dit. Il faut rompre avec le passé. C'est donc une confession que durant les 20 dernières années cette Chambre a pris des mesures discriminatoires au point de vue communal et politique.

M. Forget : Exactement, 20 ans ou plus. Il y a l'"esprit" du "Club de Curepipe" et du "Dodo Club".

M Duval : Qu'est ce que le "Club de Curepipe" et le "Dodo Club" ont à faire avec des mesures qui seraient passées par cette Chambre qui ne

seraient point discriminatoires, au point de vue communal, religieux ou politique ?

Troisièmement, que l'Opposition dans cette Chambre soit respectée. L'Opposition dans cette Chambre entend jouer son rôle d'Opposition et l'entend jouer dans la mesure et dans toute la mesure prévue par la Constitution, prévue par la loi et prévue par les *Standing Orders*, M. le président, qu'il est de votre privilège d'appliquer. Dans ces conditions la population que nous représentons acceptera le verdict de la majorité. Je crois devoir attirer l'attention de tous mes Collègues sur les risques que prendrait tout Gouvernement qui déciderait de s'aliéner, et de s'aliéner d'une façon définitive, 44% de la population qui ne demandent qu'à coopérer démocratiquement et constitutionnellement avec un gouvernement élu par des élections libres.

M. le président je crois avoir suffisament parlé, il n'est point nécessaire pour nous, nous ne sommes pas ici en campagne électorale, et il n'est point nécessaire d'avoir recours ni à l'appel à l'émotion, ni...

M. Foogooa : Radio pirate.

M. Duval : Encore moins aux pirates eux mêmes Je regrette ne pas pouvoir jusqu'à présent me référer aux membres de cette Chambre selon leur rang dans leur circonscription, car je ne peux pas arriver à savoir qui est le premier, le deuxième ou le troisième membre, mais cela arrivera.

M. Foogooa : Vous le saurez dans quelques mois

Mr. Speaker : *The hon. Member is now coming to the end of his speech.*

M. Duval : Je me souviens, M. le président, que l'hon. Membre qui vient de parler sera mon adversaire dans quelque temps dans la circonscription No. 4. Il a donc parfaitement raison de dire que je saurai dans quelques mois, quel va être son statut à cette Chambre ou ailleurs.

M. Président, j'ai terminé. J'ai déjà fait un appel aux collègues de mon parti pour que, au cours de ce débat, et au cours des débats ultérieurs, la plus grande courtoisie et la plus grande politesse règnent de notre côté. Je me suis adressé au Premier Ministre pour lui demander d'obtenir la même chose des collègues de ses partis, et je voudrais espérer, M. le président, que vous n'aurez point à vous plaindre du comportement des membres de l'Opposition qui sauront se conduire de la même façon civilisée avec laquelle ses mandants se sont comportés durant les élections Merci, M. le président.

(*Applause*)

(3.40 p.m.)

The Minister of Housing, Lands, Town and Country Planning, Mr. A. R. Mohamed (Fourth Member for Port Louis Maritime and Port Louis East) : Sir, after having heard the speech of the hon. Prime Minister which I consider historical and very convincing, I think, any other speech in favour of the motion appears to me very superflous. I am sorry, I was not here for the full time that the leader of the Opposition spoke, but I was indeed here at the time when he started his speech, and I was able to understand that he made it quite clear in the opening of his speech that his party is not prepared to accept the arguments and reasons given by the Premier in favour of the country becoming independent. Sir, I for my part would like to make it clear that because I am not in favour of hampering the progress of this country, and also not being in favour of continuing to

live in slavery, I, without any hesitation, beg to solemnly declare that I am in favour of this motion, and also to declare that the time has come for all of us to vote unanimously in favour of this motion for the purpose of becoming free and respected citizens of an independent and sovereign Mauritian nation. (*Applause*)

(3.45 p.m.)

Mr. J. E. M. L. Ah-Chuen (Third Member for Port Louis Maritime and Port Louis East) : Mr. Speaker, the motion of the hon. Premier is in my opinion very much premature...

Mr. Mohamed : On a point of order, Sir, may I draw attention that the orator who is just delivering his speech, is, in fact, reading it ? I strongly object to it.

M. Speaker : The House should allow me to deal with a question of this nature. But, on an occasion such as this, copious notes are permissible.

Mr. Duval : The hon. Premier himself did refer to very copious notes.

Mr. A. R. Mohamed : The Prime Minister has the right, I suppose.

Mr. Ah Chuen : ... coming soon after the general elections and when certain results of these elections are actually being contested both by the Independence Party and the *Parti Mauricien Social Démocrate*. Sir, I should like to recall that on the very evening of the election's day, assurance was given by His Excellency the Governor in a nation wide TV and radio broadcast that if there is dissatisfaction with the results of the elections in some constituencies because it is thought there has been irregularity a remedy is provided by the law. I think, therefore, that it would only be fair to all the parties involved, to all the candidates and, most important of all, to the electorate, that before the question of independence is considered in this House, the final numerical state of the Independance Party and of the P.M.S.D. should be declared definite, and such position cannot be declared definite until all the electoral petitions have been first heard and dealt with.

My second point, Sir, is that at the Constitutional Conference of 1965 one of the points reached by the Secretary of State for the Colonies was that Mauritius could accede to independence only after a period of six months' full internal self-government.

We have only just entered this period of full internal self-government, and undoubtedly the purpose of this interval is to allow for a trial period ; in view of the fact that only 54 per cent of the electorate have voted for independence, and I should incidentally like to point out that 54 per cent of the electorate do not necessarily mean 54 per cent of the total population if we bear in mind that out of a population of 750,000 only 271,000 have voted.

I think, therefore, that it would be in the general interest of this country to prolong the trial period of internal self-government instead of shortening it. This would give a golden opportunity to all the communities of this island to learn to live and work together under a new form of Government.

Sir, I have on more than one occasion, stressed in this House that political independence would serve no purpose unless the country has first achieved economic stability, and I should again like to draw the attention of hon. Members to the truth of my statement. I do not believe that it is

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absolutely necessary to obtain independence to improve our economy in order to raise the standard of living of our countrymen. These things can be achieved if we stop all wastage and all reckless and extravagant expenditure, if we all make a honest attempt to work for a better Mauritius. Sir, with or without independence, the immediate big task ahead of all of us, and particularly of the Government is to save the economy of this country. If this urgent task is not acknowledged, and is not tackled, if the minimum want of the people cannot be satisfied, if the ordinary man and woman cannot find a job, and cannot feed himself and his family, if his dignity as a man is thus done away with what will he do with independence? For this reason, Sir, I am of opinion that the present Government should give top priority to the economic problems of Mauritius instead of devoting its energy to pressing for a quicker constitutional change.

Sir, I think, that this is the time for moderation, for greater understanding, for co-operation by all sections of the Mauritian community. This is not the time for intimidation and threats of retaliation; the other man's conviction should be respected, the other man should be free to express his opinion, and it is only in an atmosphere of security, peace and harmony that we can all collaborate and work for the well-being of this country, irrespective of its ultimate constitutional destiny. Thank you, Sir.

(3.55 p.m.)

Mr. P. R. Awootar Mewasingh (Second Member for Vacoas and Floréal): Mr. Speaker, Sir, it is with a sense of great pride and satisfaction that I am standing to do my first patriotic duty in this very august Assembly.

It is time, Sir, for all true patriots to show, by their sincere deeds, that they can raise their minds high above petty electoral disputes to work sincerely for the good of the new nation which is about to see the day.

It is high time, Sir, for the sons of this country who prize dignity and national self-respect to help putting an immediate stop to this long lasted colonial status which is hampering our economic progress and jeopardising our national dignity.

I consider, Sir, that the true Mauritians sitting in this House must think about the great problems that are facing our country to-day. We must cast aside our petty quarrels and come forward with a true national spirit and set the good example to our people.

Mauritius is lucky, Sir, to have a tremendous amount of goodness, goodwill and enthusiasm among its population, specially among its youth, and the few people who are sitting in this House this afternoon on this very auspicious and historical day have the very great responsibility, I consider, to shape, by their very sincere deeds, the destiny of that population, and this destiny can be shaped only by a very sincere approach to our problems armed with the best possible principles.

It is time for us to think about how to harness that goodness, that goodwill and that enthusiasm into constructive channels which will be conducive to a very bright and independent Mauritius.

We have often heard everywhere, from every party, from every true Mauritian, about the building of a Mauritian nation. But can we build that Mauritian nation without independence? Can we shape the future of this country without political freedom? When all the free nations of the world, masters of their own destinies, are going fast ahead towards progress and prosperity, have we the right to waste our precious time by standing idle with our begging hands stretched in vain towards our masters? Do we still have any illusion left after the treatment which was given to our passport? For any one of my colleagues, Sir, who is labouring under that illusion, allow me to quote Cicero:

> "He who through fear of poverty forfeits liberty — liberty which is better than mines of wealth — will remain a slave for ever".

To this, Sir, I will add that it is our bounden buty to break the handcuffs which are enslaving our people even if these handcuffs are made of solid gold.

M. Duval: Malheureusement.

Mr. Mewasingh: It is with this spirit that I have risen, Sir, to thank the hon. Premier for his historical resolution asking for independence. I wholeheartedly support his resolution being confident that nothing less than independence can free our dear country and its people from both political and economical bondage.

(3.58 p.m.)

Mr. S. A. Patten (First Member for Stanley and Rose Hill): Mr. Speaker, Sir, I have been listening very attentively to what my elders have just said about this question of independence.

Before proceeding further, I should like to congratulate the hon. Second Member for Vacoas and Floréal (Mr. Mewasingh) for his maiden speech.

(*Applause*)

As a young and newly elected Member of this House, I think it is my duty to express my opinion on this very important question. In so doing, I am sure I am voicing the opinion of thousands of young people like myself in this country.

As I was saying, other hon. Members have addressed this House already on the question of independence. Some have evoked the good that it can bring to us and others have pointed out the evils that it can bring along with it. But no one can deny the fact that the fundamental basis of a country before it can accede to independence is a sound economy, a stable Government, unity and respect among its people.

It is a pity to note, Sir, that during the electoral campaign some have behaved in an alarming way towards some religious faith and this sort of attitude is deplorable and this happened only before independence. What is going to be the position after independence if this abusive attitude goes on and what is the guarantee that Government can give the people to debar such tendencies as to criticise the religious faith of the people of this island?

It is very well known, Sir, that the financial position of the country is not good not to say precarious and with independence the situation is going to grow worse. We have seen examples in Africa where countries have acceded to independence. We cannot be expected to live on help from different quarters and what guarantee do we have that this help will be coming after independence?

Let me, Sir, *en passant*, clarify with the help of one or two examples, the position now prevailing in Mauritius. The increase in unemployment is alarming. Jobless fathers and mothers are doing all they can to avoid destitution. I have known many

cases myself where the heads of families have had to sell their furniture to be able to feed their little ones. Recently there was a mother, a Mauritian mother of Tamil origin, who had to sell even her "tally" — this is a golden locket worn by Tamil women as a sign of sacred allegiance to their husbands — she sold that "tally" in order to be able to have one or two weeks' food for her little ones. I know several young men with a School Certificate working as relief workers and trying to secure a job as such which they do not find sometimes. Recently there was a jobless father who came to see me and he told me that he had to give his child *en cadeau* — I stress upon it — he had to give his child *en cadeau* because he could not earn a living for that little one.

Mr. Ringadoo: Perhaps the hon. Member can produce the list.

Mr. Duval: Perhaps the hon. Member would stop interrupting a maiden speech.

Mr. Ringadoo: He is reading.

Mr. Patten: I think, Sir, it is a tradition of this House that a maiden speech should not be interrupted.

Mr. Duval: On a point of order, Sir, may I stress that you will see to it that the tradition that hon. Members making their maiden speech be not interrupted and be allowed to refer to copious notes should be maintained for this side of the House as well as for the other side.

Mr. Patten: Everyday, Sir, we can see crowds of people queueing up before Public Assistance Offices or in front of employment exchanges waiting for assistance or a job. The whole situation, as you might say, is explosive and all responsible parties in this House should make it a duty, Sir, to find a remedy to this state of affairs.

If independence could bring something to alleviate the misery of our people, if independence could bring something for our jobless fathers, if independence could stop mothers from shedding tears, and if independence could bring work for our youngsters. I would be the first one to vote for it, I am sorry I cannot vote for independence, Sir. Thank you.

Mr. R. Gujadhur (Second Member for Flacq and Bon Accueil): Mr Speaker, Sir, my first and obvious duty is to congratulate my hon. Friend, the First Member for Stanley and Rose Hill (Mr. Patten) on his maiden speech.

"Equal in all respects and in no way subordinate to one another", is a famous sentence which is embodied in the Statute of Westminster. That is the ultimate constitutional consummation of every country of the Commonwealth as envisaged by the pundits of constitutional reforms. And I see no other idea behind the motion of the hon. Member, the Premier and Minister of Finance, which is before the House today. This motion which is before the House today is not a revolution. It is not the panacea of all our ills. It is simply a free, gradual, calculated constitutional set up which should be the ultimate aim of every country that has carried on under the pattern of the British Government. It is as a result of the famous London Conference where my Friend the leader of the Opposition, and his colleague Mr. Jules Kœnig who I must say I am sorry not to see in this House today, took part; I was saying that it was in their presence and that of my Colleagues on this side of the House that Her Majesty's Government

themselves agreed to give independence to Mauritius subject to an election being held and a simple majority voting a resolution, which is being voted I hope this afternoon. The election has been held and it has been held under the rule of law. It has been held very significantly because it was held in the presence of Commonwealth Observers. Whetever may have been the election, it is here, and to-day the House constituted is a legally and constitutionally set up one. I do not think any speech from my Friend the Leader of the Opposition can change that.

Mr. Duval: Not a speech but an electoral petition.

Mr. Gujadhur: An electoral petition, Mr. Leader of the Opposition.

Mr. Speaker: The hon. Member must address the Chair.

Mr. Gujadhur: An electoral petition, I am referring not addressing to my Friend, the Leader of the Opposition, has its proper forum. And the Leader of the Opposition must thank this side of the House for having supplied to this country an independent judiciary and my Friend should wait with all his anxiety for the decision of that independent judiciary which on this side of the House we cherish, as well as does the other side of the House.

This being the position, Mr. Speaker, I find it absolutely irrelevant that my Friend should have referred to the constitution of this House and should have referred to what he has called in his mind as the reshuffling of this House and securing a majority on his side.

Mr. Duval: You feel unconfortable.

Mr. Gujadhur: Mr. Speaker, Sir, the election was held normally in this country. It was held with the absolute right to the citizen whose name appears on the electoral register to vote as he wishes. He has done so. He has done so and I think my friend, the Leader of the Opposition, should have the courage at least momentarily to submit to that decision and if he does so, I do think that the arguments that he has levelled against the proposition of my friend, the hon. Premier, are just flimsy arguments that should be shelved.

Mr. Duval: Does my Friends, the Leader of the *Parti Travailliste* and the Leader of the *C. A. M.* seem to think differently from what he says?

Mr. Gujadhur: I am referring to what I have heard this afternoon in this House. I am not referring to anything that I do not know.

I am sorry, Mr. Speaker, I am referring to my Friend, the Leader of the Opposition whom I very much like as everybody knows. I think that the Leader of the Opposition who has acquired a sense of maturity which he has shown in his speech this afternoon should realise — he will forgive me to give some advice — that there is a place in this House for him, there is a place in this House for all Members who are backing him, there is also a place in this House for the percentage that he has submitted to this House, but that percentage, Mr. Speaker, should submit to the verdict of the majority representing this side of the House and be content and assured that this House, before the speech of the Leader of the Opposition, has made provisions for the safeguards of the fundamental rights of the people of this country. The Opposition is an offshot of the British pattern and it certainly has its role to play. This

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House has already accepted the Constitution which Her Majesty's Government has proclaimed to day, Mr. Speaker, and in that Constitution if read carefully, my Friend the Leader of the Opposition will see that all his requests to this side of the House have already been accepted. Mr. Speaker, the people of Mauritius should realise that the Constitution that has been promulgated is a Constitution which gives safeguards of a great variety, and gives safeguards much more than in any other colony that has been given independence ..

An hon. Member : Thanks to whom.

Mr. Gujadhur : I think it has been thanks to the constructive collaboration of the Opposition with the Members of the Government at that time. Well, they should remain content by understanding and realising that they should not be as sceptical as they are to-day. Well, my Friend, the hon. Premier thinks to secure independence to this country. I think they should be guided by that very constructive collaboration with which they played their part at the time of the London Conference. They should be guided by that constructive collaboration and admit that Her Majesty's Government has committed themselves in good faith to give independence to this country, subject to the resolution of my Friend being passed.

An hon. Member : Six months.

Mr. Gujadhur : This in my submission, that the six months to which my hon. Friend on the other side is referring, has no bearing in the sense that the debate at the London Conference has been published in a sessional paper. There is nothing mandatory about it.

Mr. Duval : What about the simple majority which is going to vote the resolution ?

Mr. Gujadhur : What is the basis of the requirements of Her Majesty's Government ? The basis of the requirements of Her Majesty's Government is to the effect that the resolution should be carried by a simple majority of the House. That is the basic principle of the requirements of Her Majesty's Government. Her Majesty's Government has expressed the desire, as far back as the time at which the London Conference was held, that it would be six months after. I do not think it has any bearing at all on the subject matter at issue. It is not binding because this House which, in the words of the Leader of the Opposition, Mr. Speaker, is supreme today, that this House in his own words, has the fullest autonomy that any Constitution can give. Therefore, in its own supremacy, in its own sovereignty, this House is perfectly entitled to-day to pass this resolution and make the request to Her Majesty's Government. Knowing the power that Her Majesty has had, knowing the concepts of world politics to day, and knowing the absolute desire of Her Majesty's Government to free countries whose people have expressed their decision that they should be free, I am more than certain that Her Majesty's Government will immediately accept the resolution of my Friend to fix the date of Independence for this country.

Mr. Speaker, I am referring to the different aspects of the Constitution. I think that the different aspects of the Constitution are themselves a safeguard to the people of Mauritius. I know of no country where a majority of people have admitted to give as much safeguards as they have given to the minority. But I regret to have to say to the Leader of the Opposition that there is one sentence of his speech which I do not like, and that sentence

was that it was one community of this country only that seeks independence. I have yet to know whether elected as I was in a constituency where live the different communities of this island, elected by a majority which probably the leader of the Opposition will never achieve in his whole political career, I regret to have to state that he assumes he took it for granted my contituents will never admit that I was elected by only people belonging to my community.

I protest, Mr. Speaker. If he is fair in himself, if he respects himself, if he says as he does say, that he wants to collaborate with everybody in this country, there is one thing in the name of my constituency which I represent wholly, whether he likes it or not today, that he should withdraw the fact that their representatives are only representatives of one section of the population of this country. Mr. Speaker, these are very grave allegations.

Mr. Duval : I must say to the second Member for Flacq/Bon Accueil that I am not withdrawing anything.

Mr. Gujadhur : I think my Friend proposes to perpetuate the slight that he has made to my constituency, and it will take note of it. Mr. Speaker, it is easy for those who want to stop progress in this country to make use of all sorts of manœuvres. It is easy for anyone to stop progress in this country, to speak of the system of protection of minorities, of validity of rights and so forth and so on. but it is not easy to fool this public of Mauritius which has given a clear proof that they are no more going to be fooled and that they mean to progress in this country to secure their right, their birthright which in the words of one of an elder Leader of India, "Lokmanya" Bal Gangadhar Tilok : "Independence is our birthright" and we propose to take it, Mr. Speaker.

Mr. Speaker, I wish to say before I take my chair that I hope that my Friends of the Opposition will withdraw the conditions that they have laid to prevent independence in this country. They have laid the conditions that we should wait till the Court has established who are the members of this House and who are not the members of this House. I wish that they should realise that what they have said is not serious in itself. I wish they should realise that the only good attitude on such an occasion, is that they should say that they are against independence because it does not suit them. But I regret to have to state Mr. Speaker that here again in this augnst Assembly, they have come to find ways and means to conceal their propet intentions. (*Interruption*)

I am sorry to have to state that the percentage of population voting against is something in itself. It is a mechanism of a procedure for the purpose of securing elected members to this House and that is all. It is the number of Members in the House that counts and nothing else.

The question, Mr. Speaker, is that whatever would have been the position of the members of the Opposition, the Members of the Opposition should realise that once they had committed themselves in London, that Her Majesty's Government should commit itself to give independence to this country on the conditions laid down. To day they should have come to this House and voted for it. (*Interruption*

I think that my Friend believes in the rule of law, and that he has sub

mitted it with such a big force. If my Friend believes in proper procedure, my Friend should have realised that the very day the London Conference was over, he knew that the question of independence of the country was no more in the hands of Her Majesty's Government; it was in the hands of the people of Mauritius Mr. Speaker, on the 7th of August, the people of Mauritius have given their verdict. They have placed Mauritius on the map. They have decided that Mauritius should be given its proper place in the Comity of Nations and I look forward to the day when Her Majesty's Government is going to accept the resolution of my Friend. We will see to it that Mauritius secures her proper place in the Comity of Nations.

Mr. Speaker, before Is it down, as I have dealt with the arguments of the Leader of the Opposition, I must also call for his collaboration. I will also say to the Members sitting opposite me that it is no time for bickering, no time not to realise and be practical, that it is no time to continue that state of uncertainty which was obtaining in this country before the elections, now that the people have given their vote, now that everything is settled, now that the idea of uncertainty is over. I ask my Friends of the Opposition and those outside this House to become realist. I pray that they will realise that uncertainty is over and we should all pool our resources so that this country which is ours, not mine or yours, all of us put together that we should strive together to see to it that Mauritius secures necessary advice, necessary administration, so as it could shape its destiny and carry on in the best interests of all, irrespective of class, colour or creed. Thank you, Mr Speaker.

(4.22 p.m.)

M. G. Ollivry (First Member for Rodrigues): M. le président, après le discours vigoureux et quelque peu agressif du deuxième député de Flacq et Bon Accueil (M. Gujadhur) je dois tout de même dire que je suis d'accord avec lui pour déclarer que le leader de l'Opposiiton et les membres qui sont ici de ce côté de la Chambre ont leur place dans cette Assemblée car ce serait vraiment à désespérer si le Leader de l'Opposition, qui est quand même le Leader du parti majoritaire, n'avait pas sa place dans cette auguste assemblée.

M. le président, permettez que je me réfère à quelques points que j'ai notés du discours du deuxième député de Flacq et Bon Accueil. Je ne consulterai pas de notes copieuses pour mon "*maiden speech*" et je me contenterai de parler au pied levé, comme ont dit, pour répondre surtout au discours du deuxième député de Flacq et Bon Accueil, dirigeant de la puissante entreprise "travailliste" qui se nomme *Fuel*, de ce député qui est venu nous dire qu'il a été élu par toutes les communautés de Flacq et Bon Accueil. Je me permets d'en parler, M. le président, puisque je crois qu'à part mon hon. ami le deuxième député de Rodrigues et moi-même, il ne se trouve à cette Chambre et il ne s'est trouvé à cette Chambre, personne qui puisse se targuer de parler au nom de l'unanimité de son électorat.

Pour revenir au deuxième député de Flacq et Bon Accueil, dans un discours comme je l'ai dit très vigoureux et quelque peu agressif, il nous a demandé de coopérer à l'occasion de cette autonomie intérieure. Je suis certain pour ma part que ceux qui en dehors de cette Chambre l'auraient entendu auraient quelque peu peur de coopérer avec un collègue aussi agressif.

An Hon Member: Un matamore.

M. Ollivry: Nous verrons vendredi comment cela se passe.

Dans son discours le deuxième député de Flacq et Bon Accueil nous a parlé du "*rule of law*". Si le '*leader*' de l'Opposition a demandé qu'on ne montre pas tant d'empressement à voter cette fameuse motion de l'hon. Premier Ministre, c'est précisément parceque nous croyons dans le "*rule of law*" et que nous voudrions, par exemple, voir la pétition électorale de l'hon. ministre du logement être décidée par la Cour Suprême, par ce pouvoir judicaire que nous respectons autant que le deuxième député de Flacq-Bon Accueil. Je le répète: il n'a pas bien compris les propos du *leader* de l'Opposition, il n'a pas compris que ce que le *leader* de l'Opposition voulait dire c'est que nous reconnaissons la légalité de cette Chambre, nous reconnaissons que cette Chambre est aujourd'hui légalement constituée mais ce que nous disons, c'est qu'étant donné que l'hon. Premier Ministre lui même a declaré qu'il y avait eu des fraudes dans certaines circonscriptions et qu'il y aurait des contestations devant ce pouvoir judiciaire que nous respectons, nous ne devrions pas montrer tant d'empressement. Pourquoi vouloir en effet nous imposer une motion qui, si la majorité changeait à la faveur des pétitions électorales, pourraient se trouver renversée? Evidemment, l'hon. deuxième député de Flacq et Bon Accueil, qui connait bien les Britanniques, nous a dit que le gouvernement de Sa Majesté s'empresserait de nous accorder l'indépendance que, M. le Président, l'hon. Premier Ministre a demandée. Ceux qui me connaissent de l'autre côté de la Chambre — et il y en a quelques uns et des plus importants — savent que, pour ma part je ne me suis jamais opposé à l'émancipation des peuples. Ils savent que je collaborerai toujours avec le gouvernement issu de la majorité du peuple et ils savent qu'ils pourront compter avec moi et avec l'Opposition si, les contestations terminées, cette Chambre acceptait de voter une motion pour l'indépendance. Mais ce que le *leader* de l'Opposition a dit et ce que le deuxième deputé de Flacq et Bon Accueil n'a pas semblé ou n'a pas voulu comprendre, c'est que nous devons attendre que les passions soient apaisées, que les pétitions électorales soient décidées par ce pouvoir judiciaire qu'il respecte, M. le président, autant que nous, afin que la constitution de cette Chambre soit vraiment définitive. Mais le *leader* de l'Opposition n'a pas dit que cette Chambre n'était pas légalement constituée, je ne crois pas que nous serions venus ici aujourd'hui.

L'hon. député de Flacq et Bon Accueil, comme je le disais, dirige la puissante entreprise travailliste de FUEL...

An Hon. Member: Do not forget that Ebrahim Dawood is here.

M. Duval: Ce qui prouve la vanité des choses de ce monde. (*Laughter*)

M. Ollivry: Il n'a pas, comme a dit le *leader* de l'Opposition, été élu par les laboureurs mais nous a t-il dit sur un ton quelque peu paternaliste par tous les électeurs qui ont voté pour les députés de Flacq et Bon Accueil.

Pour en revenir donc au discours du deuxième député de Flacq et Bon Accueil, je disais que c'est parceque nous sommes d'accord avec le "*rule of law*", et parceque nous sommes d'accord avec le "respect" du pouvoir judiciaire, que nous demandons tout simplement à attendre que la constitution de la Chambre soit définitive avant de voter une pareille motion.

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M. Duval : Boolell a compris. Ça c'est exceptionnel.

M. Ollivry : Je suis très heureux que l'hon. ministre de l'éducation ait finalement compris. (*Laughter*)

L'hon. deuxième député de Flacq et Bon Accueil nous a également dit que la période de six mois d'autonomie intérieure, — si je l'ai bien compris et si je ne l'ai pas bien compris qu'il me le dise, — n'avait aucune importance puisque c'était contenue dans un " *Sessional Paper* ". Si cette période de six mois d'autonomie intérieure n'a pas d'importance, je me demande si les garanties de cette même indépendance que demande l'hon. Premier Ministre en ont puisque elles sont également contenues dans le même *Sessional Paper* ! Alors pourquoi donc vouloir se presser quand vous avez vous-mêmes accepté à la conférence de Londres qu'il y aurait une période d'autonomie intérieure de six mois ? Est-ce que cet empressement serait suscité par la peur ou bien par le respect du pouvoir judiciaire ?

L'hon. Premier Ministre ne nous a pas convaincus des avantages économiques de l'indépendance. Ici je parle en tant que Mauricien de naissance puisque je viendrai plus tard, à en parler en tant que député de Rodrigues et je dirai qu'on n'a pas réussi à me convaincre des avantages économiques qui sortiraient de cette sécession où certains croient voir l'indépendance. On ne m'a pas convaincu mais si on a réussi à convaincre la majorité de la population, je suis disposé à accepter ce verdict dans la mesure où le pouvoir judiciaire aura entériné ou confirmé la constitution de cette Chambre. L'hon. Premier Ministre nous a parlé de certains pays non loin de nous tels que le Kenya, la Tanzanie mais il ne nous a pas parlé du Congo, de Zanzibar et d'autres pays que nous connaissons bien.

An Hon. Member : Des mercenaires du Congo.

M. Duval : De M. Forte, le mercenaire.

M. Ollivry : Il ne m'a pas convaincu des avantages économiques de l'indépendance. Mais si l'on doit accepter l'indépendance, à sa place je me demanderais pourquoi on accepterait une intervention britannique dans nos affaires intérieures. Pourquoi accepter en vérité un traité avec la Grande Bretagne qui inclurait la possibilité pour la Grande Bretagne d'intervenir dans nos affaires intérieures. Est-ce qu'on a tellement peur des fureurs du peuple ? Pourquoi avoir peur du peuple ? Pourquoi demander et insister que le gouvernement britannique dans son paternalisme vienne nous donner son " aide " dans nos affaires intérieures après l'indépendance ? Nous qui avions reclamé l'association, avions demandé que, l'autonomie intérieure installée, nous continuions à être associés avec la Grande Bretagne. Quand on est associé, il y certaines choses qu'on doit accepter mais en revanche on pouvait penser recevoir certains avantages économiques. Quand on a donné les Chagos — je dis bien " donné " parcequ'on n'a pas vendu — quand on a accepté que des bases puissent être installées vis à vis de nos amis africains et asiatiques, quand on a accepté que des facilités soient accordées à Plaisance aux autorités britanniques, quand on a accepté que le *H. M. S. Mauritius* puisse continuer à disposer de certaines facilités ici, on aurait pu s'attendre à recevoir en revanche certains avantages économiques. Avec la solution de l'association, nous aurions accepté de donner à l'Angleterre certains avantages mais nous aurions demandé en revanche certains avantages économiques. Ce que l'hon. Premier Ministre nous

demande de voter en fin de compte, c'est une forme d'association — l'indépendance n'étant qu'un mot — mais une association avec tous les inconvenients et sans aucun des avantages.

M. le président, nous préférons, nous avons préféré, nous avons demandé au peuple de préférer une association qui comporte certains inconvenients, assurément, mais également des avantages économiques certains.

M. le président, le *leader* de l'Opposition a clairement exprimé la position des membres de ce côté de la Chambre en disant que nous acceptons que la Chambre a été légalement constituée mais qu'à la faveur de certaines élections ou de certaines pétitions électorales la composition de la Chambre pourrait se trouver changée et qu'en consequence il ne fallait pas montrer tant d'empressement à voter cette motion puisque la motion elle-même pourrait se trouver renversée à la faveur des résultats des élections partielles qui pourraient avoir lieu.

En tant que premier député de Rodrigues, où la campagne électorale a été basée uniquement sur la question de l'indépendance, où les Rodriguais ont voté massivement contre l'indépendance et pour une forme d'association étroite avec la Grande Bretagne, c'est à dire pour maintenir et pour conserver leur statut de citoyens du Royaume Uni et des colonies, en tant que premier député de Rodrigues, je déclare que dans l'éventualité où l'Ile Maurice deviendrait indépendante, nous nous réservons le droit et la possibilité de demander non pas l'indépendance, M. le Premier Ministre...

M. Walter : Nous vous la donnerons sans difficultés.

M. Ollivry : ... mais que Rodrigues continue à jouir des avantages découlant d'un statut spécial qui la lierait au Royaume Uni. Naturellement l'hon. ministre du travail qui sait bien que là-bas on paye les gens avec du maïs, — mais c'est un principe vraiment " travailliste ", — est disposé a donner à Rodrigues la secession.

M. Walter : Son indépendance.
(*Laughter.*)

An Hon. Member : Are we in a circus ?

Mr. Speaker : This is not a happy term to use. Some excitement on the part of Hon. Members seems inevitable in a debate of this kind.

M. Ollivry : Je vous remercie, M. le président. L'hon. ministre du travail sait qu'à Rodrigues, les Rodriguais sont payés avec du maïs.

Mr. Foogoca : *Interruption.*

M. Ollivry : Je n'ai rien compris à ce qu'à dit l'hon. membre mais cela n'a pas d'importance. Le ministre du travail est disposé a accorder à Rodrigues son indépendance ! Voilà qui montre le paternalisme tout naturel dont il fait preuve vis à vis des Rodriguais qui sont encore sous le gouvernement de Maurice et qui explique d'ailleurs la sollicitude dont à toujours fait preuve le Gouvernement depuis ces 20 dernières années envers les Rodriguais. M. le Président, je terminerai en répétant que dans l'éventualité où l'Ile Maurice accèderait à l'indépendance, les Rodriguais se réservent le droit de demander qu'un statut spécial leur soit accordé qui les lierait au Gouvernement du Royaume Uni. Cette initiative, évidemment, je la prends avec l'appui total du P.M.S.D.

qui répresente ici la totalité des habitants de Rodrigues. Au nom du P.M.S.D., donc, je déclare que si cette éventualité se matérialisait, les Rodriguais demanderaient un statut spécial qui les lierait au Royaume Uni.

J'ai terminé, M. le Président, et je vous en remercie.

(4.40 p.m.)

Mr. Y. Mohamed (Third Member for Quartier Militaire and Moka): Mr. Speaker, Sir, I have to congratulate my Friend the Member for Rodrigues...

An Hon. Member: First Member.

(*Interruption*)

Mr. Speaker: The hon. Member is making his maiden speech, he should not be interrupted.

Mr. Mohamed: That does not worry me in the least. I have known my Friend the hon. Member for Rodrigues for some time and he referred in his maiden speech to those people who have known him. I am one of those people. I must say that these *jeux de scène* are new in him, he must have imported them from Rodrigues. All the same, new habits or adopted things do not last very long and we have seen by the end of his speech all the *jeux de scène* had disappeared. We have heard of the plots by the *P. M. S. D.* for quite some time in this country, but all their plots have come to nothing, and the people of this country by majority are determined to go to independence. We have heard speeches, remarks, unpleasant as they were, from Members who have been in this Assembly for quite some time, my Friend the First Member for Constituency No. 1 (Mr. Duval) in fact the Leader of the Opposition, and then repetitions of exactly what the Leader of the Opposition had said by the Third Member for Constituency No. 3, and also speeches from the First Member for Rose Hill and Stanley, and of course the last Member who spoke Mr. Ollivry himself. As far as my Friend Mr. Ollivry's speech is concerned, we have heard that we should not be afraid. Why are we afraid? Why should a Government party in power be afraid? You can be sure, my dear Friends of the Opposition, that fear does not lie on this side of the House. We have fought the elections in spite of the millions spent by the *P.M.S.D.* to scare us. We have fought it unafraid, undeterred and we are still ready to fight it undeterred for the independence of this country.

An Hon. Member: *Tí dimoune ça!*

Mr. Mohamed: It is not "*ti dimoune ça*," it is more than you can cope with. We have heard the First Member for Rose Hill say, I think this is the only material point in his speech, that in Africa, the situation after indepence is worse. I think I should refer him to the First Member for Rodrigues who has worked in an independent country like Cameroun for years before coming to Mauritius and he has found there that the situation was excellent after independence. The situation in Kenya is excellent after independence. During the electoral campaign, Mr. Speaker, we have heard people, with no experience whatsoever, say that political independence should come after economic independence. And those same people have visited countries like Pakistan, India, Kenya which have become politically independent first and economically independent afterwards. This is the case, this will be the case with this country, whether there is co-operation from the other side or not. We are determined to overcome all sorts of obstacles in our way to try to get this country in its

rightful place in the United Nations and elsewhere where we shall be proud to be.

Mr. Speaker, Sir, it has been said that the composition of this House is not definite. The person who said it in the very beginning must have been speaking surely because he knows the situation on his side. Surely, on this side of the House also the composition is not definite. Electoral petitions will come and we shall be able to see with satisfaction that the seats on the other side will become vacant and the seats will be the same on this side.

(*Interruptions*)

Mr. Mohamed: There are some undistinct words coming from that side but we shall not pay attention to the movement of the beards or whatever the movements may be on the other side.

Mr. Speaker, Sir, the First Member for Constituency No. 1, the Leader of the Opposition has said that he does not hope to change the convictions of this side of the House. As I said from the very beginning it would have been wishful thinking on his part, and there has been a lot of wishful thinking in him and there is still a lot of wishful thinking in him, and all to no purpose, I can assure him, of that. Mr. Speaker, Sir, he said the reason for his speech was not to change the convictions of this side of the House but that he was speaking for posterity. Rightly so, but posterity would have been more grateful to him, posterity would have blessed him had he worked for the independence, for the pride and for the prosperity of this country. He has tried, he and his friends, and those of the Curepipe side *le Club de Curepipe*, they have worked to undermine the interests of the workers, the interests of the freedom of the workers of this country, they and people of that side have had their independence for ages, but they wanted to deprive us of our independence. When I say us, I mean the big majority of this country. I would not have been here and the other Members of this House too, had not the Muslims cooperated and voted for independence. They are trying to fool themselves and they have tried to fool the minority communities, like the Chinese and the Muslims, but fooling does not last. You can fool the people once, twice but not for ever. The Muslims have found out. We have told them we cannot hope for association and a big majority of the Muslims have listened to us and have voted for independence. We did not worry about those few lackeys that you must had from the Muslim community.

Mr. Duval: On a point of order, Sir, I do not think that the hon. Member should address the other Members as "lackeys".

Mr. Speaker: If the hon Member when he used the word "lackeys", was referring to anybody in this House, he should withdraw it.

Mr. Mohamed: If I had been allowed to carry on, it would have been amply clear to those people who have objected, that I was not referring to any Member of the House here. But if there are any on that side I am afraid...

Mr. Duval: I again object because the hon. Member is coming back with this word "lackeys".

Mr. Mohamed: With your permission, Sir, I shall carry on. I did not at any moment mean to call anybody on the other side of the House "lackey". They took it for themselves.

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I shall carry on with my speech by saying, by reaffirming and by telling the people on the other side not to hope for too much because the Muslims, the minority communities in this country are certainly not on their side. There are certain people who have been elected in certain constituencies and who are even scared to go in those constituencies.

I shall again refer to the speech of the Leader of the Opposition. He has said, Sir, : "*le passé ne nous concerne pas, c'est l'avenir qu'il faut voir*". I am in absolute agreement with him on this score. We must look to the future and if we look to the future, we must be looking to the progress of this country, because when we look to the future of our own child, we do not expect our child to go back to childhood but we expect him to become mature as we expect everybody in this country to become mature and quite a few, I am sorry to say, are not mature. On this question that we must not look at the past, they are very quick in saying do not look at the past, forget the past. But Mr. Speaker, we must if we want to build the future and if we want to be careful in preventing the reactionaries from taking from us what we are asking with justice and with full right, we must think always of the past. We must always have the past in our minds because it is the sufferings of our forefathers in the past, the sufferings of the people of this country which have made them sacrifice in order that their descendants one day might fight for the freedom of this country. Those people had that hope that one day the people and their children and grandchildren would fight for independence and we are the grandchildren of those forefathers who had that hope and we will materialise that hope. We will realise it in spite of the millions spent by the *P.M.S.D.* The past, Mr. Speaker, we must remember it. Why should not we remember it? Is anybody in this House afraid, or ashamed of our past? On this side of the House, we are not afraid, we are unashamed. On the contrary we shall build on it, whereas on the other side of the House perhaps, I say perhaps, they are ashamed of the past because of what our forefathers underwent.

M. Duval: *Quel imbécile?*

Mr. Y. Mohamed: That is the word to which I now object.

Mr. Speaker: The hon. Member (Mr. Duval) must withdraw the word.

Mr. Duval: Do I understand that the word '*imbécile*' is not parliamentary, Sir?

Mr. Speaker: The word '*idiot*' is not parliamentary.

Mr. Duval: In that case I withdraw the word.

Mr. Y. Mohamed: Now, we have heard again the hon Member the Leader of the Opposition. I shall not stoop to teach him any lessons. He said and asked this House: "Have we achieved any '*unité nationale*'? — not to use the word in the way he used it in the television. Have we achieved it? Are we going to achieve it?" We are acheiving it, we cannot achieve '*unité nationale*' without independence. It is high time, Mr. Speaker, that the people of this country started taking a national conciousness. We are Mauritians, we should think in terms of Mauritians. The hon. Member, the third Member for Port Louis Maritime and Port Louis East (Mr. Ah Chuen) has said: "It is high time to co-operate and collaborate with the Government". Mr. Speaker, he should

collaborate, and in this way he will show that in fact he is truly sincere and loyal. We have heard again the Leader of the Opposition say that he respects '*les loyautés dans les circonscriptions rurales*'. He referred to '*loyauté*' in the rural constituencies, that is, the constituencies which manifested their desire for independence. Loyalty is the word used by him. So, Mr. Speaker, even the people in the rural constituencies in spite of the fact that they were called recently illiterate by the Leader of the Opposition — if the '*Cerneen*' reports his speech correctly, they were called illiterate. We have it here. If the papers of the Opposition report correctly his speeches as they usually do, and make plenty of fuss about it sometimes...

An Hon. Member: *Hindou mon frère!*

Mr. Y. Mohamed: After all, they are loyal. Only yesterday the illiterate people who have been insulted were being asked to vote for the *P.M.S.D.*, and soon afterwards they are called illiterate. What is this attitude? Does one call it a reasonable attitude, an attitude of sincerity on the part of the *P.M.S.D.*? Yesterday, they were called '*Hindou mon frère*', and then suddenly they are called illiterate people, and to-day in this Assembly they are called loyal. Where are we going to, Mr. Speaker? Therefore, we now know there has been a confession on the part of the Leader of the Opposition who in spite of his true feelings, if he had come to power, I am sure he would not have hesitated for one minute to ask for independence. But, they are reactionaries. We are in power, we are trying to raise the standard of the workers of this country. The Opposition say that independence is not good for the workers of this country, but good only for the capitalist. That is why after years that a man had worked for the Independence Party which was working towards the independence of this country, suddenly, as a capitalist, he decided to leave this party and defend his wealth, which he can only defend by joining other capitalists. The Leader of the Opposition has said that England is sacrificing some of her liberties and is joining the European Common Market. We know now that this is impossible. De Gaulle refuses. Therefore, England sacrifices some of her liberties. These are his arguments: what is wrong if Mauritius were to accept independence? There is absolutely nothing wrong, but it is certainly good and better for the people of this country to know that they cannot associate themselves with a country that cannot defend itself any more, that is not self-sufficient to supply other countries like Mauritius. It was high time. The Leader of the Opposition is laughing. The Opposition cannot expect us to associate ourselves with a country like England which refuses to accept a passport issued by this country to allow immigrants to England. People have been encouraged by some irresponsible people to leave Mauritius and to go abroad, to go to other countries like Belgium, places like England, and there they have been badly received, and yet they are trying to do more harm to the people of this country. I certainly do not expect and do not wish Mauritians to undergo the same treatment, the same fate as those six persons who have been jailed for weeks in Brixton jail. Therefore, the argument about the British passport which was used during the electoral campaign and which has been referred to in this Assembly this afternoon, is devoid of any merit. Now, Mr. Speaker, independence as I have said is the right thing for this country. We shall see the end because we want to see the end of miseries, the end of poverty,

and we can only see the end of all these things by voting in favour of independence. The leader of the Opposition has said ; '*il prévoit ce qui va arriver, il prévoit du mal avec l'indépendance*'. Well, I am sorry to say that there has been a lot of '*prévoir*' in the recent past by the Leader of the Opposition.

Mr. Duval : And none by the Government.

Mr. Y. Mohamed : But, all have failed, and he has not succeeded in his predictions. Not only all his predictions have failed, but his own party as well. Mr. Speaker, Sir, being one of the youngest members of this Assembly, and speaking for a great majority of the young people of this country, it is with pride, glory that I appeal to all Members of the Opposition to revise their decision, and to vote with this side of the House for independence.

(*Applause*).

At 5.05 p.m., the sitting was suspended.

On resuming at 5.43 p.m., with Mr. Speaker in the Chair.

M. C. S. Roussety (Second Member for Rodrigues) : M. le président, c'est avec une très grande joie que je m'adresse à cette Chambre comme un citoyen rodriguais qui vient pour la première fois siéger à cette auguste assemblée, et prendre part à la discussion sur cette motion à l'ordre du jour. Comme vous devez le savoir, le peuple rodriguais a fait clairement ressortir par son vote qu'il était absolument contre l'indépendance, et ce vote a été exprimé d'une façon claire et sans équivoque. Je déplore cependant dans les rangs du gouvernement cette attitude désinvolte, cette attitude d'indifférence qu'il ont toujours manifestée jusqu'ici à l'égard de cette population de 20,000 habitants, cette population de notre dépendance qui se trouve à 350 milles d'ici.

Mr. Speaker : The hon. Member is making his maiden speech. So, he will excuse me if I interrupt him, but what he is now saying should be said when we discuss the general Budget. If it is an introduction he can go on along that line.

M. Roussety : Je vous remercie pour votre compréhension, M. le président.

Il est tout à fait clair, comme je le disais, que le peuple de Rodrigues a voté en masse contre l'indépendance, et je suis de l'avis de mon hon. ami, le premier député de Rodrigues, que si dans les six mois à venir le peuple de Maurice se penchait pour l'indépendance, nous, a Rodrigues, nous ne pourrions, vu justement la façon dont nous avons été traités durant ses dernières dix-huit années, que demander au gouvernement de Sa Majesté de rédiger un statut spécial pour cette île. Nous allons voir cependant dans les six mois à venir quelle sera l'attitude du gouvernement envers Rodrigues, envers les problèmes et les difficultés que nous avons à affronter et si le gouvernement montre beaucoup de sympathie, je suis tout à fait disposé à collaborer dans la plus grande mesure comme notre Leader vient de le dire tout à l'heure, au début de son discours.

M. le président, je ne voudrais pas garder la Chambre plus longtemps. Beaucoup a été dit au cours des précédents discours, mais je tiens à faire remarquer que la Chambre peut compter sur un jeune que le peuple rodriguais a envoyé aussi pour œuvrer à la prospérité de leur pays. Merci.

(*Applause*)

(5.48 p.m.)

Mr, S. Jugdambi (First Member for Grand' Baie and Poudre d'Or) : Mr. Speaker, Sir, at first, I think I should congratulate the hon. Second Member for Rodrigues (Mr. Roussety) for his maiden speech.

I also thank the hon. Member, the Premier and Minister of Finance for bringing in the motion aiming at the independence of Mauritius. As one who has been closely associated with the working class movement for the last two decades or more and who has been associated also with the great majority of the trade union people representing an overwhelming majority of the organised labour force, I can safely say that we cherish the motion as it is most likely to bring in certain economic changes which the working class long awaits. I know that much has been done. I beg leave, Sir, to quote one single item : the Termination of Contracts Ordinance which ensures appropriate security to the workers to the tune of nearly Rs 90 millions. We have also seen the introduction of the old age pension. We may say with due pride that even in some of the independent countries, the old age pension has not yet seen the day.

The compensation law has been amended so much so that it is ensuring a good amount of protection to the working class. While listening to the speeches delivered by hon. Members in this House, I have heard some of them objecting to our country achieving its independence from fear that it will render us economically poor, that it is so even now, and that independence will mean nothing to the working class here. If this country has been rendered poor according to the hon. Members, it is not the fault of the Party in power. When we, through our leaders, were aiming at the progress of the country, we have seen that an appreciable amount of money has found its way to either Southern or Northern Rhodesia or South Africa much to our distress and disadvantage. Northern Rhodesia or South Africa. Those who are afraid of independence they have been to the length of trumpeting everywhere that the country will not be better off.

I am confident, Sir, as one who has visited many countries and who has seen how after political independence those countries have rapidly moved towards economic independence and to enumerate a few I would name East Africa, Tanzania, India, Pakistan and some other French speaking countries. These countries, Sir, stand as a living testimony to give a denial to those who spoke against independence and I am sure that with the independence of the country, we can attract foreign investors into the country, we can diversify our economy, which would certainly create possibilities of employment.

It is on account of all this that I am for independence, Mr. Speaker and I have not the least doubt that all our Colleagues here in this august Assembly will not hesitate in the least to vote this motion standing in the name of the hon Premier. Thank you.

(*Applause*)

(5.52 p.m.)

M. J. C. M. Lesage (First Member for Belle Rose and Quatre Bornes) : M. le président, il est de tradition pour celui qui parle après les orateurs qui font leur *maiden speeches* de les féliciter. Aussi je ne manquerai pas à la tradition et je félicite les trois derniers orateurs qui m'ont précédé. Si cependant les deux derniers orateurs dans l'ordre chronologique, ont prononcé des dis-

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cours empreints de modération et non-controversables, nous ne pourrions en dire autant du discours qu'a prononcé le troisième député de Moka-Quartier Militaire. Nous allons donc sérier nos observations sur ce que cet orateur a dit.

Tout d'abord, il a parlé de jeux de scène de Rodrigues. Je ne sais si c'est dans le contexte de la pêche qu'il l'a employé ou tout simplement pour employer la terminologie théâtrale. On pourrait alors lui rétorquer qu'il ferait fortune au guignol, et qu'on pourrait s'attendre à de prestigieuses performances au "*natak*", de lui. Un conseil d'aîné. Il ne doit pas trop fulminer contre les capitalistes, placé comme il est, entre le premier membre de Rivière des Anguilles-Souillac et le second membre de Flacq-Bon Accueil.

(*Interruptions*)

M. le président, il est un troisième aspect de son discours que nous voudrions relever. Avec des tremolos dans la voix, le troisième député de Moka et Quartier Militaire a déclaré que la peur ne se trouvait pas dans 'leur rang.' Or, si notre mémoire ne nous fait pas défaut, c'est ce même bon. Membre qui a déclaré sous serment en cour de justice qu'il avait été '*scared stiff*' à la suite des menaces qu'une personne avait proférées à son égard, et qu'il en avait été tellement débalancé qu'il n'avait pas pu se rendre dans sa circonscription pour aller organiser le transport de ses partisans pour la manifestation le jour de la Fête du Travail.

Mr. Speaker: But it is very far from the subject matter of the motion before us.

M. Lesage: Je vais terminer à son sujet par cette dernière remarque. Je crains fort qu'il n'ait pas suivi avec attention le discours qu'a prononcé notre Leader. Lorsque notre Leader a prononcé le mot 'Illettrés', il avait ajouté que c'était le qualificatif dont s'était servi le deuxième membre de Vieux Grand-Port—Rose Belle à l'égard des votants de sa circonscription.

Mr. Speaker: I do not think that the Leader of the Opposition is in need of a defence in the person of the Member.

M. Duval: C'est parce que je n'ai pas répondu à ce point, M. le président.

M. Lesage: C'est un simple exercice de charité chrétienne.

Mr. Speaker: Let us conform to the practice of Parliament.

M. Lesage: Maintenant je voudrais faire certaines observations sur ce qu'a dit le deuxième député de Flacq-Bon Accueil (Mr. Gujadhur). Il a fulminé contre ce qu'il a appelé une insinuation de notre Leader quant au vote massif des Hindous pour le parti de l'indépendance. J'apporterai deux témoignages des membres de son propre parti. Avec votre permission, M. le président, je citerai un gros titre du *Mauritius Times*, ou le troisième député de Mahébourg et Plaines des Magniens... pardon! Plaine Magnien aurait dit...

M. Duval: Le mot était bon.

M. Lesage: "*Hindus deserve congratulations.*

"*H. Walter: He paid a tribute to the Hindus who had stood as one man behind the Independence Party.*"

... Il a été également dit dans le *Congress* que le troisième membre de

Mahébourg/Plaine Magnien avait déclaré au meeting de remerciements tenu à la place du marché de Rose Belle que la communauté hindoue avait suivi le mot d'ordre. Quel mot d'ordre? On serait tenté de sentir là l'intervention de certaines chancelleries appuyées par des feux de Bengale et des messages apocryphes. Ceci dit, à tout seigneur, tout honneur!

Nous voudrions maintenant faire certaines observations sur la motion de l'hon. Premier tel qu'il l'a developpée. Sans exaggération nous dirons qu'il a défalqué certaines personalités qui ont contribué à l'avancement politique de ce pays. Je ne veux pour exemple, que le Docteur Curé, fondateur du Parti Travailliste qui n'a même pu obtenir un "*ticket*" — pour employer une expression anglosaxonne—et dont l'activité parlementaire a été passée sous silence. C'est ce qu'on pourrait dire "*adding insult to injury*". Il a été également question dans ce discours de mouvement de libération, de gris-gris politique et autres choses de la même veine. Si nous avons le plus grand respect pour le Premier en tant qu'homme, nous ne pouvons nous empêcher de dire tout haut ce que nous pensons de son action parlementaire capricante. Sur les questions de gris-gris politique, ses recettes doivent être excellentes a en juger par les prises de position politiques qu'il à prises tout au long de sa carrière politique, se tenant toujours — qu'il nous excuse de le dire — du bon côté du comptoir. C'est ici qu'il s'agit de sorcellerie, de magie politique pour ne pas parler de magie noire. Il a été également question d'une fraction de gens qui se sont toujours opposés au progrès constitutionnel. En 1882, lorsque Sir William Newton commenca son agitation pour l'élargissement du cens électoral, il y eut 7,000 Mauriciens qui ont adressé une pétition au Secrétaire d'Etat, faisant cause commune avec l'oligarchie d'alors pour réclamer *le statu quo* et nous croyons reconnaître en bon nombre des membres du gouvernement des descendants de ces gens. Personnellement, nous n'avons pas a baisser la tête. Nous appartenons à une communauté qui a été toujours à la pointe du combat pour l'émancipation politique de cette petite terre.

Et pour en revenir je vais reprendre ce qu'a dit le dernier orateur qui quoi qu'il ait prononcé un discours empreint de modération et non controversable, il s'est décrit comme ayant été associé étroitement au mouvement des travailleurs. Je considère qu'il a pêché lui aussi par omission. Il n'a pas parlé de Manilall Doctor, ce même Manilall Doctor qui fut conspué par les descendants et autres acolytes de ces sept mille qui s'étaient eux aussi, opposés au progrès politique. Et c'est bien à eux maintenant de vouloir nous designer du doigt. Après avoir fait ces quelques observations, nous voudrions maintenant parler avec réalisme de la situation, du carrefour où notre petit pays est rendu. Comme l'a fait ressortir notre Leader, dans le discours du Premier, personne n'a fait mention du fait que pas un étranger ne siège à cette Chambre, que le Conseil des Ministres est entièrement composé de Mauriciens. Mais on a voulu brûler une étape et agiter ce mot indépendence qui semble être un sesame pour certains. Indépendance en guénilles, indépendance quand même. Le deuxième député de Flacq/Bon Accueil (M. Gujadhur) a parlé de l'indépendance comme d'un '*birthright*'. Je crains qu'à l'heure actuelle il ne soit en train d'enfoncer une porte ouverte: l'heure est à la décolonisation. Il est cependant deux façons de se décoloniser: c'est soit en association étroite ou intégra-

tion avec la métropole ou l'indépendance tout courte. Ici je vais faire une petite parodie : " *Some people are born independent, some people achieve independence, some have independence thrust upon them* ". Et je vais m'expliquer : Lorsque Mahatma Gandhi et Pandit Nehru réclamaient l'indépendance, on les envoyait pourrir sur la paille des cachots. Lorsque l'hon. Premier réclame l'independance, il est fait chevalier : Sir Seewoosagur. Voici le problème en quelques mots. Voici le problème tel que nous devons le silhouetter. Et tout le reste n'est qu'inflation verbale, avec ou sans geste.

Nous allons maintenant développer les deux fers de lance de notre charte politique, de notre manifeste politique, manifeste electoral, à savoir un prix rémunerateur pour nos sucres — je vois que je mets l'eau à la bouche du deuxième député de Flacq/Bon Accueil (M. Gujadhur). Et deuxièmement, des postes pour ces 50,000 chômeurs et demi-chômeurs condamnés à l'inaction ou à l'oisiveté et tout le monde sait que l'oisiveté est l'oreiller du diable, quoiqu'en disent certains. Voici le problème. Tous les pays sous-développés — ou pour employer un terme moins offensant, moins injurieux — en voie de développement ont bénéficié d'aide d'ex-puissances coloniales, de pays industrialisés, des colosses industrialisés pendant dix ans. On en a fait une expertise, on en a fait un relevé et la conclusion en quelques mots c'est la décennie de la déception. En 1954, le producteur africain avait à produire 14 balles de café pour importer une jeep. En 1962, il lui fallait produire 39 balles de café pour importer la même jeep. Voilà le problème. Il existe encore sans doute certaines possibilités d'industrialisation à Maurice. Ce ne serait plutôt que dans le domaine des industries de transformation. Nous ne pouvons, à nous autres 750,000 personnes, se coudoyant, s'asphyxiant sur un confetti jeté dans l'Ocean Indien pouvoir prétendre produire à un prix compétitif. Nous avons eu plusieurs tristes expériences, dirai-je, celle du savon, c'est un terrain glissant, celle des cahiers, et celle de la margarine — nous ne sommes pas contre — mais ce ne sont que des palliatifs, et nous avons vu que ceux-là même qui pronaient l'industrialisation verticale ici nous ont fait voir que pour onze industries secondaires, on allait pouvoir absorber 1,400 chômeurs. Quid de ces 50,000 chômeurs et demi-chômeurs ? Vont-ils être condamnés à vivre comme des troglodytes dans les avenues macalpines ? Il n'est pas question pour nous de nous industrialiser. C'est un truisme de parler de production massive, la production industrielle. Nous prenons un exemple : fabriquer 10,000 verres, dont le prix nous reviendrait à Re 1., 50,000 : 75 cs, demi-million : 50 cs, un million : 10 cs. A Maurice, nous ne pourrions que fabriquer 10,000 seulement. Ces chiffres ne sont pas des chiffres exacts, c'est simplement pour les besoins de l'argumentation. Ce qui arriverait, nous serions contraint de hausser le tarif douanier à Re 1. Nous allons frapper Re 1. sur le verre americain qui coute 10 cs pour pouvoir vendre notre verre local à Re 1. Eh bien, c'est de l'antipodisme économique ou industriel.

Nous revenons maintenant à la question de passeport britannique. Il est heureux que cette question ait été soulévée dans cette même semaine, et je conserve contre tout espoir qu'il y aura un appel sur cet appel. Nous ne pouvons malheureusement dire que notre gouvernement ici s'est montré assez ferme vis-à-vis des Britanniques comme l'a fait ressortir notre *Leader*. Qu'est-ce qui ressort de cette triste affaire de passeport, M. le président ? C'est que sur le plan interieur, il y

a certaines restrictions. De même qu'il n'est pas permis à un Mauricien de s'établir à Rodrigues sans avoir un permis de séjour, il n'est pas permis à un ressortissant du Commonwealth d'entrer, comme il veut, en Grande Bretagne. Mais sur le plan international, le passeport mauricien est un sésame. Cela a été prouvé amplement. Le passeport britannique est reconnu dans les territoires d'Europe tels la France, la Suisse, l'Italie et la Belgique. En Allemagne, il y a certaines restrictions mais d'ordre d'hygiène seulement. Je n'ai pas le texte sous la main mais la déclaration circonstanciée qu'a faite M. Wilson lorsqu'il y a eu des débats sur la question d'adhésion au Marché Commun prouve amplement que le droit de libre circulation de main-d'œuvre en Europe allait s'appliquer non seulement aux Britanniques mais également aux citoyens du Commonwealth.

Mr. Walter : If the hon. Member would give way. This is a very important statement the hon. Member is making. Perhaps he could give us the reference in the speech of the Right Hon. Mr. Harold Wilson. We should be grateful to the hon. Member.

M. Lesage : C'est dommage que nous n'ayons pas le texte mais nous pourrons le passer à un autre de nos collègues qui va satisfaire la curiosité de l'hon. troisième membre de Plaine Magnien/Mahébourg (M. Walter), et s'il est quelqu'un ici qui a adopté une attitude responsable envers les jeunes Mauriciens qui tentaient la grande aventure, c'est bien notre Leader. Il a fait une conférence au Plaza pour conseiller aux jeunes mauriciens qui partaient sans biscuit pour la Belgique de ne pas se lancer dans une aventure sans retour. Ceci a été dit publiquement. Ceci a été consigné noir sur blanc dans tous les journaux par les journalistes qui ont bien voulu répondre à son invitation. Et c'est d'autant plus curieux que dans les milieux travaillistes depuis 1956 il y avait un fort courant en faveur de l'intégration. A cette époque, je me rappelle que le journal *Advance* consacrait de nombreuses colonnes à l'intégration citant l'exemple de Malte et nous ne voyons pas pourquoi nous ne pourrions pas faire partie de la Grande Bretagne. On aurait eu quelques '*brown Britons*' mais l'Angleterre n'échappera pas au destin commun à toute puissance impérialiste.

Dans la Rome antique il y a eu au moins un Africain empereur à Rome et lorsqu'il nous a été donné de visiter l'Angleterre en 1965 a l'occasion de la conference constitutionnelle, nous pensions nous trouver à Rome, ville devenue cosmopolite, juste avant la chute de l'Empire Romain. Il y avait à Londres beaucoup plus d'étrangers que d'anglais et c'est normal. Les puissances colonisatrices doivent s'attentre á la réciprocité et non au sens unique. L'Angleterre elle-même est un pays d'émigration. S'il en entre 75,000 à 80,000 ressortissants du Commonwealth, il en sort 100,000 et 150,000 pour aller au Canada, en Amérique du Sud, en Australie, en Nouvelle Zélande et même en Rhodésie. Il appartient donc à ce gouvernement d'employer un langage ferme puisque nous avons l'intention d'avoir notre drapeau, de nous asseoir au premier rang à l'ONU. Pourquoi ne pas négocier à partir d'une position de force vis à vis de la métropole et lui faire comprendre le langage de la raison. Pendant 150 ans la politique coloniale britannique a été celle du " *bacon and eggs* ". L'Angleterre était les œufs et les colonies étaient le *bacon*. Vous savez très bien que la poule devient plus coquette, plus élégante, plus aguichante après avoir pondu alors que pour produire du *bacon*, il faut que le

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pauvre animal fasse le sacrifice de sa vie. (*Laughter*)

Ce que nous réclamons aujourd'hui de l'Angleterre c'est bien simple, c'est la politique du "*bacon and eggs*" dans le sens inverse.

Mr. Foogooa : *Interruption.*

M. Lesage : Nous serons les œufs et l'Angleterre le *bacon*. C'est tout à fait normal. Le *bacon* assaisonné au gingembre est excellent, me dit-on.

Ce que nous demandons à l'Angleterre donc c'est la réciprocité pure et simple, le réalisme. Nous avons donné nos sucres à l'Angleterre, nous avons donné notre sang à l'Angleterre. Je me rappelle alors que j'étais étudiant, que j'avais vu sous toutes les gares de gros placards avec le mot "*Together*" où il y avait un Gurkha, un Swahili, un Askari, un Australien, un Néo-Zelandais, un Anzac et tout le reste. Lorsqu'il s'est agi de défendre la liberté, les Mauriciens n'étaient pas des citoyens de seconde zone. Lorsqu'aujourd'hui nous réclamons l'association à défaut d'intégration, ce gouvernement invoque le racialisme foncier des Anglo-Saxons. L'Angleterre, qu'elle le veuille on non ne peut se passer de la main d'œuvre de couleur. Les trams ne fonctionneraient plus et pas ça seulement. Un peu partout les gens sont venus s'installer et il n'est pas question qu'ils s'en aillent. Ils ont le droit après tout, se prévalant du principe de réciprocité et ne sont pas comme les Anglais qui eux venaient s'installer en conquérants.

Je ne m'excuse pas, M. le président, de prendre le temps de cette Chambre parceque la question qui nous est posée aujourd'hui est une d'une importance extrême. En effet, sans remonter au déluge nous voudrions faire l'historique des quelques semaines qui ont précédé la constitution de cette Assemblée. Nour avons, comme je l'ai déjà dit, axé notre politique sur un meilleur prix pour nos sucres et la possibilité pour nos jeunes d'émigrer. C'eut été une soupape de sûreté et non une solution de désespoir pour cette île surpeuplée. Nous avions notre publicité politique et que disions nous? " Paix, fraternité, amitié ". Mais nous savions également que le communalisme est dur à cuire, nous savions que le communalisme ne pourrait être terrassé en un seul jour, mais nous nous empressons de dire que plus que jamais nous sommes convaincus que c'est la seule voie à suivre, la voie nationale. Nous n'avons pas l'intention de laisser cet arbre de fraternité et d'amitié que nous avons planté en terre mauricienne dépérir. La sève a monté, l'arbre s'est ramifié, il ne s'agit que d'en cueillir les fruits, dans cinq ans, dans dix ans ou dans quinze ans. Nous ne sommes pas des lâches, puisque tous ceux qui se sont portés volontaires, tous ceux qui ont répondu " présent " pour donner l'assaut à la citadelle, au bastion du communalisme implanté, nourri, entretenu par certains dans certains coins de l'île Maurice, ceux-la ont été fauchés, et nous leur disons " chapeau ". Aussi ceux-là même qui ont pris des risques, qui ont subi le boycottage social et économique, qui ont fait face à l'intimidation et à la violence, ceux-la jamais, au grand jamais, nous ne les abandonnerons, au péril, s'il le faut, de notre sécurité physique, de notre vie même.

Hon. Members of the Opposition : *Hear ! Hear !* (*Applause*).

M. Lesage : Sans vouloir exagérer encore une fois, lorsque Himmler et Hitler s'apprêtaient à commettre le pogrom le plus ignoble consigné dans l'histoire — même Néron eut été de la petite bière à côté de cela — on appela

une certaine nuit " La nuit des longs couteaux ", à Maurice nous pourrions parler de " La nuit des sabres et des bâtons pointus " pour qualifier le soir qui précéda les élections générales.

M. Forget : Est-ce le bâton qui a tué Surath ?

M. Lesage : Quatre Bornes vous a répondu à ce sujet. Belle Rose plus spécialement.

Sir S. Ramgoolam : *That is why he is here to-day.*

An Hon. Member : *He came in by the window.*

M. Forget : N'oubliez pas " le père de la nation ".

M. Lesage : M. le président, je suis heureux qu'un de nos collègues ait rendu hommage au " père de la nation ". Si vous me demandez mon sentiment personnel je vous dirai que c'est à vous rendre athée lorsqu'on songe à cette défaite.

Je continue. Il a été question de pétitions électorales. Tous ici ont fait les éloges de la séparation des pouvoirs, garantie de l'impartialité du judiciaire à Maurice. Nous ne faisons que souscrire à ces affirmations, à ces déclarations parcequ'on a eu raison de dire " lorsque la politique entre au prétoire, la justice en sort." Mais nous savons que nous pouvons compter sur nos cours de justice pour apporter des changements aux résultats des élections.

Il y a un dernier point sur lequel je voudrais insister. C'est l'atmosphère dans laquelle cette consultation s'est déroulée. On aurait pu parler de "*fair play*", de "*cricket*", si elle avait été faite selon les règles du jeu. Nous avons des raisons, des preuves, pour croire que le jeu n'a pas été joué par certains. Nous, nous avons toujours respecté les règles du jeu. Nous, nous n'aurions jamais traité ceux qui ont voté pour nos adversaires de laquais ou de bâtards. En revanche, il est clair que certains n'ont pas respecté ces mêmes règles. Je ne saurais ici assez insister sur le caractère provisoire, voire caduc, d'un vote qui pourrait être pris sur cette question. Il s'agit de terminer ici. Je l'ai déjà dit à cette Chambre, je l'ai déjà dit ailleurs, je continuerai de le dire. Nous exécrons la suprématie raciale, de quelque pigmentation qu'elle soit. Nous n'acceptons pas la loi du nombre, brutale. Nous acceptons de collaborer, pas a genoux fléchis mais une collaboration sur le même palier puisqu'en effet il n'est rien de plus stupide que de dire " je suis fier d'être un hindou, je suis fier d'être un musulman, je suis fier d'être un créole ou un sino-mauricien, je suis fier d'être je ne sais quoi encore" car l'appartenance à une communauté n'est qu'un simple accident de naissance.

J'ai terminé, M. le président.

Members of the Opposition : bravo ! (*Applause*)

(6.25 p.m.)

The Minister of Education and Cultural Affairs (Mr. S. Bookell) : Mr. Speaker, the last speaker made some very serious, some impertinent and some sinister statements. He reopened his electoral campaign, this is now dead and buried. He wished us to believe that the verdict of the people should not be accepted by this Assembly. Mr. Speaker, Sir, I am not going to comment on the impertinent aspect of his speech but I am going to comment on some of the arguments he repeated in favour of association and by implication, against independence.

It is a bit late in the day to reopen the whole debate but I should like to state in as few words as possible, that what the *Parti Mauricien* had offered to the people of Mauritius was something so illusory, so flimsy and devoid of any substance that the people rejected it outright on the 7th August last.

(Interruption)

My Friend is so fond of potatoes that I hope he will not forget his experience when he visited the Marketing Board.

Mr. Forget : He is fond of those that were buried.

Mr. Boolell : He likes the smell.

As I stated, we have seen all through that whatever argument had been put forward in favour of association by the *Parti Mauricien* has been proved to be incorrect, not to say untrue.

As far as sugar which was dangled as a lure to the small planter is concerned, it was proved in a debate in this House when the *Parti Mauricien* had chosen to walk out, to resign, that sugar is a commodity which is not attractive to the Common Market. Whatever may be the argument put forward by the *Parti Mauricien* this has been shown time and again, sugar is not a commodity which is attractive to the Common Market. Secondly, the *Parti Mauricien* was banking on the entry of Great Britain into the Common Market which also has been proved to be incorrect because we do not know for certain within what time limit Britain is going to enter the Common Market. Thirdly, the passport which was dangled over the T. V. and which was used as a platform by the *Parti Mauricien* has been proved to be of no use by those who want to emigrate either to Great Britain or to any country of Europe. Of course, there is the old convention that anyone who travels to some countries in Europe does not need to have a visa. He can stay there for three months after which he must leave the place. As far as emigration is concerned, we have seen that those people who were led to believe that they were going to the land of honey and milk, in Belgium, had to be repatriated at Government expense and one in desperation even committed suicide and the burden of that will be borne by those who misled the people, who misled these young people into leaving everything behind and going to Belgium. These people had to come back denuded of everything and completely in desperation.

Sir, these are grave responsibilities which any responsible party will have to bear if it does not try to tell the truth to the people, specially to the youth for whose sake so much has been written and so many words have been uttered today by the hon. Leader of the Opposition.

We are all on both sides of the House concerned about the future of this country. Independence is not a magic word. There is no magic in it, but we have to weigh the pros and the cons on independence v/s association and then come to the conclusion which is best for us. People in this country are not stupid. Even people who reside in the countryside, although they have been taxed with being illiterate, they know what is good for them and what is bad. People have been given the occasion to judge and they have judged in the proper way. It is after mature consideration and a lot of heart searching that we, on this side of the House, have come to the conclusion that if Mauritius is to solve its grave economic problem, its unemployment problem and so on, there is

no other way except to go for independence. For some people in this country the door is barred anywhere except on a permit which is limited to a few to go to England. There is no place for them except for those highly qualified, there is no place in South Africa, in Australia or even Asia. People are not attracted, not interested to emigrate to places where they are not welcome, so that we are reduced to the bare fact that the bulk of us must stay here, must live here and die here. If we have to live in this country, we have thought that the best way to do it is to take our destiny in our hands. Let us forget about divisions, let us forget about our different loyalties and create one single loyalty and one single fatherland and let us all behave like Mauritians, in the real sense of the word and that can only be achieved if we have one country, one flag, and one objective in front of us and that will be in the interest of the country, of the people and of the rising generation. Sir, it would be idle talk to speak about *parti national*, about Mauritian nation, about the removal of barriers if we do not achieve independence. So far we have been accustomed in this country to speak of our origin, to speak of our ethnic group, to speak of our religious or communal group. Even in the last census in spite of the efforts made by some people we have been divided into several categories. We have been divided into Hindus, Muslims, General Population, and what is more sinister about it is that while the Hindus have been divided into Tamils, Telegus, Marathis, and even into castes — in the last elections posters were put everywhere that such subcategory has so many seats — while that attempt was being made to divide the Hindus into compartments, into sections, some people thought it wise to link together other people to form one community which is called the general population. There are some people who thought fit to come down and to identify themselves with the dockers and the cane cutters. But the attempt to divide and subdivide the hindu community did not succeed because fortunately people realised to what end this was being done, and they gave a lesson, the countryside people gave them a lesson which shall not be forgotten and which has made history in this country. Sir, this is the lesson which they learned from the last election. For the future let us create something which shall bring us together and not divide us. With independence, as the hon. Premier puts in his speech, there will be a sense of regeneration, we will find new values. We have confidence in our people, they will have a new sense of loyalty. We all feel that we belong to a certain place, no one will look up to France for inspiration. Some of our Friends will not look up to China, or Formosa, others will not look up to Pakistan, India or to Madagascar. We will look up to our own country. We shall feel that we belong to one country and we have loyalty to one country and we can build a nation ; and I hope that the history which is being made to-day will be remembered by posterity and the future generations will thank those of us who made the effort to bring about such a realisation and will condemn those who even at this late hour, even after the verdict of the people, are refusing to accept the lesson of history. Sir, as I stated before, there is no magic in this word independence, but independence is going to open up for us vast possibilities and to release hidden sources of energy. This is an opportunity we want to give our people. We have confidence in our youth to whatever section they belong, because I do not make any distinction between the rural people and the urban people. I am not like those who tell the

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rural people after the elections, you are illiterate because you did not vote for me. I am not going to say to the urban people that you are ungrateful because you voted for a certain party. We have faith in our young people. They are intelligent, they are adaptable. They can learn things easily and I am sure this is the source of our strength. This is going to attract overseas investment, overseas people will come here, will make use of that intelligence and make use of that skill which is still lying untapped and which we are not yet making use of because of political struggle, because of our quarrels among ourselves I am sure that after embarking on this new venture which is independence, we will be doing it for the good of the country. There is no doubt that as things are in Europe and as the situation in Hong Kong is developing, many overseas investors are looking for places where they can have better security, where they can have better returns for their investments. We have had talks with many people, people who are interested in coming to Mauritius to make investigations, but what they want first is the removal of uncertainty and the establishment of a stable Government. I hope that those who have at heart the interest of this country and especially that of our youths will remember that stability can only come when there is an absence of demonstration of police force and absence of "*gaz lacrimogène*" which we have witnessed in Curepipe on so many occasions and in so many other places

An Hon. Member : Camp Lascars.

Mr. Boolell : We want to have stability and stability means responsible behaviour both by the Government and the Opposition. Both must work towards one objective and that objective should be our service to the country. The Opposition to-day is the alternative Government of to-morrow. How can we judge whether an Opposition deserves to be the Government of to-morrow? The performance of the Opposition today is tantamount to obstruction. But I must compliment the Leader of the Opposition for the very moderate and statesmanlike speech he made, apart from certain lapses which are forgivable, because habits cannot be abandoned in a day, and I am sure if he follows along that line the future will be bright for him.

Sir, after this sort of introductory remarks...

Mr. Duval : What, introductory?

Mr. Speaker : The hon. Member might substitute the word exhaustive.

Mr. Boolell : I am not going to take much time of the House, but before I conclude which will take a few minutes at least I should like to take one or two points which have been mentioned, not because I want to pick up a quarrel, far from it, but because I want to put facts in their perspective so that people who will be reading the report of this debate will know exactly what are facts and what are not facts. Sir, to start with I must say that I was not in the least surprised to see the attitude adopted by the *Parti Mauricien Social Démocrate National*. I am not surprised because if the attitude had been otherwise, it would have been a breach of faith towards those people whom they have led to believe that they were going to come out with success in this election. At any rate we are not surprised, we can understand their attitude adopted in this House. They are still hoping against hope to come on this side of the House within some time. They are speaking of electoral petitions. They are speaking about the elections which are not over yet and seats which

are to be contested, the majority of this side to be shifted to the other side and the balance to be offset so that the Members elected will come on this side of the House and we might perhaps move to the other side. Sir, it is a legitimate hope and we do not grudge it but what is not true is when the leader of the P.M.S.D. said that he represents the majority party in the House as presently constituted. We grant that we are three parties together; we fought the elections under one banner, the Independence Party, so when we went to the elections we were one party. When we returned to this House were turned as one party, but the P.M.S.D. National is composed of so many groups that it is difficult to remember them all. They are, I think, the Tamil United Party, the Hindu Democratic League, the Telegu United Party, the Muslim Democratic League. When we take into account all the different groups which have formed what is called the P.M.S.D.N., we come to the conclusion that the true P.M.S.D. has very few members if we exclude members of the Tamil United Party and Muslim Democratic League.

Sir, I know that the results of the elections have been a great deception to the P. M. S. D. and for obvious reasons after all the noise they made and the confidence they had given not only to the people here but also in England. They had even walked out from the House just to force the elections. They spent a lot of money, used the '*Radio Pirate*' the emissions of which we heard much to our advantage on Saturday, Sunday and even on Monday, we have identified the voices and the location of the '*Radio Pirate*'. In spite of all that, they failed. After all that had been done, I can see the disillusion in the face of our Freinds. Every attempt was made to win the elections, and every single means was used, and whatever possible means could be utilised was utilised, and in spite of that the people were not in favour of association, with its price of sugar, emigration, and the British passport. I can realise that, but that does not mean that our friends should not accept in a true Mauritian spirit what the people have decided. The leader of the Opposition, and the ex-leader of the Opposition had repeated that if there were a referendum, and a majority will vote either way, they would accept the verdict. Now, the referendum was refused and we were given the elections and the results of the elections are known.

Mr. Duval : But they are contested.

Mr. Boolell : We all know that contesting an election in Court is very easy. It is also easy to repeat in every street corner, in public meetings: "Don't worry, the elections are not over yet", because accounts have to be rendered to those to whom promises have been made. Now, the time has come for you to render account. The members of the Opposition are simply trying to postpone the rendering of the account. It is because they are not in a position to render account that the *Parti Mauricien* is having recourse to all sorts of tactics. But in this House the resolution of independence will to night be voted, and once voted the *Parti Mauricien* will not be morally entitled to say it can only accept it if the election petitions are not decided in their favour. I think, neither legally nor morally they have any ground to sustain such a point of view. As I stated before, if we are all concerned with the interests of the country, of the future of this country, the *Parti Mauricien* should behave like responsible people and accept the verdict of the people once for all, and as this House

is legally constituted, and as this motion is going to be legally carried, there is no legal or moral ground to make their collaboration conditional. Sir, it is my duty not only to address this Assembly, but also to address myself to the public, and it is good that the public knows the behaviour of our Friends who wish to be the next Government.

M. Duval : *On nous a félicité tout à l'heure.*

Mr. Boolell : Yes, when somebody deserves congratulations, we are going to congratulate him.

Mr. Duval : Not in the same breath.

Mr. Boolell : In the same breath. If he deserves criticisms we are going to do so. Sir, there is one point which struck me in the speech of the Leader of the Opposition. He said that in the event of the majority voting for independence, they will cooperate, provided there is no discrimination. I hope, Sir, he means what he says, and I am not going to state anything further. We have witnessed what is taking place in Curepipe. We hope that the beating of people who did not vote for the *Parti Mauricien* will be stopped, and if need be we will take the initiative of stopping it.

An Hon. Member : The hon. Minister is surely speaking of Montagne Blanche.

Mr. Boolell : I am speaking of Curepipe, Floréal. I am speaking of the incident which have taken place after the elections and which are still taking place. Let charity begin at Curepipe, and I hope that if the Opposition Members say one thing here in this House, they mean it and they intend to carry it out. I hope we have had enough of this organised violence, premeditated killing, we have had enough of it. I am not condemning anyone. I hope that all of us should see that it stops because we have a task ahead of us, and the only way we can justify ourselves in the eyes of the public is by showing by our word, by our deed, by our behaviour that we can work for a Mauritian nation.

Thank you, Sir. (*Applause*)

(6.55 p.m.)

M. L. R. Rivet (First Member for Beau Bassin and Petite Rivière) :

M. le président, c'est avec une très grande émotion que je prends la parole aujourd'hui sur la motion de l'honorable Premier. Je me rends compte en prenant la parole que j'ai beaucoup à apprendre, que j'ai beaucoup d'inexpérience parceque j'aurais pu comme l'honorable Premier, avoir écrit mon discours pour pouvoir venir le lire ici après. J'espère dans l'avenir être mieux équipé pour jouer le role qui me revient à cette Chambre.

L'honorable Premier a dit dans son discours qu'aujourd'hui est un " *day of joy* ". Je crois que c'est très mal présenter les faits. J'ai eu l'occasion après le dépouillement de circuler dans beaucoup de circonscriptions, dans les circonscriptions ou le Parti de l'Indépendance avait obtenu la majorité, et ce qui m'a frappé c'est cette impression de deuil national qui a suivi les élections générales. On aurait pu se croire après " Carol ". Certains diront que cela était dû au fait que la police ne permettait pas les manifestations après le dépouillement. Il n'y a aucune force au monde à arréter un débordement spontané de joie. Et, je dois ajouter que, individuellement, même ceux qui avaient voté pour l'indépendance après un lavage de cerveau, après qu'on leur ait demandé de choisir entre le docteur Ramgoolam et Duval, se sont rendus

compte, le vote exprimé, qu'ils avaient fait une betise, avec le résultat que nous avons été temoin d'une consternation générale dans le pays. La joie se serait remarquée parceque on ne peut pas arriver à cacher la satisfaction, le contentement que l'on ressent dans les circonstances semblables. Même s'il n'y a pas eu de manifestations populaires, on aurait pu lire sur le visage des gens la satisfaction, le contentement qu'ils éprouvaient ; tel n'était pas le cas. Je prendrai aussi pour exemple ce qui s'est passé aujourd'hui. Dans tous les pays qui, a une élection, obtiennent une majorité pour l'indépendance il y a dans un jour comme celui-ci un genre de délire national. Je dois dire que la réunion d'aujourd'hui s'est passée très tranquillement. On n'a vu aucune manifestation, aucune satisfaction, aucun contentement exprimés ici librement, et c'est un point que le Parti de l'Indépendance devrait retenir avant de se lancer dans cette aventure où ils veulent nous entraîner.

Le Premier a parlé des " *great names of past politicians* ". Il a cité le nom de Rémy Ollier, de Pezzani, de Laurent. Comme ces derniers, j'espère qu'il voudra faire passer les intérêts supérieurs du pays avant les intérêts de son parti. Tous ces hommes ont combattu pour les intérêts supérieurs du pays, et ont fait de leur mieux pour servir leur pays. L'hon. Premier a été à bonne école. Il a eu la chance de recevoir sa formation politique aux côtés des grands hommes de la génération précédente tels que Sir Edgar Laurent et autres. Je crois qu'il devrait bien peser le pour et le contre avant de se lancer dans cette aventure qu'il nous propose parceque, plus tard, c'est la postérité qui jugera si oui ou non il a fait le bon choix, et il pourrait se faire que son nom ne jouisse pas ultérieurement de la même estime et du même respect que celui de ses prédécesseurs.

L'hon. Premier a aussi parlé d'un ' *end of a journey* ' et d'un autre voyage qui allait commencer. Il pourrait se faire que cette expérience soit tout bonnement la fin d'un voyage qui n'ait pas de recommencement. C'est pourquoi nous devrions bien réfléchir sur la décision que nous avons à prendre.

L'hon. Premier a aussi dit que nous devrions être indépendant et il a cité l'exemple du Canada et celui de l'Australie qui, bien longtemps avant nous, ont obtenu leur indépendance. Je crains que ce soit l'histoire de la grenouille qui voulait devenir aussi grosse que le bœuf, et nous savons tous quel a été le résultat.

On nous a dit que l'indépendance était un " *birth right* ", que c'est quelque chose d'inévitable que nous ne devrions pas rejeter, que c'est quelque chose qu'on devrait exiger. Je me permettrais de citer aujourd'hui les paroles de quelqu'un qui a été beaucoup plus actif pour que son pays obtienne l'indépendance que l'ont été ici les membres du Parti de l'Indépendance et l'hon. Premier lui-même. Il s'agit de M. Lee Kuan Yew. Voilà ce qu'il a déclaré — je cite de Reuter en date du 18/19 août, 1967 :—

> " Singapore's Prime Minister, Lee Kuan Yew said today few Asian and African peoples had fared better independent than under the colonial powers.
>
> Mr. Lee, speaking at a community festival, said it was not possible to assume control automatically of the apparatus of a modern state built up by someone with a superior organisational structure and superior technology.
>
> It was not possible " that when the colonial Governor goes out you can walk in and put on all the plumes and uniform, and things will go on just as before. "
>
> " It is not true, " he declared.
>
> Mr. Lee said in many societies the people were quite happy ' just to sit down under the banyan tree, and contemplate their navels. "
>
> " So when there is a famine, they just die quietly. "

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A l'Ile Maurice, les chômeurs que nous avons ne sont pas des paresseux qui dorment au soleil en espérant que l'Etat viendra à leur secours. Ce sont des hommes qui veulent travailler pour nourrir leur famille et si, après, la famine vient frapper à leur porte, je crains fort qu'ils ne se contenteront pas de se laisser mourir, cela pourrait avoir alors de graves conséquences pour l'avenir de ce pays. Je pense que les membres du Parti de l'Indépendance devraient méditer sur ces paroles de M. Lee Kuan Yew, de quelqu'un qui est Premier Ministre dans un pays indépendant depuis de nombreuses années et qui est le Vice-Président de l'Internationale Socialiste auquel appartient aussi le parti travailliste.

M. Bissoondoyal : A-t-il démissionné depuis ?

M. Rivet : Je verrai le renseignement et je vous le communiquerai plus tard.

Et l'hon. Premier a aussi déclaré que '*freedom has not brought any harm to any country*'. Il semblerait que l'hon. Premier n'ait pas lu l'histoire contemporaine. Il ne se rappelle pas ce qui s'est passé à Chypre ; il ne se rappelle pas ce qui s'est passé au Ghana et ce qui se passe en ce moment en Nigérie. Je crois que c'est très édifiant. Ces pays ont pourtant le potentiel nécessaire pour devenir indépendants. Malgré tout ce potentiel, ces pays ont à affronter aujourd'hui de très graves problèmes. Ici à Maurice il nous manque ce potentiel. Nous prenons un très grand risque en voulant nous lancer dans l'indépendance.

L'hon. Premier a aussi déclaré que l'Association n'apporterait aucun avantage à l'Ile Maurice. C'est navrant de voir que les membres du Parti de l'Indépendance n'aient pas approfondi la question un peu plus. Ils auraient vu que, au moins, l'Association aurait cet avantage pour l'Ile Maurice, de permettre à la Grande Bretagne de combler notre déficit budgétaire qui a commencé depuis déjà deux ans et qui dans la conjoncture future ne peut aller qu'en augmentant. Telle est la condition qui figure dans le statut d'Association pour les Iles sous le Vent. L'Association n'apporterait aucun avantage à l'Ile Maurice ! Je passe la parole à quelqu'un qui jouit de l'estime de la population dans son ensemble, de tous les milieux officiels et inofficiels, je veux parler de M. Guy Sauzier que *L'Express* du 12 mai décrit en ces termes :

> " On sait qu'il s'acquitte de ses fonctions avec une compétence que reconnaissent ses collègues d'autres pays puisqu'il fut un des membres du sous-comité qui prépara la voie à l'accord des pays exportateurs intervenu le 6 avril dernier. "

L'Express reproduit la conférence donnée par M. Sauzier il y a seulement quelques mois et j'espère que nul ici ne viendra contester les compétences de M. Sauzier. Voila ce que *L'Express* déclare ou plutôt voila ce que M. Sauzier a déclaré, propos qui a été rapporté par *L'Express* :

> " L'Ile Maurice, associée à la Grande Bretagne, obtiendrait dans le Marché Commun le statut qu'ont aujourd'hui les anciennes colonies françaises. Il lui permettrait peut-être de manger à deux râteliers : celui de l'Accord du Commonwealth et celui du M. C. Par contre, la Nigérie, pays indépendant, membre du Commonwealth qui vient d'obtenir le statut associé (donc différent) au sein du M. C., n'obtiendra pas les mêmes avantages, "

Je vais citer aussi ce que je prends pour être un commentaire du journal *Advance*, organe du Parti Travailliste, du 13 mai, 1966 :

> " L'avantage pour l'Ile Maurice d'adhérer au Marché Commun ne se trouve pas seulement dans le fait de pouvoir écouler une partie de ses sucres à un prix raisonnable, mais aussi dans le fait qu'elle pourrait bénéficier de prêts à long terme pour son développement économique. De 1958 a 1961, la Commission du Marché Commun avait voté une somme totale de 277 millions de dollars a être repartie entre 26 pays d'Afrique et des Indes Occidentales. "

Je trouve vraiment très difficile d'accepter, après ce que je viens de citer, les arguments ou plutôt l'absence d'arguments des Membres du Gouvernement au sujet des non-avantages que pourrait avoir notre projet d'Association.

J'avais espéré que les discussions d'aujourd'hui auraient eu lieu dans une atmosphère non pas d'entente, mais une atmosphère qui aurait pu bien augurer pour l'avenir. J'ai constaté avec regret que certains hon. Membres se sont permis de lancer des menaces à l'adresse de l'Opposition. Eh bien ! je me contenterai de dire ceci. Menacer l'Opposition, c'est menacer aussi le peuple de l'Ile Maurice parce que l'Opposition est issue du peuple et est la voix du peuple. Dans d'autres pays il y a eu des dirigeants qui ont essayé de museler l'Opposition et qui ont essayé de la liquider pour de bon. Je ne citerai que le cas de Sir Abboobakar Tawafa Balawa, premier ministre de Nigérie, le cas de Lumumba au Congo, et le cas de Nkrumah au Ghana. Aussi il ne faut pas croire que, puisque aujourd'hui vous avez remporté la majorité, ce peuple va être docile et va vous suivre jusqu'au bout du chemin. Ce peuple réclame de vous des réalisations pour son avenir, pour qu'il puisse vivre dans la dignité, dans la prospérité, et, si plus tard vous n'arriviez pas à le faire vous seriez les premiers à en subir les conséquences.

Il a été dit et archi-dit que l'indépendance est inévitable et que l'on doit au plus tôt essayer de l'obtenir. Je me permets de souligner ici, M. le président, que la mort aussi est inévitable, est-ce une raison pour se suicider. Il m'a été rapporté que quelqu'un dont les écrits reviennent assez souvent dans un de nos quotidiens et qui a vanté les bienfaits de l'indépendance, aurait déclaré qu'après tout l'indépendance, ce n'est qu'un mot, ce n'est qu'une psychose. Ce qu'il faut, c'est de descendre au fond de l'abîme pour pouvoir en remonter après. En bien ! je considère que cette personne agit d'une façon criminelle. Nous ne sommes pas des animaux qu'on conduit à l'abattoir, des bêtes qu'on va jeter dans un ravin pour le combler et permettre au reste d'atteindre l'autre bord où la situation est meilleure. Nous sommes des êtres humains avec chacun de nous nos aspirations, notre désir de vivre. Nous refusons d'être sacrifiés afin qu'une partie de la population puisse accéder à un avenir meilleur. Cela n'est pas nécessaire d'autant plus que nous autres du Parti Mauricien Social Démocrate nous avons des solutions à proposer aux problèmes de ce pays qui éviteraient une telle hécatombe.

Je voudrais à ce stade faire une analyse de la situation dans le pays et voir quelles sont les possibilités pour l'avenir, quelles sont les chances de ce pays de pouvoir solutionner ses problèmes. Le parti de l'Indépendance a un doigt dans l'engrenage et tôt ou tard il sera écrasé et le pays avec. Je vais citer l'opinion du troisième député de Vieux Grand Port et de Rose Belle (Mr. Bissoondoyal). Quelque temps avant les élections, il a publié un genre de manifeste électoral. Voila ce qu'il nous déclare dedans :

> " Des postes que le favoritisme crée et remplit, des bourses d'étude et des délégations à l'étranger qu'il invente et distribue (ceux qui aspirent à rester au pouvoir n'importe où ne sauraient manquer de céder a ce besoin anti-national), des prêts qu'il a à accorder à des agents sans scrupule au nom de la S. I. L. W. F. par exemple, où de la Banque du Développement, ont mis la société mauricienne dans une situation extrêmement compromettante.

Ça c'est l'opinion d'un des leaders du Parti de l'Indépendance et je voudrais

savoir aujourd'hui ce qu'il compte faire pour remédier à cet état de choses, pour assainir, le plus tôt possible cette atmosphère que je considère comme étant vraiment empoisonnante. Il y a aussi l'opinion d'un économiste dont les écrits sont très appréciés dans la presse locale. A la veille de l'indépendance il a fait une analyse de la situation locale.

Il s'agit de M. Vayid qui a fait paraître un article il y a quelques jours de cela (journal *Express* du 19 août 1967). Voilà ce que déclare M. Vayid :—

> " Il faudra relancer les associations responsables de la planification familiale, leur insuffiant un nouvel enthousiasme, impitoyablement, jetant dehors les parasites et les incompétents qui ne peuvent faire le travail, et secouer l'opinion publique en la rendant consciente des dangers terribles de notre poussée démographique.
>
> Jusqu'ici, nous avons traité le problème avec un dilettantisme navrant et le népotisme, le jeu des influences et les considérations sectaires ont joué un rôle regrettable dans la campagne du planning familial "

Précisons ici que M. Vayid n'est pas du bord du P.M.S.D. et qu'il n'a pu être poussé par quelqu'un du P.M.S.D. M. M. Vayid continue plus loin :

" La productivité

> L'autre tare qui afflige notre société est le niveau extraordinairement bas de notre productivité. Avec notre main d'œuvre flattée par une législation socialiste doctrinaire ; une liste de 26 jours de congé public ; un syndicalisme généralement obscurantiste et réfractaire ; des fonctionnaires plus préoccupés par les trois P" (Politique, Promotion et Passage outre-mer) que par leurs responsabilités ; des sociétés commerciales traînant leurs méthodes archaïques comme des boulets ; un commerce axé sur l'opportunisme ; un leadership économique dénué d'inspiration... nous devons nous considérer heureux de n'avoir pas un plus gros déficit budgétaire et que certaines entreprises arrivent encore à faire des profits."

" Le chômage

> Cinquante mille sans emplois pour une population adulte de moins de 400,000 est probablement un record mondial... peu enviable. Le fait que quatre cinquièmes de nos chômeurs soient des hommes corse le problème davantage.
>
> Si nous devons en croire ces chiffres, environ 13% de la population potentiellement active est sans travail, dont 10% au moins des hommes. Il y a là une invitation à jeter le manche après la cognée et à avouer qu'il n'y a rien à faire.
>
> Mais en regardent nos sans emplois de plus près on arrive à distinguer des pseudo-chômeurs : des petits propriétaires ; ceux qui sont en fait employés ; d'autres qui ont abandonné leur emploi ; des paresseux qui de toute manière ne voudraient jamais gagner honnêtement leur vie, etc...
>
> En soustrayant les parasites du nombre officiel de chômeurs nous aurons un chiffre moins effrayant mais éloquent quand même, et il sera probablement de l'ordre de 25,000, c'est-à-dire plus de 6% de la population active."

Voilà, M. le président, la situation à un moment où nous voyons les partis majoritaires venir demander l'indépendance. Nous savons tous que le doigt est dans l'engrenage et que les partis au pouvoir pourront difficilement redresser la situation et que nous allons tous vers l'abîme où il y a le népotisme, le gaspillage, le favoritisme. C'est ce qui attend la population de l'île Maurice et c'est pourquoi je pense que nous devrions en tant que Mauriciens bien réfléchir avant de prendre cette décision irrévocable et parce qu'une fois dans l'abîme on ne pourra plus en sortir.

Je m'attendais en arrivant ici aujourd'hui à entendre des arguments valables en faveur de l'indépendance. Je n'ai pas entendu dans des meetings publics des arguments de la part des partis au pouvoir pour établir d'une façon nette et claire comment le pays allait pouvoir survivre après l'indépendance. Je vais me permettre de citer une fois de plus M. Vayid qui dans un second article, déclare qu'il faut un minimum de 650 millions de roupies pour les cinq prochaines années de façon à pouvoir résoudre les problèmes qui se posent à nous. Et ce chiffre est donné par un économiste. Je m'attendais en arrivant ici à entendre de la part des différents partis de l'Indépendance, des explications pour nous faire voir comment nous allons avoir l'argent nécessaire pour pouvoir redresser notre barque, mais jusqu'à l'heure nous n'avons eu aucun argument qui ait été mis en avant pour prouver que la situation désastreuse où nous nous trouvons pourrait être remédiée dans un avenir pas trop lointain. Nous savons tous que la vague de l'indépendance à l'heure actuelle est une vague qui n'a pas l'ampleur qu'elle avait auparavant. Beaucoup de pays sont revenus sur cette question d'indépendance. Les faits à Maurice sont présentés sous un faux jour.

L'hon. Balancy, ministre des travaux a déclaré tout dernièrement dans un meeting public que nous ne pouvons pas avoir de l'aide étrangère parce que nous sommes encore dépendants, mais une fois indépendant, nous aurons beaucoup d'aide. Tel n'est pas exactement le cas.

Nous avons profité ces dernières années de l'aide étrangère sur une assez grande échelle, de la Banque Mondiale, de la F. A. O. et cela aurait continuer même si nous conservions notre statut actuel. La seule aide additionnelle qui pourrait venir au pays après l'indépendance sont des aides où vous avez des " *strings attached* " venant de certains pays qui pourraient essayer d'aider l'île Maurice pour leur propre compte mais là, aussi, je crois que les choses ont changé. On s'est rendu compte que ces aides données généreusement à certains pays, en Asie, en Afrique, ont servi à acheter des Cadillacs pour des ministres ou à permettre d'ériger de belles constructions à ces derniers et je crois qu'un pays tel que l'Amérique est revenue à l'heure actuelle sur cette questio d'aide étrangère. Au dernier Congrè américain, malgré la demande du Pré sident Johnson, il y a eu des coupure drastiques dans cette aide aux pay étrangers. Donc, je ne vois pas d'o cet argent va venir. A ce stade j voudrais relever un point qui peut-êtr n'a pas été suffisamment expliqué

Aux yeux des partis de l'Indéper dance, nous passons aujourd'hui pou être un parti qui est contre la voie d progrès. Eh bien ! Tel n'est pas du tou le cas. Ce que le Parti Mauricie demande, c'est une association avec l Grande Bretagne, une association qu du point de vue constitutionnel, ne se rait pas différent de l'Indépendanc que réclame le parti de l'indépen dance.

(*Interruption*)

Je comprends le désir d'un pays d vouloir diriger ses propres affaires e le P.M.S.D. n'est pas contre cette évo lution. Aussi je me dois de précise qu'avec l'association on aurait ét complètement libre de gérer nos pro pres affaires et que la Grande Bretagn en aucun cas n'aurait pu s'ingére dans nos affaires intérieures. Les deu seuls domaines dans lesquels l'Angle terre aurait eu son mot à dire auraien été la représentation étrangère et l défense, et ce après consultation d gouvernement local.

Pour ce qui est de la représentatio étrangère, je considère que là encor l'Association aurait un avantage su l'Indépendance, l'example du Hau Commissariat à Londres porte témoi gnage de ce que je viens de dire. Je n veux pas ici critiquer le Haut Commis saire et son personnel mais on s'es rendu compte que le Haut Commiss riat n'a pas été en mesure de rendr au pays les services qu'on attendait d cette institution. Et je considère qu des ambassades Mauriciennes dan

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d'autres pays seraient dans une même position et ne pourraient aider le pays. Par contre, les attachés d'Ambassade dans des Ambassades Britanniques pourraient donner plus de poids à une représentation de l'Ile Maurice à l'étranger et nous aurions beaucoup plus à gagner en ayant recours à ce genre de représentation. Comme je viens de vous dire, il y a...

(*Interruption*)

Mr. Speaker : What the hon. Member is trying to say is that there is no point in voting this motion because it will create all sorts of difficulties. He is speaking on the motion which is before the House at present and he is entitled to do so.

M. Rivet : Pour répondre aux objections de l'hon. membre qui conteste les avantages de l'Association je citerai les propres paroles de M. Frederic Lee au moment où se réunissait à Londres une conférence constitutionelle pour donner aux Iles sous le Vent le statut de pays associé. Je me réfère à ce sujet à un article écrit par James Douglas et qui a été publié par le journal *Action* du 7 mai 1966. Cet article a été communiqué à la presse par le B.I.S. et voici ce que M. Lee déclare...

Sir S. Ramgoolam : Est-ce que c'est "*Action*"?

M. Rivet : C'est le B.I.S. qui a communiqué l'article qui a été publié dans toute la presse locale.

An Hon. Member : Dommage que ce ne soit pas le C.I.O.

M. Rivet : Voilà ce que déclare M. Frederic Lee, alors Secrétaire d'Etat aux Colonies :—

"Tout récemment, le gouvernement anglais a pris une nouvelle initiative en accordant le statut d'association à certains territoires des Antilles. Ces territoires conservent le droit de régir leurs propres affaires, d'amender leur propre constitution et même de se déclarer indépendant, (sans avoir a passé par le Parlement Britannique). Mais aussi longtemps que ces pays resteront associés à l'Angleterre, celle-ci assurera leur défense et gérera leurs affaires étrangères."

Voilà les conditions qui ont été proposées pour les Antilles et je suis ici fier en tant que membre du Parti Mauricien Social Démocrate...

An Hon. Member : National.

M. Rivet : National si vous voulez, d'avoir en 1965 contribué à pouvoir mettre sur pied ce projet d'association, et il est malheureux de constater que ce projet qui a été mis sur pied par le P.M.S.D. va profiter à d'autres territoires pendant que nous autres nous allons vers l'abîme, à moins que les résultats des pétitions électorales n'arrivent à modifier les choses. Venons maintenant à la question d'aide financière. Un article reproduit par le *Mauricien* du 4 novembre, 1966, du *Commonwealth To-day* déclare : "Un état associé peut toujours compter sur la Grande Bretagne pour une aide financière et technique."

Le ministre du développement outremer vient justement de créer un *Development Division* pour les nouveaux territoires associés des Caraïbes. Associés nous aurions donc été assuré d'une aide de la Grande Bretagne. Vouloir prétendre que le Parti Mauricien est contre le progrès n'est pas exact. Au contraire l'Association est une forme de décolonialisation reconnue par les Nations Unies et avec le gros avantage sur l'indépendance de pouvoir profiter d'une aide de la Grande Bretagne en cas de cyclone, de sécheresse et de pouvoir compter en temps normal sur une aide beaucoup plus importante de la Grande Bretagne. Mais il est une autre question qui est

encore beaucoup plus importante. C'est la question des avantages à travers le Marché Commun. On va me dire, M. le président, que c'est une utopie de vouloir compter sur l'entrée de la Grande Bretagne dans le Marché Commun. Aussi, je me dois de faire la précision suivante. C'est qu'en 1961 il y a eu une déclaration de principe du Parti Mauricien signée par le président, M. Raymond Devienne, dans laquelle il faisait ressortir que le salut de l'Ile Maurice se trouvait, avec l'association, dans le Marché Commun. Nous voyons aujourd'hui que les évènements sont venus lui donner raison.

(*Interruption*)

Pour répondre à cette objection je parlerai de M. Johnson qui a dit lors d'un certain congrès, que le Parti Travailliste Anglais allait voter contre l'entrée de l'Angleterre dans le Marché Commun et le lendemain même nous avons vu que le Parlement anglais a en fait voté pour l'admission de l'Angleterre dans le Marché Commun. A l'heure actuelle, si nous examinons les faits de très près, il est impossible pour la Grande Bretagne de ne pas entrer dans le Marché Commun. Elle ne peut pas se permettre un deuxième soufflet, un deuxième "non". L'Angleterre aura à entrer, coûte que coûte, dans le Marché Commun même en sacrifiant le Commonwealth et si elle sacrifie le Commonwealth, nous courons le risque de perdre les avantages de l'accord sucrier du Commonwealth. Voilà les dangers qui nous menacent à l'heure actuelle avec l'indépendance. Nous pouvons perdre ce que nous avons à l'heure actuelle, perdre le prix préférentiel que nous avons pour nos sucres. Avec l'Association on aurait au moins essayé d'avoir, et pent-être que nous aurions eu, de très gros avantages ; et je dois dire ici que, du point de vue économique, il est beaucoup mieux pour un pays d'avoir de l'argent par le circuit normal de sa production en vendant le sucre à un prix plus avantageux, que de compter sur des prêts étrangers qui n'arrivent pas a être utilisés comme ils devraient l'être. Nous avons l'exemple du Marketing Board, du Family Planning, — comme l'a fait si bien remarquer M. Vayid — où cet argent sert a plaire aux amis du gouvernement de façon qu'il soit assuré de leurs services aux élections.

An Hon. Member : M. Vayid n'a pas voté contre l'indépendance.

M. Rivet : Nous voyons donc après l'analyse des faits qu'il n'y a aucune chance aucun espoir que le pays puisse survivre avec l'indépendance. A cet effet je dois dire qu'il y a une panique dans toute la population, y compris la communauté hindoue qui a voté pour l'indépendance, qui se demande à l'heure actuelle quel va être son sort dans le futur. La communauté hindoue a subi un lavage de cerveau, avant d'aller aux urnes. Le vote exprimé, il y a eu un revirement et la preuve en est qu'on n'a pas eu aujourd'hui l'explosion de joie et de satisfaction qui aurait dû normalement se produire comme c'est le cas dans tous les pays du monde qui accèdent à l'indépendance. Cela établit sans erreur possible le bien fondé de mes assertions.

Je voudrais avant de terminer, M. le président, faire un appel. Je m'adresse à cette Chambre non pas seulement en qualité de membre de cette assemblée, mais surtout en tant que citoyen de ce pays. Je voudrais faire un appel tout particulier aux membres du Parti de l'indépendance pour qu'ils pèsent bien le pour et le contre avant de se prononcer sur la motion de l'hon. Premier.

Je suis persuadé que l'hon. Premier ne voudrait pas passer dans l'histoire

comme étant quelqu'un qui a nui à son pays, quelqu'un dont le nom serait maudit par les générations futures. Car j'espère qu'il désire beaucoup plus les avantages supérieurs du pays que l'ambition de pouvoir être à la tête d'un pays indépendant, de servir une politique de prestige. Je veux espérer que les membres du gouvernement réfléchiront, pèseront bien le pour et le contre avant de se prononcer sur la motion.

(Applause from Opposition Benches)

(7.35 p.m.)

Mr L. Badry (First Member for Mahebourg and Plaine Magnien) Sir, I think this is a unique opportunity for me to address this Assembly. First of all, I have to congratulate the last speaker for his maiden speech.

Everybody knows that I am a trade union officer and since long I am serving the working class of this country. I am in full agreement with the motion presented this morning by the hon. Prime Minister of this country. There will certainly be opposition. The Opposition will remain and there will always be opposition. It has been found out everywhere, history has repeated itself, that people always stick to their doctrines. Those who oppose belong to a certain category of people, they have the right to defend their interests. We cannot do otherwise, we have to allow them to do so but the working class of this country in general are very anxious to achieve independence. Independence is the fundamental right of the working class because the working class needs progress, good living conditions and employment. Just now, an hon. Member pointed out that there is unemployment in this country and that is why he is against independence. Why there is unemployment prevailing at this juncture throughout the country? It is because the old régime and the old tactics of the capitalist system are still in operation, it is because the distribution of the labour force in this country has not been properly done and the wealth of this country has not been properly distributed. It is also because when the wages order was put into operation there was some sort of obstruction. In the field of agriculture certain works have been abolished only to increase unemployment and unemployment causes great hardship. If we want to get rid of unemployment the only remedy is national independence. The country must move according to its destiny for the progress and the liberty of mankind. The Opposition will bring forward their tactics but they cannot jeopardise the rights of any citizen in this country, they cannot jeopardise the independence of this country because independence is necessary for the development of the economy and also because we want foreign capitalists, foreign currency to come to this country. And they will only come after independence and not before because the present structure, the present régime forbid them to come with their capital to this country. I am in favour of independence. I know that the Opposition will object and will always object. I know they will always object because in every country, I have read some history, I have never seen in any country that the Opposition is prepared to cooperate with the party claiming independence for the people. It has never been possible but I will say at this time you must show your good will to the majority of this country who are asking for independence because Mauritius, is a very small island and we have different communities and cultures. For that purpose I want to make an appeal to the Opposition that it should agree to independence and independence will bring prosperity and dignity to the people.

I hope that my short contribution to this debate, will be considered worth while.

(7.40 p.m.)

The Deputy Speaker (Mr. P. G. R. Rault) (Third Member for Port Louis North and Montagne Longue): Mr. Speaker, I am not very sure whether according to tradition I should be considered as a new Member and consequently that I should not congratulate the hon. Member who has spoken or as an old Member having already served in this Legislature for 15 years I should congratulate him. I shall, therefore, give myself the benefit of the doubt and therefore I shall congratulate the hon. Member who has just spoken before me for his maiden speech which has been of a very high order.

Sir,. after the speech which the hon. Prime Minister made this morning I think almost everything which had to be said has been said. I am not saying that at all to deprecate in any way any other speech which has been made, not even the speech made by my Friend, the Leader of the Opposition. I entirely see his position, he played well for his team and he has done very well but the speech of the hon. Prime Minister was the speech of a man inspired. He is such a great man in our history that the words he spoke, I am sure, will with the passage of time, when passions have cooled down, be accepted as Gospel truth even by those who, today, are opposed to the ideas and sentiments which he has expressed. I think that whatever may be said against the Premier in public is usually quite different from what we hear either at private parties, in drawing rooms or in lunch rooms and cocktail parties, and from the very people who are his opponents. I am not referring to the Members of the House but to the members of their party outside who tell us that we are blessed by God for the moderation of the man who is at the helm of our country. This, we all know, Sir, is the truth and every hon. Member knows it because he must have heard it on several occasions.

Sir, the main question today before us is to decide whether the members of the Independence Party who were elected on a clear platform and went to the people of this country proposing one main theme namely the independence of our country, are able now to betray their trust. That in my view, goes to the very root and essence of democracy and to the very essence of honesty in dealing. How can one expect that people who have campaigned so hard for something in which they believe or they have come to believe, because, Sir, whatever may be the hesitations which have been entertained in the past and which I know are still being entertained in some parts, independence goes with the course of history. Mauritius will be the 123rd independent nation in the world, 122 nations already are independent. Whatever some people may think about it, independence of peoples is the irresistible trend of our times, nothing at all can stop it. Therefore what must we do as intelligent thinking men? Many of the gentlemen opposite are my personal friends. I can even see on either side of the House two sets of members of the same club to which I belong. They are my valued personal friends. I know, Sir, that they all love the country as dearly as we do. What would be the state of this country if the waves of independence are beating around our shores and around the beaches everywhere and we are left the sole dependent territory, there would be constant agitation in the souls of men who crave after that liberty which cannot be destroyed. If we were to postpone the problem it would prove more acute every

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year. Is it not more courageous, more intelligent to tackle the problem immediately. We must face that problem sooner or later. Postponing it would perpetuate uncertainty, that uncertainty which has prevailed in our country in the last two or three years, that uncertainty which in my view, Sir, has been the cause of most of our ills, we must start grappling with the problem now and now is the time. To those gentlemen outside, who with their capital, with their brains, with their know-how, with their great ability, have supported and nurtured the P.M.S.D., I make that appeal and I am confident that that appeal is made in the name of the whole party. Is it not better now to get together and work for the economic future and prosperity of Mauritius rather than hanker after the past which my hon. Friend, the Premier said is dead for ever and will never come back. We have in this country brains, we have a high degree of civilisation, we can undertake any task which we have to perform, we have people right down in the masses whose brains have not been made use of, whose intelligence has not been given the chance to flourish. We can use them and I think that we must seize that opportunity and we must not let slip the chance. Some of our Friends, especially the First Member for Beau Bassin and Petite Rivière, have saddened me. He has expressed today a pessimism which I have heard in some circles, it has also been reported to me by the same President of that club I referred to. A member of that club, whose name I shall give privately to the hon. Member, who has a high position in the civil service went to that president and told him. I have fallen into drink at my place we have all gone off our food, so we keep drinking all the time because we have lost confidence in our country, we are now desperate. Now this is because of the psychosis of fear which has built up especially in a community which is not a minority but which is also one of the majority communities and that psychosis of fear will ruin everything. It was obvious to some of us that it was utterly impossible that Mauritius of all nations in the world, that Mauritius with its past and its potential, Mauritius with people of the community of the First Member for Quatre Bornes who, as he said, has been "*Une communauté à la pointe du combat pour l'émancipation politique*", that Mauritius with such an active community could possibly vote against independence. It was something unthinkable, that a branch of the human race would reject liberty, it was something which has never occurred in any part of the world and could never occur in Mauritius. Sir, we knew that that psychosis of fear which made people refuse to face reality would cause such a shock when they would wake up from that dream that they would be as sleepwalkers in a nightmare. We expected that sort of reaction of pessimism in a man otherwise so gifted as the hon. Member who has just spoken.

He apologised because he has not made notes but he defended himself extremely well. But why be so pessimistic, why not trust one's fellowmen and I say it in all sincerity that the community referred to by my Friend, the First Member for Quatre Bornes and Belle Rose, must understand that the future lies in close harmony with the majority community of this country. We should move together as brothers forgetting things which do not apply here where we have so much in common. Nigeria and Cyprus and other countries are countries which have been poisoned by imperialists. They are divided territories, they are divided into races, cut in two. In many of these countries there is tribalism, they have deliberately been cut into two by the old imperialist proconsuls. Whey did they do that? They did that with an aim in view but they did not foresee that their grandsons would liberate those countries. Here in Mauritius do we know of any part of the country where only one community lives? Everybody lives next door to each other. When there is either a death or a birth, a festival or a mourning in one house, does not the Hindu or the Creole or the Muslim go to share the joy or the pain? Can anybody say that he can live without the help of his neighbour, whether he has different religion or not. Whether we are of western or asiatic descent all of us intermingle with one another so much. No one is completely western or asiatic. From 1948 in this House or in the other House we were always talking in that breath and we talk in no other (perhaps the party of my learned Friend, Mr. Ollivry, which my learned Friend joined two days before the elections has not done so in the past). Sir, unless the Members opposite do not wish to see that the workers of this country get their due, hundreds of dockers, stevedores, granary people and all these workers get what they deserved, they should read the Speech from the Throne, they should see what Government proposes to do for the workers, what security it proposes to give. If we are allowed to proceed on those lines, then all the ills which have been enumerated by the First Member for Beau Bassin, which he seems to want to perpetuate will gradually disappear if we get an independent Mauritius, if not these ills will go on and become worse every day.

I am sure that the hon. the first Member for Beau Bassin and Petite Rivière did not catch the meaning of that moderation in victory which we showed, he did not understand the sense of it. One did not want to offend. We knew that differences have been fostered so ingeniously with such advanced modern techniques, in fact every modern technique which you read in the last issues of *Constellation*. Everyday like mushrooms all over the island we saw posters artistically designed showing skeletons, showing famine, depicting four headed monsters. They wanted to scare children and they dare talk of brain washing. Indeed, Sir, but when that Friend of mine spoke of mourning, I am sure that after the night will come the day, and I hope and trust that in a few months when the festival of independence will come over Mauritius, everybody will dance in the streets, Members of the Opposition and Members of the Independence Party. This is the wish I make on this first day of the New Assembly.

At 8.00 p.m. the sitting was suspended.

On resuming at 9.30 p.m. with Mr. Speaker in the Chair.

The Minister of Local Government and Co-operative Development (Mr. S. Bissoondoyal (Third Member for Vieux Grand Port and Rose Belle): Mr. Speaker, Sir, I believe this day is considered as a memorable day because after some one century and a half the country is in a position to vote for independence. This is the due to the labours of the great leaders of the past and present, and I hope nothing will be done to prevent the wish of the majority of people in Mauritius from materializing. But such an occasion has forced us to witness an attitute which will be like a dark spot in our history. A political party which believes that it has at heart the interest of the population at

large has had the cheek to say that it opposes political evolution! This is the dark spot in our history. Unfortunately such a statement will not receive in the local press the place that it deserves because those who are ruling in this sector of the press, will realise that a statement of this nature is most damaging to the people who believe that they are fighting for the rights of the people in this country. From time to time we have heard that 44 per cent of the voters have voted against independence and that we should not impose on the country the wish of the people who have voted for independence. What is 44 per cent when they themselves emphasize that a majority of members is not a majority? They from time to time refer to their having obtained 44 per cent of the expressed votes. But, the people of Mauritius should know how these forty four per cent of votes have been obtained. It is a shame for those who claim that they are literate, educated and who imposed on the electorate every kind of hurdle in the 23 estates that exist in the country. Almost all of these estates had raised barriers against the candidates of the Independence Party. The 23 estates employ, we believe, something like 60,000 people, that is to say, about 40,000 heads of families and they believe that it is a political strategy to raise barriers to all the entrance roads, asking the help of the police to prevent cars of candidates of the Independence Party from entering those estates. What can be as dark a spot as this in our history? That was not all, Sir. Before the election a paper was tabled in this House showing the names of places where meetings could be held, and we believe that the police authorities had submitted those names to the estates. The schools built on the lands of the estates were refused as meeting places although the names of those places appeared in the list tabled in this House. I have read, Sir, about a character of Emile Zola: a murderer who passes to be very innocent and even as the saviour of the person he had murdered. It is good that the book be read by those who assume that they understand politics, and that they can be politicians. The spokesmen of the P M S D N have tried from the very beginning this afternoon and in the press to persuade the public that they are innocent. "We are victims," they say "and the Independence Party has encroached upon our rights and privileges and everything has been wrecked to our detriment." This comedy, Sir, is played to create history because it is believed when certain columns of certain papers will be filled with matter of this character, future historians will draw from these columns material for their history, and then this party will be represented as a very innocent party and the Independence Party represented as having appealed to the emotion of the majority of the population in the country, and because of that trick the Independence Party has got a majority of seats, and that independence will be forced upon the public in this country. Sir, it is of vital importance that this trick be exploded. First of all, we had the appeal to the public: "send cheques addressed to Mr. de Chazal..."

M. Duval: *Sans casque.*

Mr. Bissoondoyal: Shameless people begging at the door of the estate owners, using what they got from them, (and the evidence of it is all the hurdles placed on the road entrances to the estates) come and say that they are victims, that they are honest people, that independence is dragging them down into the abyss, and they want the people to realize this calamity. But these shameless people have

contacted members of the Independence Party persuading them to become Prime Ministers, and get the capital they need, the finance they need, and everything they want and even independence (*Applause*).

An Hon. Member: Shame!

Mr. Bissoondoyal: It is these people that come here to say that they have a conscience, and they invoke conscience at every turn of the road as if they are speaking in the interest of the public. Sir, it could not be opposed too much because such an attitude is usual in all countries where the vested interests find that it will not have the freedom, the prerogative, the liberty, the privileges they had obtained in the past. We have seen that in every colony, in every territory where they cannot stop the coming of independence, they try to sabotage that independence when it has come. They try to do everything in their power in that sinister pursuit. Sir, speaking of England as a country that has achieved substantial progress, in my view I think that it has achieved that substantial progress because of certain factors.

First of all, the interests of the smaller man are looked after through the co-operative movement, the trade union movement. But all these things could be possible because of the freedom of the country. Africa and Asia have been victims of all these prejudices and things that divide and keep down people and no one at that moment could have felt himself strong enough, wise enough to refer to England as a country enjoying advanced progress. We have only to go back to the days when the co-operative movement started, when the trade union movement started, when the true free press started and see what battles were fought and how those battles could be in the interest of the public. If England had been a colony, there would never have been a cooperative movement, I mean a successful cooperative movement, a successful trade union movement, the situation to bring about a free press and all the other things that come from these movements. But how can we expect a man who accepts to be on bended knees before vested interests to understand the meaning of the cooperative movement, the trade union movement and the free press?

To understand why all these hindrances are being put in the way of independence; we have to investigate. What is the past of every individual that today opposes independence? I am not speaking individually. I am speaking in a spirit to establish a general principle. "*Dis moi qui tu hantes et je te dirai qui tu es*". A man who prefers to be dependent on resources presented to him on conditions naturally cannot accept independence. It is incompatible with the mentality of a man who has been all the time bending to be all of a sudden independent and accept independence. But they are clever. They want to explain to the public that independence will bring harm to Mauritius. It is as if because a father of family cannot bring Rs. 1000 to his family every month, the wife, the young daughters and the children must accept refuge in another person's house. This is the upshot of all the arguments that have been used in this House. You have no money, you cannot become independent. A head of family cannot bring in Rs. 1000 at the end of the month, therefore his wife, his young daughters, his children must take refuge at another man's place where that sum can be provided. Educated people can speak in this vein to Mauritius! What is money after all? In a coun-

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try where we can have over 300,000 acres of cultivable land, where we have no experience of any severe drought, can we speak of poverty ? Yes, it can be poor if we allow the 88 persons to continue to draw Rs. 22m. and thirty six companies to draw Rs. 40m. of dividend per year and if we allow that state of things to continue. And shameless people will allow that state of things to continue. Then naturally the best part of our countrymen will have to be poor. Then naturally whether we like it or not, we will have to go to the bottom of the abyss. All the arguments have been rested on money. You have no money, but each of your candidate got at least four cars before the election. From where those cars came ?

Mr. Walter : 18 in Curepipe.

Mr. Bissoondoyal : ... on an average, candidates whose financial resources are known to everybody. This country has no money ! This country can command millions of rupees in an election, but this country has no money to enable its population...

Mr. Olivier : What about Mr. Donald Fort ?

Mr. Ringadoo : What about the salaried staff ?

Mr. Jagatsingh : What about the "*pieds noirs*" ?

Mr. Walter : If you were real socialists, the British Labour Party would have helped you as well.

Mr. Olivier : You paid his salary.

Mr. Walter : I have got no time to lose with your sort.

Mr. Bissoondoyal : Town Councils were using public funds to employ thousands of people on no other work than to stand and see what is going on. That is an honest way of dealing with the problems of this country ! That is an honest way of getting the people to understand democracy, that is an honest way of opposing independence !

Mr. Walter : And on the 7th at six o'clock, they were all dismissed.

Mr. Duval : We are after dinner.

Mr. Bissoondoyal : There are certain people in this country who think that because they have at their place a firearm — I am wrong, mistaken, lots of firearms — because they can have lots of money, because they can have some people placed at a high level at their disposal, they can do anything they like in this country.

Mr. Olivier : The Special Mobile Force !

Mr. Bissoondoyal : They can do anything they like. There will be casualties if this is to be the fate of the country. But then there will be casualties on both sides.

Sir, at a time when we have made up our minds we have to realise that without independence, the greatest evil in this country cannot be got rid of : the evil of communalism. And how it is born ? In all colonies, if you have no communalism, you have tribalism. And who planted these things in all these colonies ? Who ? Has anyone dared to understand that ? Mere stooges have not a free mind to understand how these things work in colonies. Communalism is a thing that cannot be got rid of if we accept to be dependent on outsiders or even on people who are born in Mauritius but who feel like outsiders. The only way to get rid of communalism is to get an independent Government in an independent country and that independent country will give rise to men to take care of itself, men who will think that the country is made up of their countrymen. At present you have people who are not responsible to the country at all but who have so much right, who have so many privileges for appointments, promotions and a lot of other things, that this country cannot hope to breathe in an atmosphere of patriotism. One gentleman has already obtained a privileged position in the Government or in Town Councils and he uses that position to set one man against another and the source of communalism is there. If you find a young Hindu disgruntled because he has not been given what he hopes to have or what he thinks he deserves and that he feels that someone of another community although he does not deserve that has got it, then you create communalism. No one can gainsay what I am saying. This is the source of communalism in this country. And how to get rid of it ? You have to give independence to this country. And independence will create an atmosphere. That atmosphere may not be created tomorrow morning but an appropriate atmosphere will be created. Otherwise England too would have been divided into Saxons, Teutons, Danes and what not but because it was independent it could get easily over all these divisions and now in the United Kingdom, you come across but Britishers. Hardly one or two will think that he is a Saxon or of Danish origin or of Scottish origin. All will think in terms of being a Britisher. Why ? That was the position in France and in many other countries. But people who do not want to read to understand would not have the mood, the right approach because there are foreigners behind them. They will never understand what has happened. They are living in 1967 but they are still telling you what they had imbibed from echoes some 40 or 70 years ago and they cannot free themselves from those echoes. They learnt it in the schools, in the churches, in the parties. When they shake hands with people of a higher level, they lose their personality, their self and everything that makes up an individual, a responsible individual, in a responsible society.

M. Duval : *Dans les parties de chasse.*

Mr. Bissoondoyal : So many posters coming from South Africa indicate who have been the masters in all these things.

An Hon. Member : Mr. Fort.

Mr. Bissoondoyal : Because I know that all these things cannot have come from their brains. There have been masters behind. And they had thought that this would work in this country. I myself at a certain time, had thought that I would come out but with a very narrow majority, seeing around me all the estates shutting all their entrances. We had no right to put up posters, no right of access on the estates. Our friends with a gloomy look, would run away from us with sadness in their hearts.

I stood in 1948, 1953, 1959 and 1963. I never saw such things. It was the first time, in my electoral experience, that I saw such dirty, nasty shameful things worked out by public men, thinking that by brutal force and having at their disposal a few men of authority in this country, they could stop independence.

Sir, they have not lost hope even now, because if they have had the effrontery to come and approach me

hoping that I could be tempted by a a premiership, they must have thought of some worse strategy than this. They thought if they could catch hold of me... the game was up. They were unsuccessful. They thought of knocking at the door of individuals.

M. Lesage : *Cessez de vous mettre du vent dans les voiles !*

Mr. Bissoondoyal : The hon. Member is ignorant of the plans of his party. He might be right.

(*Interruptions*)

Mr. Jagatsingh : Shut up !

Hon. Members of the Opposition : You should be ashamed of yourselves. Shut up yourself ! Shame ! Shame !

Mr. Speaker : I must ask hon. Members to observe silence.

(*Shouts*)

Mr. Duval : In presence of such disorder we will leave the Chamber.

(*Members of the Opposition leave the Chamber*)

(10.00 p.m.)

Mr. Bissoondoyal : I have come to the end of my speech and I now resume my seat.

The Minister of Labour (Mr. H. E. Walter, Third Member for Mahébourg and Plaine Magnien) : Mr. Speaker, Sir, it is not the departure of the hon. Members of the Opposition which should stop the debate on a motion of that importance. It is a motion which is the culmination of years of hard and arduous work which has met through its passage difficulties of such texture that only men of courage and determination and leadership have been able to carry through until the end of the day.

Sir, in this long battle, since the battle cry of freedom has been expressed in Mauritius, many victims have been left on the battle field. The battle cry for freedom never stops and to-day we see that the fruits of the efforts of those who preceded us have well worth their sweat, tears and blood and the long battle I should add, the ordeal of those who were not deterred by a ferocious opposition which knew but only one thing, the conservation of their privileges and the maintenance of their rights, by means fair or foul, provided their interests were safeguarded is to-day seeing the dawn of victory and the twilight of oppression.

Sir, it is a momentous day and it is with a decisive heart that until this late hour of the night people on this side of the House who have believed in the progress and the emancipation of the masses are still keeping the fight, in spite of the provocations that have just taken place in this House. We could guess and we need not have been Cassandra like to have understood that instead of submitting to their defeat and accepting their fate as courageous men who would have embraced independence without justifying the words of Churchill which have proved true : in victory magnanimity, and we have been magnanimous to them but they in defeat should have shown humility instead of defiance. (*Laughter*)

What did they show ? I need not comment upon this as it is better left untold.

Sir, this auspicious occasion which has given rise to a spring of pessimism on the opposite side has shown to us throughout the speeches from the opposite side but only one thing : *sterility*. Arguments which have been put forward have in no way, Sir, shown, or proved, convinced or strengthened any reason that could in a way or another make the people of Mauritius believe that there was another alternative to independence. Sir, it is a thousand pities indeed that the hon. Members of the Opposition in spite of their absence — they will read it tomorrow through the objective press that we have — did not do their homework. Had they read the final communiqué of the London Constitutional Conference in 1965, to-day we would have been spared all these infertile reasons so elaborately propounded. When the hon. First Member for Beau Bassin-Petite Rivière (Mr. Rivet) spoke, I wondered whether the one who succeeded him should have congratulated him or congratulated Mr. Vayid.

Sir, we see in this debate, from our side a positive attitude while on the other side but a spirit of absolute negation. If only they could show a spirit of abnegation, perhaps we would have understood and pity would have taken the place of what we feel today, this constant obstruction to progress. Sir, economy seems to be the whole platform of their arguments but I would like to know, Sir, whether they have understood that parliamentary democracy is the springboard on which the economy of the country can be properly channelled, organised and can, in the end, lead to that prosperity and welfare which the representatives of the people who have been elected through the secrecy of the ballot box upon a manifesto, a real one and not an hysterical and illusory one, whether those people have understood that no economy can show any progress unless the people can have a means and a way by which they can express their willingness, their free will, their desires in the choice of their representatives and this Government.

Of course, Sir, parliamentary democracy to certain minds is something of a myth. They do not understand that the majority rule demands that the verdict of the people should be respected because it is expressed by the majority of the House, that the sacred atmosphere which surrounds the debates of the representatives of the people is something that should be cherished and not be treated with such levity as we have seen in their recent walk out.

Sir, a child was asked to describe an elephant or to define it and his answer was, after grave search in his mind, " Well, I cannot define it but if I see an elephant, I will know that it is an elephant. " Well, this is parliamentary democracy. If it operates in the way that we, on this side of the House, have tried to show to the people of Mauritius and to the world at large and to the Mother of Parliaments, that we believe in democracy and that we accept what the majority wants, I see no reason why those little apprentices of democracy that we have heard to-night should not have taken the lead from their elders, if elders they have on the other side.

Sir, I was saying a few minutes ago that had they done their homework they would have got the answer, in the communiqué in the Sessional Paper No. 6 of 1965. Sir, we see in it :

> " The Secretary of State, at paragraph 20 of page 4, accordingly announced at a Plenary meeting of the Conference on Friday, 24th September, his view that it was right that Mauritius should be independent and take her place among the sovereign nations of the world ".

Then, it goes on to speak about the Electoral Commission and the simple

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majority that is needed at the Assembly. And, further on, what do we see ?

> "The Secretary of State announced, (and that with an independent position) that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence."

So, this part of it dismisses the argument of the Leader of the Opposition that Mauritius will be isolated and completely cut off from any possible chances of defending itself and it goes further that the British Government envisage that such an agreement must provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius.

Here again, Sir, could we obtain better terms than this with an independent Mauritius than we would have obtained otherwise. They led people to believe that the source of economic assistance would completely dry up once independence was granted, but what do we see further down :

Finally, the Secretary of State underlined the importance attached by Britain to the maintenance of the close and friendly relations which had existed between Britain and Mauritius for over 150 years. The achievement of independence would, in his belief " strengthen rather than weaken these ties of friendship. Mauritius would naturally continue to be eligible for economic assistance from Britain, in the same way as other formerly dependent territories and would still benefit, from the Commonwealth Sugar Agreement. "

As far as Britain is concerned we would be in a better position than we are today for many reasons which any fertile imagination can conceive or find if they can think. It means, Sir, that becoming independent, taking our legitimate place in the forum of the sovereign nations of the world we will be recognised by the powerful nations of the world. Our voice would be better heard at that level in that position. With a colonial status, in the international organisations, we are told " You are but an associate member and you cannot vote". It is not a policy of prestige as the Opposition avers and these words which have been floating about in the country for months or for years, would find their answer in the words of President John Kennedy when he said " I believe in human dignity as the source of national purpose, in human liberty as the source of national action, in the human heart as the source of national compassion and in the human mind as the source of our invention and our ideals. " Let those words sink, let them be recorded by the press so that the absent Members can read tomorrow these expressions of wisdom so that they can find this inspiration so much lacking in them. They would put them on the right road, so that they understand that the time has come for them to accept the free verdict of the electorate as the expression of democracy.

Sir, it is not because a certain percentage, less Rodrigues, believed in the theories and the empty myth expounded by the Opposition during the electoral campaign, where the main issue was one between association and independence that those people should still believe the catalogue of untruths, distorted and presented with such resounding publicity and to have created a persuasive and a persistent myth. Unfortunately, for those who

propounded the theories, they have started to taste the desintegration of their arguments. We have got, and I need not labour this point, the judgment on the validity of the British passport to emigrate. This document was presented to the public as the magic wan which would have cured all the effects of unemployment and allowed people to emigrate freely to the land of milk and honey. But, Sir, it is the reverse of the medal which is to be feared. This persistent myth and the ensuing persuasive fear has created a psychosis in a certain section of the community, but when found out to be devoid of all possible human truth, and proved to be a red herring, it is then, Sir, that those protagonists have got to be afraid of the return of the boomerang. We have nothing to lose, we have come forward to the people with clean hands, with a programme that we believe we can realise. Of course, Rome was not built in a day. It will take us time. There will possibly be difficulties ahead but the difficult times can be matched by the resources available, the array of brains that we see on this side, men of experience who have proved their leadership and ability, Sir, our record is there and it speaks for itself. We have not six newspapers to blow our trumpet every morning and mid-day about the possibilities of what can be done, but what we have done, we are proud of it and we have nothing to be ashamed of.

What have we heard throughout the series of speeches from the Opposition ? But a series of hypotheses based on false assumptions, in other words, sophistication at its best, incorrect assumptions from false premises. This is all that we have heard. Where is the positive side ? I need not go into the details of the speeches we have heard neither will I try to refute all those incongruous arguments but there is one which must be answered not for its soundness but for its inaccuracy. It must be said so that the public in Rodrigues and Mauritius should realise that this Government never shirked its duty towards its forced dependency.

Sir, if we look at what is being spent on Rodrigues, and an unproductive dependency, what do we find ? Rs. 3,677,140 per annum. And we hear from this young, keen and eager Second Member for Rodrigues about the treatment that Mauritius has meted out to Rodrigues. They should consider themselves lucky that they have not been treated as Mauritius has been by Britain for 150 years. When one thinks Sir, that we have just built a new hospital in Rodrigues with modern equipment, we have two Government Medical Officers attached to this dependency, we have built two new schools in Rodrigues, scholarships are granted and after all here is the finished product of the work of the socialist Government, the hon. Member himself.

Mr. Speaker : The hon. Member is not present.

Mr. Walter : I know, Sir, but I am addressing him. And today for this field of good acts we only reap ingratitude. We have been told that in Rodrigues payment is effected in maize. Perhaps the hon. First Member for Rodrigues should have explained to the House when, where and how such payments were effected. Or was it the system that existed in the days of his masters ?

Mr. Speaker : The system already existed.

Mr. Walter : Sir, I am glad that you make the statement because it confirms that it is only an expression of the capitalist system which this socialist party has tried to destroy. Of course, we are vigilant because there is still much more to be done in that field. I need not go into the programme. We will leave that for further converts and return to the motion.

Sir, I have been attacked by the hon. First Member for Belle Rose and Quatre Bornes in a cheap ironical way, that I said that Hindus should be congratulated. Yes, Sir, they should. It is a community which has given a lesson to other communities, it has shewn to the world at large that communalism is a cancer that it will fight and uproot right from the bottom. This is what I meant when I said that Hindus should be congratulated. They have elected Creoles, Muslims and Hindus. Everbody who came with a touch of communalism was just banned from the realm of their influence. I am being accused. *Les hindous ont obéi au mot d'ordre. Oui. Parce que nous leur avons dit que le communalisme n'a pas de place dans une société hétérogène. Ils ont souffert, ils n'ont jamais connu de place au soleil et ce n'est que par la force de leur volonté, de la volonté de leur chef, qu'ils ont réussi à se frayer un chemin. Qu'a-t-il fait, celui qui se dit être le leader de la communauté de couleur ? Il a réduit en haillons cette communauté, il ne reste plus rien que des bouts, des fragments de cette communauté.*

(Interruptions)

Mr. Speaker : The hon. Minister should abstain from referring to any particular Member.

M. Walter : *Il n'a jamais songé un seul instant que le but de l'indépendance n'était que la réalisation du travail de ceux de cette communauté qui ont été assassinés, enfermés en prison pour la liberté et l'émancipation de la masse. Et aujourd'hui ils se disent le produit de cette communauté.*

Mr. Speaker : I suppose the reference is to the Leader of the Opposition. He is not here. The best thing is to avoid any reference to him.

Mr. Walter : If physically he is not there, I believe in spirit they must all be there, Sir.

Mr. Speaker : The trouble is that the Standing Orders do not deal with a member in spirit.

Mr. Walter : Sir, the coloured community has been led to believe that they have been resisted in their aspirations and a psychosis of fear has been created and they have followed the path of this persuasive and persistent myth. What do they find to-day, Sir ? That most of their representatives are on the other side of the House. And what should they have been told ? That the Opposition has its say but the Government has its way.

Sir, the Labour Party is not a party composed of one community as the propaganda has led some people to believe. It is a party of all communities, it is a party with an ideology which believes in the uplift of the mass, in the creation of a welfare state, it believes that this country should be shared by one and all. We all know the point about it. I need not make any inroads into that. It is but too well known to the public at large. Everyone of us should feel a sense of pride, should feel that the hour has come for the respect of human dignity. This should be the finest hour of Mauritius.

Sir, independence is our birthright, independence is not achieved without

effort. Independence releases sources of energy so far untapped, it unleashes the powers of human souls kept in economic bondage and slavery. On suddenly seeing the horizon being opened and widened, so that the sun rising for everyone equal shares are offered. I remember the words of Sekou Toure, the President of French Guiana, when de Gaulle visited him in his address to de Gaulle, he said : "*Laissez moi manger mon tapioca pourvu que mon peuple et moi-même, nous pouvons respirer librement*". This is how I feel today. When one comes and says this country—what have they not done to create in the minds of the public the image of economic ruin, the image of utter poverty, the image of being driven to death. Sir, I need not detain the House any longer. The Lord himself said : " I shall take thee from captivity and give to thee thy liberty ". It is in this spirit, Sir, in this effort, in this prayer that I hope that those who have left — perhaps it is best that they have left the House — so that the motion will be carried unanimously with the Members present.

But before I sit down, Sir, I should like to pay tribute to the hon. Premier and I do not want the public at large to believe that this is a simple admiration, a man to whom my loyalty is unswerving, not because he is the Premier, not because he is the Leader of the Labour Party, not because he is the Leader of the Independence Party, but, Sir, for the striking example of devotion to duty, loyalty, determination to the achievement of a goal and indefatigable effort towards the emancipation of the mass. It is this tribute that I want to pay before I sit down and let the Members of the Independence Party, of the Labour Party, of the C.A.M., know that the people of this country are grateful to them because of their sense of sincerity, sense of national purpose, and the recognition of human dignity have been the elements which have made them what they are to-day.

The Minister of Agriculture and Natural Resources (Mr. V. Ringadoo) (First Member for Quartier Militaire and Moka) : Sir, the fact that we have a House where the Members of the Opposition are not present makes me believe that there is no need for me to make the speech which I intended to make and to answer some of the points made by them. I am also conscious, Sir, that for the purpose of record and also for the purpose of the public outside, what is being said today is not confined to the four walls of this Assembly. After 150 years of British administration, the Premier was right to say that we have come to the end of a journey. We have seen many things, we have learned many things. We have seen along this period what the British Government has been doing for the political emancipation of the people of Mauritius. We have seen how reactionary vested interests have behaved and in our own time over the last 20 years, we have seen how the vested interests have tried to impede as much as possible any system of reform. I think history will have to keep within its pages that Mauritius has been the one country which has had to undergo Ministerial system for a period of 10 years before independence. This is the longest time any Colony in the British Commonwealth of Nations has had to endure colonialism. This has been the biggest sin of omission on the part of the British Government and we are glad to pay tribute to the socialist Government which has long last in 1965 realised that Mauritius was fit to govern itself. This long delay has been a great sin because it has

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allowed vested interests to divide us. It has allowed vested interests to create havoc between the communities and to create religious and racial hatred. It has been an exploitation of all the bad things which vested interests can exploit in order to divide the people. At this time we must think also of the benefits which British administration over 150 years has given us. The abolition of slavery is the first, because it conferred full status on man and then a series of reforms, ideas which have been brought here, they have given us education, they have brought parliamentary democracy, they have brought the rule of law and now we are fit to continue the journey and it is a new journey as the Premier said this morning. On the 7th of August the will of the people was to implement the decision of a socialist Government in Great Britain to give Mauritius independence. My Friends who are not here and the public outside must know that there is a big misconception about what took place in London. What took place was purely and simply a decision that this country must be independent. There was no decision that the public had to choose between Association and Independence. It is here in black and white, Sir, that the Secretary of State dismissed Association. He considered Association as wished by the *Parti Mauricien*. He came to the conclusion, I am quoting from page 7, Mauritius Constitutional Conference 1965 Report, page 18 :—

> " The proposals for association developed by the *Parti Mauricien* did not rule out the possibility of Mauritius becoming independent. It was inherent in this form of association, as distinct from the normal colonial relationship, that the territory itself should be free at any time to amend its own constitution and, by due constitutional process, to move on to full independence. "

Given the known strength of the support for independence, however, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled. — and that is why later on the Secretary of State at page 20 says : " his view that it was right that Mauritius should be independent and take her place among the Sovereign Nations of the World ". And then he only discussed the *modus operandi* how all this can be implemented. Everywhere it must be a request from the Legislature. This is what is being asked after the elections. Any party other than the Independence Party, if they had won the elections would have had to content themselves with self Government if it did not require independence.

This would have been the result of what took place in London in 1965. The *Parti Mauricien* has been hoodwinking the people in this country by trying to say that by winning the elections they would have got association. That is not the case. Most of those who talk about association and all the benefits do not realise that this was fully debated and that up to now this form of association which has been granted to three or four small islands with a population of less than 15,000 people each, containing more banana trees than people, does not satisfy the resolution of the United Nations that the colonial powers have to decolonise and right now the Committee on decolonisation has been examining whether this form of association or the form of association governing the status of some satisfies the requirements of the United Nations. Sir, true freedom is not merely political, it must also be economic and spiritual. Only then can men grow and fulfil their destiny. I am quoting the words of a man who in our modern times fought for freedom as very few of the

people have done. I am quoting the words of Pandit Jawaharlal Nehru. I feel a bit ashamed as a Mauritian that when independance was referred as the birthright of every Mauritian, we only had laughter from the other side of the House. I am also ashamed, Sir, as a Mauritian that there are people who believe that only stomach means something in life. I am ashamed as a Mauritian to hear people talking about some problems which are difficult and act as a barrier to independence.

Then, all the 122 countries of the world would not defeat independence, I cannot for one accept this sort of reason. Independence is what it means. It means the freedom of the individual, it means the freedom of the nation, it means the freedom of a country, and with this sort of thing nobody should play. It is worth fighting for and shedding one's blood. I don't want the public outside to get the impression that we are only considering the spiritual, the moral side of independence. Those who pride themselves of their French culture, should have realised that France in 1789 did not choose fraternity as their first word for their motto. They knew that it is only " *la liberté* " which can bring about equality, and that it is only liberty that can bring about ' *fraternité* ' among the French people. That is why we have been saying to them that this mauritian nation, this feeling of belonging to one, this feeling that when we belong to one, we can cope with our problems in a new spirit, is something which can only be achieved after we get the freedom of this place, and we have built this nation. I am sorry that people who have been uttering words like ' *liberté, légalité* and *fraternité* ' have not learnt anything about it. Sir, it is true, and the hon. Members of the Opposition who were here until recently, were right in referring to our economic problems of unemployment, our difficulties and various things, but where they are not correct is that through association or whatever formula they will be able to cope with these problems. Neither their reasoning about the selling of sugar nor their reasoning about our entry into the Common Market — because we have had a full class debate about it — nor their knowledge about what is " *territoire d'outre mer* " and " *département d'outre mer* " is based on reading which is correct, and despite the addition of new members with legal brain, they have not been able to improve anything. Their contention about what the British passport confers is also erroneous because association will continue to allow us to have the same passport that we have, and we know what one hon. Member said when he arrived at Plaisance Airport in 1965 that he was ashamed of having a British passport.

Sir S. Ramgoolam : It was a member of the Opposition.

Mr. Ringadoo : Well, what do we offer to the young people ? What do we offer to the people of Mauritius regarding the problem which we have now with 780,000 people and in 10 years one million people ? Is it just to talk of Pierrette with her pot of milk or is it that we should offer to the youngsters of this country and to the people of this country the hope that with hard work as our ancestors have done, and with even harder work we will be able to meet these problems by galvanising all the energies which we can command in this country, by using all the available resources in this country, by getting as much outside help as we can from friendly countries and from the United Nations Agencies ? It is not correct, Sir, it is not correct that we are getting quite a lot already. We are not getting enough, we are not getting from any friendly country be-

cause we have to deal through the United Kingdom. We are not getting from all the various United Nations Agencies what we should get as an independent country, and as quickly as we need. There have been schemes which have been lying for two or three years because papers get stacked in London. We want to be able to discuss our affairs ourselves in our own right at the United Nations, at the World Bank and with other International Agencies. We want to go quickly about it so that despite the long delay, despite the fact that we are already in a situation which is difficult, we will be able within the shortest possible delay to use all our resources, agricultural, human and other ones, to create a better Mauritius for all the Mauritians to live in. This will require, Sir, the participation of people at all levels. It will require the participation of the young, it will require the participation of the old. It will require the participation of the private sector and the public sector. It will require the co-operation of one and all. Mauritius does not belong to anybody, it belongs to all of us, and we must create the condition. This is what this Government intends to do. We want to create the condition in Mauritius which will allow us to have a society whereby we utilise all our resources in order that we can meet the problems of Mauritius as quickly as possible. As you can see, this is a time of great challenge, it is not a time where we should have timid people, it is not a time where we should have weak people around us. This is a time for great things. The task is great. It will be greater if we don't do anything about what we have to do, and this is not a time for disunity, this is not a time also for ugly words. As we have come to the end of one journey, we are now set on another one, but it will be a longer one. Our task will be to build a new Mauritius. We will be able to set aside misery, poverty and unemployment. We can build the future as we have built the past together. We have in Mauritius a common heritage for all of us, of all the communities, of all the religions. From the four corners of the world, from France, from Africa, from India and from China we have all come and we have made of this Mauritius a beautiful island as in the words of President Tsiranana it is a "*tapis vert*". As the work to make this Mauritius beautiful they were hoping that one day this place would be what we are wishing it to be 'a free country'. They had the hopes, they had the pledges. It is now the time for us to realise these hopes and to redeem those pledges. We can bring changes through peaceful methods and co-operation. We can face the challenge by working for a socialist pattern of society based on planning and economic growth. We will need hard work, efficiency and a disciplined mind. The genius of the Mauritian people can rise and fulfill its destiny in creating the ideal of a multi-racial, multi-linguistic, multi-cultural society. I have faith in my fellow countrymen. The country expects each one of us to do his duty. We have been fortunate, Sir, to have at the head of this Government one who is a real son of Mauritius, and who has done what he has done over the last twenty five years. I think, we are safe in his hands because he has been the architect of the future of Mauritius, and if there is anybody when we have independence who will deserve to be described as the father of the nation, then Sir Seewoosagur Ramgoolam will deserve this title. (*Applause*)

This is the time when we should think of our country first, and of our legal and petty interests last. This is

the time for great action, Sir, and my last words will be this. They are the wise words of a wise man: "Arise, awake and stop not until the goal is reached ".

(10.55 p.m.)

The Minister of State (Finance) (Mr. J. G. Forget, Fourth Member for Belle Rose and Quatre Bornes) : M. le président, comme le dernier orateur je pense que le vide que nous constatons actuellement sur les bancs de l'opposition ne devrait pas nous arrêter dans ce que nous avons à dire. Cependant, je serai très bref, et lorsque je ferai allusion, en passant, à des propos qui sont venus de l'autre côté, je vous donne l'assurance M. le président, je traiterai les absents avec toute la déférence voulue.

Cette motion, comme le premier ministre l'a dit, est l'aboutissement d'une lutte extrêmement longue qui a été menée dans ce pays, tout au cours de son histoire. S'il y a un fait commun à toutes ces luttes, à toutes ces étapes, ce fait commun est qu'il y eut toujours des mauriciens, toujours les mêmes, pour s'opposer à ce que le reste du pays réclamait. Que ce fut pour admettre nos fils aux écoles publiques, le vote des lois syndicales, que ce fut pour donner au peuple le droit de vote, etc... tout au cours de cette longue lutte, des mauriciens s'opposèrent à ce que voulaient les autres. Nous ne pouvions donc pas nous attendre qu'au moment où se joue le dernier acte de notre effort politique, au moment où va se fermer le dernier chapitre de nos luttes, nous ne pouvions pas nous attendre — étant donné, comme l'a dit un orateur, ce qui se passait dans d'autres pays, dans des conditions similaires, de voir même l'indépendance du pays être accueillie par cette catégorie de mauriciens qui, au cours de 150 années, s'étaient toujours opposés au progrès, à l'avancement du pays, et à l'émancipation de son peuple.

Nous savons que dans tous les pays, les *vested interests* représentés par l'élément bourgeois n'ont jamais consenti à des mesures qui visaient au progrès de la nation. Un exemple qui peut paraître hors de proportion avec notre petit pays mais qui est encore récent dans notre mémoire, est que nous savons, après la débacle en France en 1940, nous savons de quel côté se sont trouvés les collaborateurs avec l'ennemi.

M. le président, je veux bien me donner la peine de réfuter très brièvement d'ailleurs la thèse de l'Opposition, comme je crois qu'on peut la comprendre. En dépit de ce qu'a dit le dernier orateur, que l'association n'était pas en cause dans les débats de ce jour, je veux bien voir ce qu'est la thèse de l'Opposition. Si je l'ai bien comprise, elle se résume à ceci : l'Opposition veut, maintenant, d'une association avec la Grande Bretagne qui puisse nous conduire plus tard au Marché Commun lorsque la Grande Bretagne sera elle-même admise au Marché Commun. L'Opposition ne nous dit pas pourquoi, si nous sommes indépendants, nous ne pourrions pas avantageusement demander la même admission au Marché Commun sans attendre la Grande Bretagne. De plus l'Opposition ne nous apporte aucune preuve que la Grande Bretagne *voudrait* nous donner l'association, pas plus que les pays constituant le Marché Commun seraient disposés à accepter l'Ile Maurice ainsi que tous les autres pays qui seraient dans la situation de l'Ile Maurice,—c'est-à-dire "associés" à la Grande-Bretagne ? Parce que je ne peux pas imaginer notre petit pays comme étant tellement le centre de l'univers qu'on lui ferait des conditions exceptionnelles et favorables pour entrer dans le Marché Commun du moment qu'il serait dans le sillage de la Grande Bretagne. Ce qui fait que la thèse de l'Opposi-

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tion repose sur le fait que la Grande Bretagne, si elle était jamais admise au Marché Commun, ferait passer de droit avec elle tous les petits satellites qui seraient dans son sillage, c'est-a-dire tous les pays qui pourraient être "associés" avec la Grande Gretagne. L'Opposition s'est gardée d'essayer d'apporter la moindre preuve de cet aspect de la question. Ce qui fait que, d'un côté, avec l'association, l'incertitude contre laquelle les membres de l'Opposition semblaient se battre, cette même incertitude demeurera plus que jamais avec la formule d'association ; tandis qu'avec la formule d'indépendance, on est gêné d'avoir à le redire, n'importe quelle action peut être prise par un pays indépendant, à n'importe quel moment qui lui semblerait favorable. Evidemment sans tout ramener à une question d'argent comme l'a dit le ministre des Administrations Régionales, il est permis à un parti politique de ne pas perdre de vue complètement ce que j'appelle l'aspect objectif de la question que nous débattons. Mais certainement il ne fallait pas lui donner une importance demesurée,parce que l'autre aspect que j'appellerai l'aspect subjectif n'est pas un aspect que les citoyens d'un pays ont le droit moral de négliger et de faire passer en deuxième si ce n'est pas au cinquième plan. Cet aspect subjectif, M. le président, auquel on n'a pas fait allusion, si je ne me trompe, ou auquel on n'a pas encore fait allusion, c'est l'idée patrie.

Mr. Speaker: I think it was said that this land of ours will finish by being our fatherland.

M. Forget : Mais cela n'a eu aucun écho dans le camp opposé. C'était comme si la question de l'indépendance de l'Ile Maurice, la question de la souveraineté du pays, pouvait être traitée ou décidée sans que l'idée de patrie ne soit à aucun moment évoquée. Peut-être que chez les Mauriciens qui appartiennent à ce groupe de Mauriciens qui, durant 150 ans, se sont opposés à tout progrès, qui, en 1920, se sont opposés à un rattachement avec leur ancienne mère-patrie, la France, peut-être que cette catégorie de Mauriciens n'a jamais après tout considéré l'Ile Maurice comme leur patrie ; peut-être sont-ils insensibles au charme de cette Ile ; peut-être n'ont-ils jamais vu nos plages baignées dans une lumière matinale ; peut-être n'ont-ils jamais vu notre ciel bleu, nos cieux étoilés par les nuits d'été ; peut-être n'enterrent-ils pas leurs morts dans la terre mauricienne ; peut-être s'arrangent-ils pour que leurs fils naissent hors de Maurice, dans une terre étrangère ; peut-être leurs morts reposent-ils dans quelque endroit inconnu ; peut-être n'ont-ils jamais levé les yeux vers nos arbres frémissant dans le vent... Si cela est ainsi, si ces Mauriciens n'ont jamais vibré avec leur pays, si la terre où ils ont grandi leur est complètement indifférente, si cela leur est égal d'appartenir à un pays étranger ou de faire ce que Danton lui ne voulait pas parce qu'il disait qu'on " n'emporte pas la patrie à la semelle de ses souliers ", alors je comprends que ces Mauriciens n'aient guère besoin d'invoquer " l'aspect subjectif ", guère besoin, à une telle heure, d'évoquer la patrie, guère besoin, à une telle heure, de désirer que cette patrie fût libre plutôt que de demeurer avec ses chaines.

M. le président, il ne faut pas m'accuser d'avoir été un peu lyrique. Cela aussi à mon sens devait être dit. Que je l'ai mal dit, cela est dû à mon état de santé actuellement et à l'heure qui est un peu tardive. Je condamne l'Opposition, je condamne ces Mauriciens qui, à une telle heure, ont adopté l'attitude qu'ils ont adoptée. Je condamne ces créateurs du communalisme et je suis heureux que la communauté hindoue n'ait pas ajouté foi a cette infâme comédie de ' Hindou, mon frère '. Le drame de ce pays vient de ce qu'une certaine petite communauté influence malheureusement une section trop nombreuse d'une certaine bourgeoisie d'une autre communauté, le drame de ce pays vient de ce que cette communauté n'a jamais pu se débarasser de son sentiment anti-hindou. En dépit de la preuve de tolérance que l'hindou nous a donnée, en dépit de la place qu'ils occupent dans ce pays, en dépit de leurs écrivains, de leurs poètes, de leurs professionnels, et de leurs philosophes, cette petite communauté n'a jamais pu se dépouiller de ce sentiment anti-hindou. S'il y a des gens qui ont besoin d'une opinion indépendante, d'une preuve impartiale, je les réfère au livre de Max Paul Fouchet, 'Les peuples nus ", le chapitre " Le Miroir Tendu ". Le drame de ce pays, M. le président, est que cette gangrène a gagné malheureusement une bonne partie d'une classe bourgeoise qui elle-même a influencé par un vrai lavage de cerveau, l'esprit de nombreux et humbles Mauriciens pour les dresser dans un sentiment de haine raciale contre la plus large communauté de ce pays. " Hindou, mon frère ! " Et au même moment nous lisons dans un journal sous la plume d'un petit monsieur raciste que c'est lui qui paie les " sarees " de Lady Ramgoolam. Je m'excuse d'avoir à mentionner cette chose encore, mais c'est pour souligner que le même journaliste n'a jamais dit, lorsqu'il y avait trois Ministres de l'Opposition siègeant dans le Gouvernement, quelles étaient les parties vestimentaires de leurs épouses qu'il payait de ses deniers.

M. le président, je m'associe pour terminer aux paroles qu'a prononcées mon collègue de droite sur les responsabilités qui pèseront sur nous dans cette nouvelle route que nous allons bientôt commencer vers une nouvelle évolution politique. Je suis absolument d'accord avec lui qu'il y a là une lourde responsabilité. Mais comme lui j'ai confiance que le Mauricien est pourvu de suffisamment de talent pour s'acquitter d'une telle tâche suscitée par l'octroi de l'indépendance à l'Ile Maurice.

Comme lui je crois que l'Ile Maurice est chanceuse d'avoir à la barre du vaisseau mauricien, à un tel moment, un capitaine aussi averti, aussi dévoué et aussi compétent que Sir Seewoosagur Ramgoolam. (*Applause*)

(11.15 p.m.)

Sir S. Ramgoolam: I do not think there is anybody else who is going to speak tonight.

There are one or two words, which I think, would be necessary that I should say. First of all, with regard to the timing of this resolution which some Members of the Opposition said was premature and that we should have waited before bringing it to the Assembly, on the ground that there might be election petitions and the composition of the House might suffer some changes as a consequence. All that I have done is follow the usual practice by bringing this resolution to the Assembly at the first opportunity as we had already done on another occasion, even while election petitions were pending at the time. The elections were held on one very important issue, the issue of independence, and, therefore, it is only reasonable that we should bring it to the Assembly for its decision at its first meeting. As Shakespeare says : "There is a time for everything"; and to-day is the right time. I know that the path of democratic process is long and arduous and it requires patience, thought and preparations which I fear the Opposition does not seem to possess. It is a thousand pities that in a com-

munity in which patience and other essential qualities are absent and good sense and wisdom have been thrown to the four winds, things will never go right. That is what is happening to the Opposition.

I am sorry that they have left the Assembly before the vote has been taken.

Mr. Speaker : I am sorry. They made it quite clear before leaving that they intended to vote against the motion.

Sir S. Ramgoolam : Mr. Speaker, I was...

Mr. Speaker : The position is quite clear.

Sir S. Ramgoolam : But I wish they had stayed to vote as all Opposition do whether they disagree with the policy of the Government, because it is not what man does that counts. It is the playing the game that counts, fair-play being the aim and purpose.

In politics, I agree, there are perhaps a lot of things that the Opposition might like to do, but in a democratic world, the only reasonable system is the verdict of the people and the ballot box which, after all decide what people must do. As you have seen, Mr. Speaker, no party has come unscathed in the general elections which took place, which is really a great tribute to the people of our country. A great deal has been said as to the way the people voted. A great deal has been said in the analysis which has followed, but there is one thing which is perfectly clear, that the people of our country has given us the irrevocable direction to go ahead with independence ; and they have voted either for the party which was for independence or for the party which was against it. They have done that as one man and they have shown to us that it is for us now to put their wish into action which I am doing without halting. I think that there is a great deal of misunderstanding in the Opposition and in the country and I feel sorry that we cannot understand each other more than we have been able to do, for political discussions can only give rise to better understanding if we were to argue on the common basis of democracy.

Just now the hon. Second Member for Rodrigues (Mr. Roussety), I do not know whether he had come before to Mauritius or not, but he seems to have a very misguided conception of the policy of this Government. As far as we know, Mr. Speaker, and I think I have been a member of this Government now for just over twenty years, in one Government or another, we have always approached the problems of Rodrigues with sympathy and understanding because we look upon the people of Rodrigues as our own brothers, people who are hard working, people who are economically badly placed as much as we are. I agree that it might have been neglected at the time of the early colonial system but I am sure, Mr. Speaker, for the last twenty years, we have been doing the utmost we can do. No doubt that with the presence of Members from Rodrigues amongst us, we might be able to do more but I must assure the people of Rodrigues that the Mauritius Labour Party was the first party to ask that they be represented in the Assembly. I remember years ago my Friend, the late Mr. Anquetil advocated that Rodrigues should be represented even if not by an elected at least by a nominated member. So it is not we who would like to perpetuate any discrimination or reduce the standard of living of our brothers and sisters in Rodrigues.

We have gradually built up the agriculture and the animal husbandry of

Rodrigues to the extent that to-day the standard of the people of Rodrigues is much better than it used to be a few years ago. We have modernised the schools and built more. We have provided a great deal more for them in this country and we have given the facilities for travelling between Mauritius and Rodrigues so that this little island is able to communicate with us and live with us as we would like it to be. If we have not been able to achieve more, it is not the fault of this country. In fact the testimony is in the budget of this year, where there is provision of Rs 4,000, 000, to ensure that the machineries of the Government and of the economic institutions in Rodrigues work properly to the satisfaction of the people of Rodrigues.

I am sure that after the two hon. Members elected for Rodrigues have worked for some months with us and seen the friendliness and the heart we have put in our work whenever Rodrigues is mentioned, they will understand that there is no gap between them and ourselves, that we look upon the people of Rodrigues as our own brothers, and we would like to see Rodrigues make progress as Mauritius is making.

Some hon. Members, Sir, made the point about association and independence. My hon. Friend, the first Member for Moka—Quartier Militaire (Mr. Ringadoo) who is now on the front bench has rightly quoted the final statement of the Right Hon. the Secretary of State in which it is very clearly laid down : " after careful study of all the factors invoked, Her Majesty's government have reached the conclusion that it is right that Mauritius should be independent and take her place among the sovereign nations of the world ". Association has been dicarded. If a resolution on independence had been defeated, association would not be the alternative. It would not be automatic association ; I think that would have been a subject for fresh discussions and decisions. I do not know what would have been the legal position but I know in politics a formula might be found. Nonetheless the issue was independence and not association...

In fact, Sir, the question of association has already been disposed of, and I do not think it is necessary to go into that, but I would like to deal with one subject which is partly related to association. Some people think that if we were to remain a British colonial territory and if to-morrow Great Britain were to become a member of the Common Market we would enter the Common Market as a matter of course. That is utter nonsense. When I moved a resolution in the last Assembly, when my Friend the ex-Minister for Industry and Commerce, the Third Member for Savanne and Black River, was going on a mission, I said that that was not the case and the contrary has not been proved to us, that we would have had to apply and I even mentioned the case of countries. So, it is not right that hon. Members of the Opposition should delude themselves with ideas which are erroneous and do not bear examination. Then there is another question related to it : the British passport. The British passport is a valuable passport. The British have worked many years to see that their country is respected, that their ideals are respected, that their ambassadors and chancelleries in all parts of the world are respected. They have done very hard work and they are great diplomats. But facts will be facts, and again I would like to put to this House one or two points on this. The British Prime Minister in May 1967, not long

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ago, analysed this question of the British passport with reference to the Common Market, as to the effect of British membership on the free movement of labour and Commonwealth emigration. First of all, to enter the Common Market with a British passport a Mauritian will have to get entry first into Great Britain, not to any other country. An entry into Great Britain is by a permit. Entry in Great Britain is not automatic, as the *Times* put it in a very big heading "Mauritians Prohibited Immigrants into Great Britain". Well,I do not blame anyone. We have an immigration permit for entry of people in our own country, but we must know what are the facts and not try to delude ourselves with ideas that are not true. To have access to the Common Market we must have a British citizenship and this can be obtained only after we have stayed in Great Britain for five years, if we have obtained first a permit before to enter Great Britain. It is only after five years in Great Britian that we are entitled to British citizenship.

Mr. Speaker : An entry is not automatic. If there is a job available for you, you may obtain entry. But they might enquire about the colour of your skin.

Sir S. Ramgoolam: It might not be very relishing to admit it, but it is a fact we all know.

This is exactly what the British Prime Minister said in May 1967, the right of entry into the E.E.C. is a matter for clarification and discussion, possibly by analogy with the position of the emigrant from an independent Commonwealth country with his right to U. K. citizenship after five years residence in the U. K. So, it is not good the *Parti Mauricien* and hon. Members of this House trying to make the people of Mauritius think otherwise. As an independent country we will continue to have the opportunity to enter Great Britain as immigrants or the Common Market countries after obtaining British citizenship by our stay in Great Britain for five years.

There is another fallacy under which the *Parti Mauricien* is trying to live, it is that we in the Government were against entry into the Common Market. We are not against entering the Common Market, if that is in the interest of Mauritius. I attended the Prime Ministers' Conference in 1962 with that purpose. On the other hand if the white people have a prejudice against me as a black man, I also have a prejudice against them as white men. I would not be anxious to join it in that event and be humiliated, but on a basis of partnership and friendliness my country will join it, as we think we might have to do, as an Associate Member and so derive the advantages that might accrue both to the Common Market countries and to Mauritius. But I do not say that I relish the idea of licking the boots of those who do not want us. But if we have to derive material benefits from Common Market on a basis of partnership, on a basis of equality and understanding, as I have just said, the interests of my country will come first.

The hon. Members of the Opposition are supposed to be endowed with great tradition of learning, common sense and gentleman — like behaviour.

Therefore, the whole idea is based on misunderstanding,because we in the Government think that we will apply for entry into the Common Market as an associated territory but we must not also run away with the idea that we can get automatically all the advantages for our sugar at the price that

some countries like Réunion are supposed to get for sugar. Even the question of Réunion might have to be revised in a year or so. It is due for discussion again, and I must say that some of the policies of the Common Market which are due for review this year with the applicant countries have not borne the fruits that the applicant countries were expecting from the discussions. I only hope and pray that our sister island Réunion will continue to derive the benefits, and I also hope and pray that when we join the Common Market our association with France and our being in the Indian Ocean with the same economy as Réunion, might influence some members of the Common Market to look at us in a different light. It is on this basis that we might be able to secure things in a different way.

During the debate the hon. First Member for Beau Bassin and Petite Rivière seems to have trotted out a lot of facts, but facts when they are not classified in a orderly manner in the brains of a human being or a computer will not give the right answer. I think he was choked by his facts and was unable to see clearly what conclusions he should have drawn. At one time I thought he was at war with his own future, and despite the legal intervention by some hon. Members on this side he continued more and more to plunge into abyss. I think on an issue like independence, like the Common Market, like the British passport and things which are very dear to us, we should try to argue in a level headed manner and not to delude ourselves that what we have in our mind is the correct answer and there is no other side to the question. It is ridiculous to think that the Prime Minister of Singapore is against independence. I know the Prime Minister personally, I was with him in a conference only last year, and if there is one man who wants that part of the world to be free, it is the present Prime Minister. I do not know from where the hon. Member got his cue.

Mr. Speaker : Reuter's news. We do not know in what context the Prime Minister of Singapore said these words.

Sir. S. Ramgoolam : When Reuter makes a statement or any hon. Member makes a statement, it also requires a brain to understand it. A person making a statement does not also supply the brain to the man reading it, because he is not responsible for his birth or quality of his education.

I think, Sir, that the whole thesis of the Opposition does not hold water. Besides, are we severing our links with Great Britain? We are going to be together with Great Britain in the British Commonwealth of Nations, to work together with them for a common purpose, to preserve our economy intact, to make progress and follow a sound policy as accepted by the Commonwealth. We want to live together, fend together so that we can progress together. That is what our policy is.

Apart from what I have said this morning, in moving this resolution of our destiny, we are going to make other friends with whom also we will work together. One hon. gentleman, the hon. First Member for Quatre Bornes and Belle Rose (Mr. Lesage), seemed to have ridiculed the idea that the World wants Mauritius to live in. He said "*Le monde a l'espoir sur l'île Maurice.*" What the World says is "*Le monde a le plaisir de voir un autre pays qui était sous le joug du colonialisme avoir sa liberté.*" That is what the World says. Other countries would be very glad to see Mauritius free, and they will welcome

us with both arms. We too will live together with them in freedom. However small it is, all countries have a part to play in the world. If Malta can do that, Barbados can do that, British Guiana can play that part, we also have our place under the sun. It is something that is in the interest of the people, it is their right, and this right it is our intention and desire and the will of the Mauritians to exercise at the earliest opportunity and there is nothing wrong in that. It is in truth, honesty and sincerity that the people of Mauritius have conferred upon us that honour and privilege.

Question put and agreed to.

Resolve

"That this Assembly request Her Majesty's Government in the United Kingdom to take the necessary steps to give effect, as soon as practicable this year, to the desire of the people of Mauritius to accede to independence within the Commonwealth of Nations and to transmit to other Commonwealth Governments the wish of Mauritius to be admitted to membership of the Commonwealth on the attainment of independence".

ADJOURNMENT

(11.46 p.m.)

Sir S. Ramgoolam : Sir, I move that this Assembly do now adjourn to Tuesday, the 29th of August, at 11.30 a.m.

Mr. Forget *rose* and *seconded.*

At 11.47 p.m., the Assembly was, on its rising, adjourned to Tuesday, the 29th of August 1967, at 11.30 a.m.

Mauritius Legislative Assembly

Debates No. 16 of 1967

First Session

Sitting of Tuesday, the 29th of August 1967

The Assembly met in the Assembly Chamber, Government House, Port-Louis, at 11.30 a.m.

(Mr. Speaker in the Chair)

ANNOUNCEMENT

Mr. Speaker : I have to inform the Assembly that I have nominated the following Members to serve on the Committee of Selection under Standing Order 91 (2) :

1. The Hon. S. Bappoo
2. The Hon. K. Gokulsing
3. The Hon. M. P. Kisnah
4. The Hon. J. C. M. Lesage
5. The Hon. J. M. Mason
6. The Hon. Y. Mohamed
7. The Hon. E. Oozeerally
8. The Hon. S. H. Ramlugon
9. The Hon. K. Sunassee
10. The Hon. Mahess Teeluck
11. The Hon. J. H. Ythier

I should be grateful if Members of the Committee would find it convenient to meet me in my office after lunch on Tuesday, 5th September, 1967, to proceed with their duty.

PAPERS LAID

The Premier and Minister of Finance (Sir S. Ramgoolam) :

(a) Statement of Accounts of the General Cyclone and Drought Reserve Fund as at 30th June, 1966. *(In original)*

(b) Annual Report of the Customs and Excise Department for the year 1966 (No. 25 of 1967).

(c) Annual Report of the Registrar General's Department for the year 1966 (No. 23 of 1967).

The Minister of Housing, Lands and Town and Country Planning (Mr. A. R. Mohamed) :

Report on the Activities of the Central Housing Authority (1960-65).

The Minister of Education and Cultural Affairs (Mr. S. Bookell) :

The Education (Amendment) Regulations, 1967, being Regulations made by the Governor on the advice of the Minister under section 38 of The Education Ordinance, 1957 (Government Notice No. 61 of 1967).

The Attorney General (Mr. A. H. M. Osman) :

(a) The Legislative Assembly Elections Rules, 1967, being Rules made by the Judges of the Supreme Court of Mauritius in virtue of the Powers conferred upon them by Regulation 5 of the Legislative Assembly Elections Regulations, 1967 (Government Notice No. 60 of 1967).

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U.N. General Assembly, 22nd Session, *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Agenda Item 23*, U.N. Doc. A/6700/Add.8* (11 Oct. 1967)

UNITED NATIONS

GENERAL ASSEMBLY

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Twenty-second session
Agenda item 23

REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

(covering its work during 1967)

Rapporteur: Mr. Mohsen S. ESFANDIARY (Iran)

CHAPTER XIV

MAURITIUS, SEYCHELLES AND ST. HELENA

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* This document contains chapter XIV of the Special Committee's report to the General Assembly. The general introductory chapter will be issued subsequently under the symbol A/6700 (Part I). Other chapters of the report are being reproduced as addenda.

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I. ACTION PREVIOUSLY TAKEN BY THE SPECIAL COMMITTEE AND BY THE GENERAL ASSEMBLY

1. In 1964, the Special Committee adopted conclusions and recommendations concerning Mauritius, Seychelles and St. Helena.[1] The three Territories were considered at two meetings in 1966 by the Special Committee, which also had before it the report of Sub-Committee I concerning these Territories.[2] At the second of the two meetings, the Special Committee adopted the report without objection and endorsed the conclusions and recommendations contained therein.

2. In these conclusions and recommendations, the Sub-Committee stated that the administering Power had failed to implement General Assembly resolution 1514 (XV) of 14 December 1960 and expressed regret at the slow pace of political development in the three Territories. In particular, it noted that the complicated electoral arrangements devised for Mauritius had apparently been the subject of great controversy between the various groups and political parties, and that the people of Seychelles were still deprived of the right of universal adult suffrage. The Sub-Committee therefore recommended that the Special Committee should reaffirm the inalienable right of the peoples of the three Territories to self-determination and independence; that they should be allowed to exercise their right of self-determination without delay; that any constitutional changes should be left to these peoples themselves; and that free elections on the basis of universal adult suffrage should be conducted in these Territories as soon as possible with a view to the formation of responsible governments to which all power could be transferred.

3. Taking into account the creation of the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, and the reported activation of a plan to establish military bases in the three Territories, the Sub-Committee recommended that the administering Power should be called upon to respect the territorial integrity of Mauritius and Seychelles and to refrain from using all three Territories for military purposes, in fulfilment of the relevant resolutions of the General Assembly. The Sub-Committee further recommended that

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1/ Official Records of the General Assembly, Nineteenth Session, Annex No. 8 (A/5800/Rev.1), chapter XIV.

2/ A/6300/Add.9, chapter XIV, annex.

the Special Committee should urge the Assembly to state categorically that any bilateral agreements concluded between the administering Power and other Powers affecting the sovereignty and fundamental rights of these Territories should not be recognized as valid.

4. Concluding that the economies of the Territories were characterized by diminishing revenue, increasing unemployment and consequently a declining standard of living, and that foreign companies continued to exploit the Territories without regard to their true interests, the Sub-Committee recommended that the administering Power should be called upon to preserve the right of the indigenous inhabitants to dispose of their national wealth and resources, as well as to take effective measures for diversifying the economies of the Territories.

5. At its twentieth session, the General Assembly adopted two resolutions, one concerning Mauritius (resolution 2066 (XX) of 16 December 1965) and the other concerning twenty-six Territories, including Seychelles and St. Helena (resolution 2069 (XX) of 16 December 1965). At its twenty-first session, it adopted resolution 2232 (XXI) on 20 December 1966 concerning twenty-five Territories, including Mauritius, Seychelles and St. Helena. The resolution called upon the administering Powers to implement without delay the relevant resolutions of the General Assembly. It reiterated the Assembly's declaration that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories was incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV). It urged the administering Powers to allow visiting missions to visit the Territories and to extend to them full co-operation and assistance. It decided that the United Nations should render all help to the peoples of the Territories in their efforts freely to decide their future status. Finally, it requested the Special Committee to pay special attention to the Territories and to report on the implementation of the present resolution to the General Assembly at its twenty-second session.

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II. INFORMATION ON THE TERRITORIES[3/]

A. MAURITIUS

General

6. The Territory of Mauritius consists of the island of Mauritius and its dependencies, Rodrigues, Agalega and the Cargados Carajos. The island of Mauritius lies in the western Indian Ocean, about 500 miles east of Madagascar. Rodrigues, the main dependency, lies a further 350 miles to the east, the Cargados Carajos 250 miles and Agalega 850 miles to the north. Situated 1,200 miles north-east of Mauritius is the Chagos Archipelago, which according to the administering Power, is no longer part of Mauritius and is included in the "British Indian Ocean Territory".

7. The island of Mauritius is of volcanic origin; its total area is approximately 720 square miles. The northern part of the island is a flat plain rising to a fertile central plateau. There are several small chains of mountains, the principal peaks reaching about 2,700 feet. There are numerous short, swift rivers with waterfalls, some of them used to generate hydro-electric power. Rodrigues, a mountainous island of volcanic origin, covers an area of about 40 square miles. All the islands of Agalega and the Cargados Carajos are coral islands with an area of approximately 27.5 square miles.

8. The estimated population of Mauritius at the end of 1965, excluding the dependencies, was 751,421 (compared with 733,605 at the end of 1964) divided into a general population comprising Europeans, mainly French, Africans and persons of mixed origin, 220,093; Indo-Mauritians, made up of immigrants from the Indian sub-continent and their descendants, 506,552 (of whom 383,542 were Hindus and 123,010 Muslims); and Chinese consisting of immigrants from China and their descendants, 24,776. Latest estimates (January 1967) are that the population will rise to about 800,000 by the end of 1967.

3/ Section II of this working paper is based on: (a) information collected by the Secretariat from published sources; and (b) information transmitted under Article 73 e by the United Kingdom of Great Britain and Northern Ireland for the year ending 31 December 1965.

9. The Territory, which is already very densely populated, is beset with a rapid growth of population resulting in a reduction of living standards among certain sections of the people and an increasing level of unemployment.

Constitution and Government

10. Under the Mauritius (Constitution) Order, 1964, the Government of the Colony of Mauritius is vested in a Governor, with a Council of Ministers and a Legislative Assembly. The Council of Ministers consists of the Premier and Minister of Finance, the Chief Secretary and not less than ten and not more than thirteen other ministers appointed by the Governor on the advice of the Premier from among the elected or nominated members of the Legislative Assembly. The Governor appoints to the office of Premier the member of the Legislative Assembly who appears to him likely to command the support of the majority of members. The Council is the principal instrument of policy and, with certain exceptions, the Governor is obliged to consult it in the exercise of his functions. The Legislative Assembly consists of the Chief Secretary, forty elected members and up to fifteen other members nominated by the Governor.

11. The status of the political parties in the Legislative Assembly has remained the same since October 1963 general elections: Mauritius Labour Party (MLP), which represents mainly the Indo-Mauritian and Creole (Afro-European) communities, 19; Parti Mauricien Social Démocrate (PMSD), which traditionally represented the Franco-Mauritian land-owning class and the Creole middle class, and which now claims to draw support from all communities, 8; Independent Forward Bloc (IFB), which is to the left of the MLP, 7; Muslim Committee of Action (MCA), which has the support of a substantial proportion of Muslims, 4; and independent, 2.

12. The Government formed by Sir Seenoosagur Ramgoolam, leader of the MLP, is a coalition composed of all the parties represented in the Assembly, with the exception of the PMSD.

Recent constitutional developments

13. As previously noted by the Special Committee,[4/] a Constitutional Conference attended by representatives of all the parties in the Mauritius Legislature was

4/ A/6300/Add.9, chapter XIV.

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held in London from 7 to 24 September 1965. The main point at issue was whether the Territory should aim at independence or association with the United Kingdom. The MLP and the IFB advocated independence, and the MCA was also prepared to support independence, subject to certain electoral safeguards for the Muslim community. On the other hand, the PMSD favoured a continuing link with the United Kingdom. At the end of the conference, the Secretary of State for the Colonies announced the decision that Mauritius should go forward to full independence subject to an affirmative resolution passed by a simple majority of the new Assembly after elections and a period of six months' full internal self-government. He also hoped that the necessary processes could be completed before the end of 1966.

14. In January 1966, an electoral commission, with Sir Harold Banwell as chairman, visited Mauritius to formulate an electoral system and the method of allocating seats in the Legislature. The report[5/] was published on 13 June 1966 and accepted by the parties participating in the present Government and the Opposition PMSD after certain amendments to the recommendations of the report had been made, following the visit of Mr. John Stonehouse, Parliamentary Under-Secretary of State, to Mauritius between 16 June and 4 July 1966.

15. Under the electoral arrangements now accepted by the four main parties, sixty members will be returned for the island of Mauritius by block voting (each elector being obliged to cast three votes) in twenty three-member constituencies, and two members returned for Rodrigues (the principal dependency of Mauritius) by block voting in a single constituency. The members elected for Rodrigues will also represent the interests of the two lesser dependencies, namely, Cargados Carajos and Agalega.

16. In addition, eight specially elected members will be returned from among unsuccessful candidates who have made the best showing in the elections. The first four of these seats will go, irrespective of party, to the "best losers" of whichever communities are under-represented in the Legislative Assembly after the constituency elections. The remaining four seats will be allocated on the basis of party and community. Parties or party alliances will be permitted to qualify

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5/ Report of the Banwell Commission on the Electoral System, Colonial No. 362, HMSO, 1966.

for the "best loser" seats if registered with the Electoral Commissioner before nomination day.

17. The Constitution of Mauritius set out in the Mauritius Constitution Order, 1966, which was made on 21 December 1966, incorporated the proposals agreed upon at the 1965 constitutional conference, as well as the subsequent agreement on electoral arrangements. The Order in Council provides that the new Constitution will come into effect on a date to be appointed by the Governor. It also provides that the provision for the appointment of an ombudsman may be brought into effect at a later date from the generality of the other constitutional proposals.

Election arrangements

18. Subject to certain exceptions, such as convicted criminals and the insane, all Commonwealth citizens satisfying a two-year residence requirement who have attained the age of 21 years are qualified to register as electors. New registers of electors were prepared in 1966. They were published on 23 January 1967 and brought into force the following day. The total numbers on the new registers are 307,908 for Mauritius plus 7,876 in Rodrigues, making a combined total of 315,784. Four Commonwealth observers (with Sir Colin MacGregor of Jamaica as chairman) were appointed to observe the various processes involved in compiling the new registers. Three of the members arrived in Mauritius on 5 September 1966 and one or more member was present from then until 28 November.

19. Discussions took place in London in December 1966 between the Secretary of State for the Colonies and the Premier of Mauritius about the date for the forthcoming general elections in the Territory. In a statement published on 21 December 1966, the Commonwealth Office said that the United Kingdom Government's view presented during the discussions was that it was most desirable that elections should be held at the earliest practicable time, bearing in mind that at the 1965 Constitutional Conference, the then Secretary of State had hoped that Mauritius could become independent before the end of 1966. Neither the United Kingdom Government nor the Government of Mauritius could avoid the subsequent delays, but the completion of the register of electors in the relatively near future would enable elections to be held in 1967.

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20. The Commonwealth Office also said that the Secretary of State had expressed the hope that the Premier would share his wish to see early elections and that the Premier had confirmed that he would wish elections to be held in 1967.

Recent political developments

21. Following the issuance of the report of the Banwell Commission, the three parties participating in the present Government organized a common front, the Pro-Independence Front, under the leadership of the Premier in protest against the Commission's proposals for electoral arrangements. Subsequently, the Front was reported to have been maintained for the forthcoming general elections.

22. On 5 September 1966, Mr. G. Duval, who later became the leader of the Opposition PMSD, was reported to have said that two important election issues were the constitutional future of the Territory and the inability of the Government to put the economy on a sound basis or to look after the destitute.

23. On the same day, Mr. Duval started a movement of passive resistance in Mauritius. Following the reported refusal by the Government to pay them the same amount of relief aid allocated to certain other categories of unemployed workers, some 200 unemployed licensees of the urban administration demonstrated in Curepipe and were arrested for the obstruction of traffic. Later, the Government took action to settle the issue in dispute.

24. At the end of October 1966, over 100 unemployed persons rejected an offer of work on sugar estates, alleging political discrimination. They demonstrated at various places between Mahébourg and Curepipe, culminating in the arrest of 105 persons on 29 October for obstructing the highway. On 4 November, they were tried and found guilty, but were discharged from prison after having received a warning from the Court of Curepipe.

External relations

25. During a visit to the United States of America early in December 1966, the Premier of Mauritius said that his Government was seeking to improve relations between the two countries, to raise the price of the two principal products of Mauritius, sugar and tea, as well as to secure aid for creating secondary industries, increasing the production of foodstuffs, notably rice and flour,

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establishing a new aerial link with Africa, Europe and the United States, reducing population pressure and unemployment, and setting up a university. After discussions with the representatives of the United States Government and various private organizations, he expressed the hope that they would help Mauritius in finding solutions to many of its problems.

"British Indian Ocean Territory"

26. Reference is made in the last report of the Special Committee[6] to the "British Indian Ocean Territory" which comprises certain islands formerly administered by the Governments of Mauritius and Seychelles, and which was created in 1965 for the construction of defence facilities by the Governments of the United Kingdom and the United States. As compensation for the transfer of these islands to the new Colony, the United Kingdom Government paid £3 million to Mauritius in March 1966 with no conditions attached, and will build an international airfield for Seychelles. On 16 November 1966, the Secretary of State for Defence stated in reply to a question in the United Kingdom House of Commons that no plan had been made for the creation of military bases in the "British Indian Ocean Territory". Thus he could not give any figure for the cost of such a scheme.

Economic conditions

27. Mauritius is primarily an agricultural country. In 1960, it suffered a severe economic setback brought about by two disastrous cyclones. Subsequently, the economy made a good recovery, reaching a peak in 1963, which saw a bumper sugar crop combined with higher sugar prices. If these two years are not taken into account, the gross national product showed a steady growth, from Rs.681 million[7] in 1959 to Rs.799 million in 1965. During this period, the population increased from 637,000 to 751,000. There was a slight downward trend in per capita income and a rise in the level of unemployment.

28. In 1965, sugar was still the mainstay of the economy. Tea had become the second most important export product. In acres, the total area of land under

6/ A/6300/Add.9, chapter XIV.

7/ One Mauritius rupee is equivalent to 1s. 6d. sterling.

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cultivation comprised: sugar, 214,400; tea, 6,600; tobacco, 1,000; aloe fib
900; foodcrops, vegetables and fruits, 10,000.

29. In September 1966, the Chamber of Agriculture of Mauritius estimated su
output for the full year at about 575,000 metric tons, representing a consid
decrease from 1965, when a total of 665,000 metric tons had been produced.
"Denise" and drought accounted for the decline in output.

30. Sugar is disposed of primarily in accordance with the Commonwealth Sug
Agreement, which has been renewed until 1974. Under the Agreement, Mauriti
exports a quota (380,000 tons per annum) to the United Kingdom at a negotia
price (£47.10s a ton in 1966-68). In addition, Mauritius may export to
Commonwealth preferential markets (in fact the United Kingdom and Canada) a
agreed quota each year. The remainder of the sugar production is sold to n
Commonwealth countries at the world free market price, which in 1966 was
substantially below the negotiated price. Exports of sugar to the United K
the Territory's principal customer, in the first ten months of the year tot
307,786 tons (Rs.208.6 million), an increase of 59,350 tons (Rs.42.5 millio
the 1965 period. However, it was estimated that the gross income of the su
industry might be moderately lower in 1966 than in the preceding year, when
569,400 tons of sugar (Rs.290.3 million) were exported.

31. Manufacturing is the second largest sector of the economy. The United
Central Office of Information reported in October 1966 that since 1963, nea
fifty new secondary industries had been introduced on a small scale in the
Territory. As previously noted,8/ the number of such industries establishe
years 1963 to 1965 was eight, eleven and twenty-five respectively.

32. Between the first and second quarter of 1966, imports increased from
Rs.80.4 million to Rs.82.9 million, while exports decreased from Rs.56.7 mi
to Rs.6.3 million. No significant changes occurred in the structure of imp
but exports of sugar in the first quarter were Rs.47.3 million and in the s
quarter Rs.0.5 million. The third quarter figure was Rs.134.6 million, mak
total for the first nine months of Rs.182.4 million. As in the past, trade

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8/ A/6300/Add.9, chapter XIV.

conducted mainly with the United Kingdom, which received 73 per cent of the Territory's exports and provided 23 per cent of its imports in the first half of 1966.

33. In July 1966, the Government decided to increase both direct and indirect taxes in order to balance its budget.

34. Capital expenditure under the 1966-70 Development Programme will be Rs.340 million and the fund will be allocated as follows: agriculture and industry, Rs.130 million; infra-structure, Rs.99 million; social services, Rs.82 million; administration, Rs.28 million; Rodrigues, Rs.1 million.

35. Premier Ramgoolam said in a recent address that an important economic problem for the Territory was that the price of sugar could not be stabilized at a remunerative level.

36. The Premier said that progress in the diversification of the Territory's economy had been slow. The Territory was putting 1,000 acres under tea annually, and it was the intention of the Government to extend this by a further 15,000 acres. The sugar industry had undertaken to provide capital out of its surplus for the erection of seven more tea factories. Businessmen were being encouraged to invest in Mauritius, and in recent years a number of light industries had been established. Industrial expansion had been facilitated by the setting up of the Development Bank of Mauritius, the advisory National Development Council and a marketing board. An East African Economic Community was under discussion, and if this were to materialize it would give further encouragement to many smaller industries.

37. While aware that conditions such as the rapid rise in population, the scarcity of local capital and the paucity of technological know-how had limited economic growth, the Premier nevertheless asserted that the Territory enjoyed a stability and prosperity unknown before in its history through a better distribution of the national income. This was being achieved by a planned economy and a regulated fiscal policy. Recurrent and developmental annual expenditures totalled approximately over £22 million. The sum of £6 million was spent annually on the development programme alone, and 48 per cent of this was financed from local resources. Mauritius was a viable country, which had never needed a grant-in-aid to balance its budget.

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38. In December 1966 the Premier made a visit to the United States, the main purpose of which was to seek aid to tackle the economic and social problems confronting the Territory (see paragraph 25 above).

39. On 20 December 1966, Mr. John Stonehouse, Parliamentary Under-Secretary of State, stated in reply to a question in the United Kingdom House of Commons that during the period 1961-66, the United Kingdom had provided Mauritius with financial aid totalling £8.1 million, in addition to the compensation of £3 million paid for the inclusion of certain of its islands in the "British Indian Ocean Territory", and to a £2 million loan raised by the Government of Mauritius on the London market. For the period 1965-68, total Colonial Development and Welfare grants and loan assistance given or envisaged amounted to £4.4 million. Aid to Mauritius after 31 March 1968 would depend on the total resources the United Kingdom could make available for overseas aid at the time and the Territory's needs in relation to those of other recipients of British aid.

40. In response to another question, Mr. Stonehouse stated that in order to combat chronic, widespread unemployment in Mauritius, his Government was examining various ways by which the Territory's economy could be diversified. But he added that the economy was almost completely dependent on sugar and that there were problems in arranging for any new industrial development. These questions were being studied.

Social conditions

41. Labour. In recent years, the economy has not expanded fast enough to provide work for all the new entrants into the labour force. Between mid-1962 and mid-1965 the annual increase in the working-age population and unemployment was estimated at about 6,500 and over 4,000 respectively. During the period, the number registered as unemployed rose by 4,700 and that on relief work by 9,050, making a total of 13,750.

42. On 28 April 1966, the Government published the first of its bi-annual surveys of employment and earnings in large establishments.[9] The main purpose of these surveys was not to find out figures of total employment but to provide a continuou

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9/ Colony of Mauritius: A Survey of Employment and Earnings in Large Establishments (No. 1), 28 April 1966.

series of comparable data which would show changes in employment from year to year, from one part of the year to another and between the various sectors of the economy. The survey covered 822 establishments, which in April 1966 employed 119,270 workers (including 34,210 on monthly rates of pay and 85,060 on daily rates of pay). Agriculture accounted for 55,200 (including 51,870 employed by the sugar industry), services 45,850, manufacturing 6,850, transport, storage and communications 4,100, commerce 2,960, construction 2,730, electricity 1,310, mining and quarrying 160, and others, 110. The average monthly rates of pay ranged from Rs. 273 for agricultural workers to Rs. 500 for electricians. The average daily rates of pay ranged from Rs. 3.2 for miners to Rs. 8.8 for those engaged in miscellaneous activities.

43. In 1965, there were seventy-nine associations of employees (one more than in 1964), with a membership of 48,349 (120 more than in 1964). There were ten trade disputes involving 1,660 workers and resulting in a loss of 3,860 man-days. The main cause of these disputes was dissatisfaction with conditions of employment.

44. Labour relations in the sugar industry formed a subject of discussion in the Legislative Assembly on 29 November 1966. A member of the Assembly, Mr. J.N. Roy, introduced a motion which would have the Assembly express the view that the widespread and defiant opposition to Indo-Mauritian workers in the sugar industry, if not checked by legislation, threatened to wreck the industry.

45. Commenting on the motion, another member of the Assembly, Mr. Jomadar, who was formerly the Minister of Labour, stated that it was very opportune and that a section of workers in the sugar industry was the victim of injustice. Having made an appeal for eliminating all forms of discrimination and injustice, he proposed an amendment to the motion, which was then adopted unanimously.

46. Under this amendment, the Assembly would express the view that a tripartite standing committee be set up by the Government in co-operation with employers and employees in the sugar industry for the discussion of all matters of concern either to employers or employees or which could adversely affect the good relations between them or the efficiency of the industry. These would include steps to ensure equality of opportunity in recruitment and promotion, and especially the discussion and disposal of possible complaints of discrimination against any category of workers or employees for suspected political affiliation or for any other cause.

47. The Premier of Mauritius said in a recent address that the main problems confronting the Territory today were the rapid rise in population and widespread

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unemployment. For many years, the government machinery had been geared to tackle these problems at many levels of administration. However, time had been lost in the beginning because some people had opposed population control on religious grounds, but a change of attitude had come about. With the assistance of the Government and the International Planned Parenthood Federation, two voluntary associations were performing good work both in the urban and rural areas. Mauritius had also been promised considerable aid from the Swedish Government.

48. As to unemployment, the Premier stated, the Government was engaged actively in long-term development of the Territory and pursued a rationalized policy of emigration. It hoped to mobilize all local resources for the creation of more work and wealth. It had also decided not to place an embargo on the export of capital in order to attract foreign investors to Mauritius. But any Mauritian emigrating overseas was only allowed to remove his capital from the country over a number of years. At present, certain labour-intensive projects including tea, textiles and edible oils were being undertaken, which would provide employment for a large number of people. By 1970, it was hoped to provide work for most of the labour force.

49. Public health. There are three systems of providing medical services in Mauritius, of which the largest is the government medical services, administered by the Ministry of Health. Other medical services are provided by the sugar estates for their employees, as required by the Labour Ordinance, while maternity and child welfare services are provided partly by the Government and partly by a voluntary body - the Maternity and Child Welfare Society.

50. Recently, some important changes have occurred in these systems. Government expenditure on medical and health services in the financial year 1964-65 was Rs. 19.7 million (an increase of Rs. 0.5 million over the previous year), or about 9.6 per cent of the Territory's total expenditure. In 1965, there were 137 government and 74 private physicians (compared with 118 and 65 respectively in the previous year). There was, thus, one physician for every 3,400 persons. A total of twenty-four hospitals was maintained by the sugar estates, representing a reduction of one from the previous year. The number of beds available for in-patients in the Territory decreased by fifteen to 3,339 and that of general beds by forty-five to 2,706, amounting to a proportion of one general bed per 361 persons.

51. During 1966, the Government began to construct a 600-bed hospital at Pamplemousses, the total cost of which was estimated at £2.1 million. On 25 November 1966, the United Kingdom Ministry of Overseas Development announced that Colonial Development and Welfare allocations totalling £1.4 million had been made available towards this project. Early in 1967 the Ministry provided a gynaecologist to give instruction to medical, nursing and other staff in family planning work and a medical administrator to work in the Mauritius Ministry of Health. The Ministry is also supplying equipment to the value of approximately £4,000 for thirteen clinics. On 20 December 1966, Mr. Stonehouse said in reply to a question in the United Kingdom House of Commons that in Mauritius, the number of family planning clinics had recently been increased from 98 to 124 and that the programme was very successful.

Educational conditions

52. Enrolment in primary, secondary, teacher training and vocational training schools in 1965 was as follows:

	Schools	Enrolment	Teachers
Primary education	331[a]	134,534[b]	4,015
Secondary education	135[c]	34,121	1,484
Teacher training	1[d]	424	26
Vocational training	4[d]	234	19

a/ Comprising 160 government, 55 aided and 116 private schools.

b/ Representing over 88 per cent of all children of primary school age (5-6 to 11-12 years).

c/ Comprising 4 government, 13 aided and 118 private schools.

d/ Government schools.

53. In 1965, the Government opened seven new primary schools, extended one secondary school and established the John Kennedy College. This college provides full-time training in technical and commercial subjects and also a variety of part-time and evening courses. Full-time, post-secondary education is provided by the Teachers' Training College and the College of Agriculture. The latter is managed by the Department of Agriculture and most of its diplomats enter the sugar industry.

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During the year, there were over 1,200 students following full-time courses institutions of higher education overseas.

54. In December 1965, the University of Mauritius (Provisional Council) Or became law. The United Kingdom Government has made an initial pledge of Rs. 3 million from Colonial Development and Welfare funds to finance a deve plan for the University. Dr. S.J. Hale of the University of Edinburgh has appointed Vice-Chancellor. The Premier of Mauritius said in a recent addre steps were being taken towards the establishment of the University where st would be taught and trained in technology and science.

55. Government expenditure on education in the financial year 1964-65 tot Rs. 28.9 million (an increase of Rs. 0.6 million over the previous year), Rs. 26 million was recurrent and Rs. 2.9 million capital expenditure. Edu accounted for 12.7 per cent of the Territory's total recurrent expenditure

B. SEYCHELLES

General

56. As from 8 November 1965, when three of its islands were included in the "British Indian Ocean Territory", the Territory of Seychelles has comprised eighty-nine islands situated in the western Indian Ocean approximately 1,000 miles east of the Kenya coast. The islands, with a land area of some eighty-nine square miles, fall into two groups of entirely different geological formation, thirty-two being granite and the rest coral. The granite islands are predominantly mountainous. In some of them and particularly in Mahé, the largest island, which has an area of about 55.5 square miles, a narrow coastal belt of level land surrounds the granitic mountain massif, which rises steeply to an elevation, at Morne Seychellois, the highest peak, of almost 3,000 feet. The coral islands are flat, elevated coral reefs at different stages of formation.

57. Most of the inhabitants of the Seychelles are descended from the early French and African settlers. Early in 1966, the population of Seychelles was estimated to be about 48,000 (compared with 47,400 at the end of June 1965), nearly all of whom lived in the granitic island group. Three quarters of the Territory's population lives on Mahé, and most of the remainder on Praslin, La Digue and Silhouette. There are very few permanent residents on the coral islands.

58. The present population is increasing at a rate believed to be in excess of 3 per cent per annum. If this rate is maintained, the population will double in less than twenty-three years. The rapid growth of population has slowed down the rise in living standards among certain sections of the people, and reduced employment opportunities.

Constitution and Government

59. The Government of the Colony of Seychelles consists of a Governor, a Legislative Council and an Executive Council. The Governor is empowered to enact laws with the advice and consent of the Legislative Council, subject to the retention by the Crown of the power to disallow or refuse consent.

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60. Under a 1960 Order in Council, the Legislative Council consists of the Governor, as president, four ex officio members (the Colonial Secretary, Attorney-General, Administrative Secretary and Financial Secretary), five elected and three nominated members, of whom at least one must be an unofficial member. General elections, on a broad franchise based on a simple literacy test, must take place every four years. The last elections were held in July 1963.

61. The Executive Council consists of the Governor, who presides, four ex officio members and such other persons, at least one of whom must be an unofficial member, as the Governor may from time to time appoint. The composition of the present Executive Council is identical with that of the Legislative Council.

Recent political and constitutional developments

62. At the 1963 elections, all except one of the five elected seats in the Legislative Council were contested to some extent on party lines between candidates broadly supported either by the long-established Seychelles Taxpayers and Producers Association, representing European planters' interests, or the newly formed Seychelles Islands United Party, drawing its support mainly from the middle and working classes. Both parties were able to claim two seats, and the remaining seat went to an independent candidate claiming support from both.

63. In 1964, the Seychelles Islands United Party faded out and two new parties emerged, namely, the Seychelles Democratic Party (SDP) led by Mr. J.R. Mancham and the Seychelles People's United Party (SPUP) led by Mr. F.A. René. About the same time the Seychelles Taxpayers and Producers Association was reorganized into an ostensibly non-political Seychelles Farmers' Association designed to promote and defend the interests of the agricultural community.

64. The main differences between the two parties were reported by Sir Colville Deverell (see below) to be in the accent they placed on the speed of constitutional evolution, and the nature of the ultimate status of Seychelles after a period of self-government. Mr. Mancham, the leader of SDP, advocated a cautious advance and an ultimate relationship with the United Kingdom as close as possible to integration, while Mr. René, the leader of SPUP, initially advocated a rapid, if not immediate, advance to self-government and the early attainment of a status of complete independence.

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schools, two of which provided all-age education, three secondary schools and one selective secondary school. In 1965, there were sixty full-time (fifty-eight in 1964) and six part-time (three in 1964) teachers. Selected young teachers are sent to the United Kingdom to follow a three-year course leading to a certificate in education conferred by the Ministry of Education. More experienced teachers are also sent there for further training. In 1965, a senior teacher departed for a year's course. The expenditure on educational services during the year is estimated at £24,561 (an increase of £1,666 over the previous year), or 10.6 per cent of the Territory's total expenditure.

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III. CONSIDERATION BY THE SPECIAL COMMITTEE[14/]

Introduction

122. The Special Committee considered Mauritius, Seychelles and St. Helena at its 535th to 539th meetings held away from Headquarters, between 15 and 19 June 1967. The Special Committee had before it the report of Sub-Committee I concerning these Territories (A/AC.109/L.398), which is annexed hereto.

A. Written petitions and hearings

123. The Special Committee had before it a written petition concerning Mauritius from Mr. A.H. Dorghoty, Second Secretary, Mauritius People's Progressive Party (MPPP) (A/AC.109/PET.689). It heard a petitioner concerning that Territory, Mr. T. Sibsurun, Secretary-General, MPPP, accompanied by Mr. Dorghoty.

124. Mr. Sibsurun (MPPP) recalled that more than fourteen months had elapsed since the Special Committee's meeting at which certain resolutions and recommendations had been adopted and it had been decided that the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples, should be reaffirmed. The most important of the recommendations were those to the effect that the administering Power should be urged to allow the population of the three Territories to exercise their right of self-determination without delay, constitutional changes being left to the people of the Territories themselves who alone had the right to decide on the form of government they wished to adopt; that free elections on the basis of universal adult suffrage should be conducted as soon as possible; and that the administering Power should be called upon to respect the islands' territorial integrity and ensure that they were not used for military bases.

125. The United Kingdom Government had not made the slightest effort to accede to the people's demands. In March 1966, he had stressed to the Special Committee the

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14/ This section includes those portions of the statements made on Mauritius, Seychelles and St. Helena in the Special Committee which relate to the question in general; those portions which refer specifically to the draft resolution are included in section IV. It should be noted that additional comments on the question of Mauritius, Seychelles and St. Helena were contained in the statements made at the opening of the Special Committee's meetings at Kinshasa, Kitwe and Dar es Salaam. These statements are included in chapter II of the Special Committee's report (A/6700 (Part II)).

prevalence of bribery and corruption by the imperialists during the pre-election period. Under Mauritian law, a candidate was allowed to spend up to about Rs.5,000 on his electoral campaign but in most cases vast sums were lavished on canvassing votes, and he had pointed out that the Government should take steps to ensure that the law was respected. The general election was to be held in September 1967 and nothing had yet been done by the Government to enforce such a law. History was obviously repeating itself and the poor people who were asking for nothing more than their rudimentary rights were being exploited.

126. He had asked at the same time that supervisors from African and Asian countries should be sent to conduct the general election but, in September 1967 before the United Nations had had time to appoint them, the United Kingdom had dispatched observers from Commonwealth countries to supervise the registration of voters and the general election. It was evident that they would only be able to observe and could not investigate the true situation.

127. At the International Conference against War Danger, Military Pacts and Bases, Atomic Weapons and Colonialism, resolutions had been adopted calling for immediate and unconditional independence for Mauritius, with an immediate general election and moral, material, technical and financial support for a major propaganda campaign to rid Chagos Island of the nuclear military bases installed by the United Kingdom and the United States.

128. In February 1967, at its eighth session, the Council of the Afro-Asian Solidarity Organization, meeting at Nicosia, had adopted a resolution on Mauritius asking that supervisors should be sent to conduct the general election which would lead to complete and unconditional independence for the island, that the United Kingdom and United States system of direct telecommunications, which had been transferred from Trincomalee to Vacoas, should be dismantled, and that moral support, and material, technical and financial aid should be provided in order to remove the United Kingdom and United States base on Chagos Island.

129. He had intended to ask the United Kingdom representative certain questions but unfortunately he was not there to reply. It would have been interesting to know why the United Kingdom had decided to buy, without the consent of the Mauritian people, what it considered to be its own territory; why the resident Government had connived with the United Kingdom to deprive Mauritius of its dependencies; why the United Kingdom had always rejected, without explanation

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all petitions for the holding of a referendum on the military bases. It was obvious that the United Kingdom wanted to grant the island independence, while maintaining a nuclear base on Mauritian soil. The Mauritians had always been a peace-loving people, had never been involved in any world war and did not want their innocent country blasted by a nuclear bomb. In the event of a third world war, Mauritius wished to remain neutral. No country could be truly independent if it remained linked with the great Powers, and the independence obtained years before by their African, Arab and Hindu brothers would also turn out to be illusory. He hoped the world would not witness such injustice without reacting against it.

130. The imperialists presented themselves as champions of human rights and democracy, yet challenged their subject peoples' rights to social, political and economic justice. The colonial countries would not flinch before the imperialists' impressive might and would demand their rudimentary rights.

131. The Special Committee should exercise its power and compel the United Kingdom and the United States to respect its decisions and resolutions. The nuclear base was a direct threat to Africa, Asia and the Middle East and to world peace. United Kingdom and United States experts were already in Mauritius putting the finishing touches to the Chagos Island base. Time was short; the general election was to be held on 17 September 1967 and he hoped the other countries would not turn a deaf ear to Mauritius' justified pleas.

132. The reactionary Government had done nothing for the country; it had introduced illegal and exorbitant taxes to pay for the extension of Plaisance airport to enable it to accommodate the latest jet aircraft, to enable the Government to pursue its neo-colonialist policy after independence and to erect an imperialist bastion in the Indian Ocean to check the advance of socialism in Africa. It was not surprising, therefore, that without the consent of the people, the same reactionary Government was supporting Israel in its war of aggression against the Arab States. He wondered how long the people of Mauritius were to be ignored.

133. The people had held a grand mass rally on world peace, organized by MPPP, on 11 June 1967, and had urged Prime Minister Wilson to reconsider the question of the Chagos Island base and accede to their demand that a referendum should be held on the matter, pointing out that they wanted to remain neutral in the event of a third world war.

134. In conclusion, he appealed to the Special Committee to ensure that the recommendations of the above-mentioned conferences were implemented.

135. In reply to questions concerning his Party's membership, strength and activities to date, the petitioner stated that MPPP had been formed in 1963 after the last general elections and had been affiliated with the Afro-Asian People's Solidarity Committee at the Moshi Conference. The other parties were the Mauritian Social Democratic Party, the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action. A new Party, the Hindu Congress, had been formed in 1966. MPPP was the only political party to have its own offic which were open every day, and a register of members. The other parties had no membership lists and only opened their offices for the election campaign. MPPP h about 50,000 supporters out of a total population of 786,000 and sympathizers among the working class. It would present candidates for the first time at the forthcoming elections.

136. Although not represented in Parliament, MPPP had been actively opposing the Government and holding daily meetings throughout the country to explain to the people the gravity of the situation created by the military bases on the island.

137. When invited to London to discuss the new Constitution, the Mauritian Social Democrat Party, which was in favour of association with the United Kingdom, had dissociated itself from the coalition Government because the other parties represented wanted independence, although they were also in favour of retaining the military bases. In 1965, the Government had sold Chagos Island for £3 millio to the United Kingdom, which, in conjunction with the United States, was building a military base on it. The United Kingdom now denied buying the island outright saying that the money had merely been given as compensation.

138. MPPP attended not only the meetings of the Special Committee but also international conferences throughout the world, for instance, the New Delhi Conference on War Danger in November 1966 and the Afro-Asian Council in Cyprus i February 1966. On 11 June 1967, it had asked the Mauritian people to attend a mass rally in favour of peace, especially in Viet-Nam, the dismantling of the military base and unconditional independence for their country.

139. Asked to supply more details concerning the size, number and type of bases and the use made of them, the petitioner regretted that he was unable to state t exact size of the bases. The base at Vacoas was used to house the direct

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telecommunications system which had been transferred from Trincomalee. The United States Government was providing funds to enlarge Plaisance airport so that jet aircraft could land there. The United Kingdom had always realized the strategic importance of Mauritius; it had taken the bases from France and had granted independence to the country only on condition that it could continue to use the key bases in the Indian Ocean. During the past year the United States Air Force had been using Plaisance airport continuously. It had also been reported in the newspapers and confirmed by the United Kingdom itself that the United Kingdom and United States navies would continue to use the naval bases in Mauritius.

140. The petitioner was asked whether or not the administering Power was implementing the United Nations decisions, and whether he was in a position to give details regarding the establishment of a base by the United Kingdom and the United States on Mauritius. Replying, he stated that the United Kingdom had not implemented the 1966 resolution any more than it had many others adopted by the United Nations. The construction of the military bases was well advanced under the supervision of experts from the United Kingdom and United States, who were to stay until the completion of the bases.

141. In reply to a further question, the petitioner said that the election was to be held on 17 September 1967. The Prime Minister, fearing trouble in a multiracial country, had asked the United Kingdom to send troops as well as observers to supervise the general election. The opposition was divided into too many small parties and did not present a united front. Although all were in favour of complete independence, some were willing to retain the military bases, whereas MPPP demanded that independence should be unconditional. The Mauritian Social Democrat Party, on the other hand, wanted a continued association with the United Kingdom.

B. General statements

142. At the 536th meeting, the Chairman of Sub-Committee I (the representative of Ethiopia), presenting the Sub-Committee's report on Mauritius, Seychelles and St. Helena, (see annex) said that the Sub-Committee had considered the situation in these Territories during the period 5 April to 10 May 1967. In accordance with the procedure agreed upon by the Special Committee, the United Kingdom representative had participated in the Sub-Committee's consideration of the three Territories.

143. The Sub-Committee had been guided by paragraph 16 of General Assembly resolution 2189 (XXI) of 13 December 1966, which requested the Special Committee "to pay particular attention to the small Territories and to recommend to the General Assembly the most appropriate methods and also the steps to be taken to enable the populations of those Territories to exercise fully the right to self-determination and independence". The Sub-Committee had also taken into account paragraph 15 of the resolution which invited the Special Committee "whenever it considers it appropriate to recommend a deadline for the accession to independen to each Territory in accordance with the wishes of the people and the provisions of the Declaration". Further, the Sub-Committee was aware that, as recognized b the Special Committee in paragraph 322 of chapter I of its 1966 report (A/6300 (Part I)) "their small size and population as well as their limited resources presented peculiar problems". However, the Sub-Committee was firmly of the opin that the provisions of the Declaration were applicable to those Territories, and had examined the situation there within that context.

144. The report of the Sub-Committee consisted of four chapters. The Chairman drew special attention to the conclusions and recommendations of the report, contained in paragraphs 124 to 129 and paragraphs 130 to 139, respectively. The report had been adopted by the Sub-Committee at its 39th meeting on 10 May 1967. The representative of Finland had stated that since certain parts of the conclusions and the recommendations were not in accord with and did not reflect the views expressed by his delegation, it could not support all the conclusions and recommendations.

145. The representative of India said that the Indian delegation had carefully studied the valuable and instructive report of Sub-Committee I. It unreservedly supported its conclusions and recommendations and congratulated the Sub-Committe

146. His delegation deeply regretted the slow progress towards the self-determination and independence of the Territories in question. In spite of repeated appeals, the administering Power had not taken steps to expedite decolonization. Progress in the Seychelles and St. Helena had been particularly slow. He hoped that the United Kingdom Government would respect the people's wishes and grant them the political status of their choice without further delay

147. The United Kingdom Government's policy with regard to Mauritius was to del independence as much as possible. For several years much had been heard of impending independence, but the United Kingdom Government had found one pretext

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another to postpone the inevitable, giving the impression that it found parting with that rich colony extremely difficult. The Constitutional Conference had been held as early as September 1965, yet the country was not expected to become independent until about the middle of 1968. That long interval seemed totally unjustified. Considerable time had been wasted by the appointment of the Banwell Commission, whose recommendations had been unacceptable to the Mauritian political parties. They had had to be modified substantially following Mr. Stonehouse's visit, thus wasting more than six months. The electoral system under the modified Banwell proposals seemed unduly complicated; if, however, it was acceptable to the political parties in the island, his delegation would respect it, its only desire being that the people of Mauritius should become independent without further delay.

148. The independence of Mauritius was essential not only for the emotional satisfaction of its people but also to enable them to devote their energies to raise their level of living. Without political independence real economic progress was impossible. Colonial Powers were not interested in doing anything for the people of their colonies that would not at the same time be in their own strategic or other interests. Mauritius provided an excellent example of that policy. It had an economy almost wholly dependent on the production and export of sugar. The United Nations had been urging the administering Power since 1964 to take effective measures to diversify the economy, but the United Kingdom Government's only response had been to take some half-hearted and haphazard steps without really trying to work out a well-co-ordinated programme. Its failure to develop other sectors of the economy had resulted in shortage of capital, a downward trend in per capita income and increased unemployment. The little progress that had been made was mainly to the efforts of the Government of Mauritius headed by Premier Ramgoolam, who was reported to have said that Mauritius was a viable country which had never needed a grant-in-aid to balance its budget. His delegation had no doubt that, once the country achieved its independence, progress in the diversification of its economy would be accelerated.

149. The administering Power in Mauritius, as in other colonies, such as Fiji, had been taking advantage of the differences in the Territory in order to maintain its own dominant position and protect foreign vested economic interests. Fortunately, the different communities had successfully resisted the administering Power's attempt to divide them. They had realized that their common interest lay in

ridding themselves first of the colonial administration. His delegation wished Mr. Ramgoolam and his associates all the success they deserved in leading their country to independence as a unified nation.

150. His Government had been greatly perturbed at the reports of the establishment of military installations in the "British Indian Ocean Territory" that had been created artificially by detaching certain islands from Mauritius and Seychelles. That was a clear violation of General Assembly resolutions 2066 (XX) and 2232 (XXI) which asked the administering Power not to take any action that would dismember the Territory or violate its territorial integrity. Such dismemberment was also a clear violation of paragraph 6 of General Assembly resolution 1514 (XV) and of the United Nations Charter. The creation of the new colony also ran counter to the declared wishes of the peace-loving peoples of Africa and Asia and must be regarded as contrary to the interests of those peoples in the immediate vicinity of the military installations. In that connexion, he quoted from a statement made by the Indian Minister for Foreign Affairs in Parliament on 6 April 1967, as follows:

> "The Indian Government's position has been made clear in the past and there is no change in our stand. We have subscribed to the Bandung Declaration of 1955. We have also signed the Cairo Declaration of 1964 on the subject of establishment of bases in the Indian Ocean and we stand by them.
>
> "We have also subscribed to resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 20 December 1966 adopted by the United Nations General Assembly, dealing with this subject. Resolution 2066 (XX) 'notes with deep concern that any step by the Administering Power to detach certain islands from the territory of Mauritius for the purpose of establishment of military bases would be in contravention of resolution 1514 (XV)'. It further invited 'the administering Power to take no action which would dismember the territory of Mauritius and violate its territorial integrity'.
>
> "We are opposed to the establishment of military bases in the Indian Ocean area as it might lead to an increase in tensions in this region. We hope that in the largest interest of peace, the British authorities will bear in mind our feelings and feeling of the countries in this region and desist from setting up a military base in this area."

151. The representative of Poland expressed his appreciation of the work of Sub-Committee I and, in particular, of the concise and objective manner in which its report was drafted. He also thanked the Sub-Committee's Chairman for her able presentation of the report.

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152. In all three Territories, progress towards the implementation of General Assembly resolution 1514 (XV) had been extremely slow. Though almost seven years had elapsed since the adoption of the Declaration on decolonization, the people of Mauritius, Seychelles and St. Helena had not yet achieved the objectives sought by the United Nations, and the administering Power was still delaying the transfer of authority to the democratically elected representatives of the peoples of the three Territories.

153. As pointed out in paragraph 125 of the report, the United Kingdom, through the Governor, continued to exercise vast powers, particularly in the constitutional and legislative fields. Contrary to General Assembly resolution 1514 (XV), the administering Power was insisting on an even longer constitutional process in Seychelles than in Mauritius on the pretext that the people lacked political expérience. In Mauritius, the elections had still not been held and the United Kingdom Government, though well aware of the people's wishes for independence, was attaching conditions to the granting of it: e.g., that there should be an interval of six months between self-government and independence, and that the demand for complete independence should be reiterated by the vote of a majority elected at the future general elections to be held under complex and controversial electoral arrangements.

154. Furthermore, the United Kingdom was openly violating the principles of the United Nations Charter and the General Assembly resolution by dismembering Mauritius and the Seychelles for military purposes, with the help of the United States. The Polish delegation fully shared the concern expressed by the Special Committee at the establishment in 1965 of a new colony - the "British Indian Ocean Territory" - and at reports that it would be used as a military base. In resolutions 2189 (XXI) and 2232 (XXI), the General Assembly reiterated its earlier declaration that any attempt to disrupt the national unity and territorial integrity of colonial Territories or to establish military bases or installations there was incompatible with the United Nations Charter and with resolution 1514 (XV). Despite the warning of the non-aligned countries at the Cairo Conference in 1964 that such military bases would create tension and would be used to bring pressure against independent States in their vicinity and against national liberation movements, the United Kingdom had refused to give any assurance that the islands detached from Mauritius and Seychelles would not be used under any circumstances

for military purposes. The Polish delegation firmly endorsed paragraphs 126 and 127 of the report of the Sub-Committee and strongly believed that the attitude of the United Kingdom was incompatible with its obligations as the administering Power.

155. The data contained in the Secretariat working paper (see paragraphs 1-121 above) clearly indicated the administering Power's failure to diversify the economies of the three Territories, which were still dependent on a single crop, and, to an increasing extent, on external aid. Mauritius had to import 90 per cent of its needs for essential goods and foodstuffs. It was also clear from the document that unemployment was increasing in Mauritius and Seychelles and that the per capita income in those Territories was tending to fall.

156. In the Polish delegation's opinion, the administering Power should take vigorous measures to assist the peoples of those Territories by grants-in-aid and development programmes to diversify their economy and create employment and opportunities for the growing populations. It should likewise take steps, without further delay, to ensure that the peoples of those Territories achieved independence in the best possible conditions.

157. The representative of Bulgaria said that his delegation had studied the report very carefully and associated itself with the conclusions and recommendations. He expressed his appreciation of the valuable work performed by the Sub-Committee. The administering Power was continuing without restraint to use the Territory for its own requirements, to behave as its undisputed colonial master, to disregard completely the inalienable rights of its population to freedom and independence, to exploit their natural resources, to dismember the Territories and to establish military bases with the participation of another great Power.

158. It was unbelievable that, seven years after the adoption of General Assembly resolution 1514 (XV), the colonial Power could show such complete disregard for its provisions and for the United Nations as a whole. Bulgaria shared the concern of the neighbouring nations which considered the military bases established on the Territories to be detrimental to their security and were demanding the dismantling of all military installations and the discontinuance of military activity.

159. The representative of Madagascar said that he had carefully studied the report of Sub-Committee I on Mauritius, Seychelles and St. Helena. His delega-

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like the Sub-Committee, considered that the provisions of General Assembly resolution 1514 (XV) should be speedily implemented in those Territories. Indeed, it had already supported in the Committee many of the ideas and principles set forth in the Sub-Committee's report. Madagascar, in view of its geographical situation, was certainly the country which was closest to Mauritius, a fact which had enabled it to maintain normal and cordial relations with that Territory. His delegation was particularly well placed to speak of the situation now prevailing in that island. It had noted the statements made by the United Kingdom representative in Sub-Committee I and had been pleased to learn that the United Kingdom Government had taken the necessary steps to enable the people of Mauritius, Seychelles and St. Helena to exercise their right to self-determination and independence. The statements of the United Kingdom representative were in accord with the actual facts in the three Territories concerned. The Malagasy delegation therefore welcomed the attitude of the United Kingdom regarding the islands in the Indian Ocean, and could not support all the conclusions and recommendations contained in the report of Sub-Committee I.

160. The representative of Finland said that, as a member of the Sub-Committee, he had already had the opportunity of expressing his Government's views on Mauritius, Seychelles and St. Helena. As he had said in the Sub-Committee on 13 April 1967, although the three Territories might have certain elements in common, there were striking differences between them in many important respects and it was difficult to visualize any common pattern for their future. He had added that Mauritius was well on the road towards full independence. That view had been substantiated by the Mauritian Prime Minister's statement of 13 May 1967 that elections would take place at the very latest before the end of September of the current year. The political development of the Seychelles seemed to be somewhat slower and it seemed not unlikely that some form of special constitutional arrangements might be advisable in the interim.

161. He re-emphasized that, whatever future course might be chosen by the three Territories, it was essential that the final choice should be made by the freely elected majority. Although there had been some regrettable delays, it appeared to him that the majority of the people in question had, in fact, the opportunity of deciding the future of their own countries.

162. A number of the conclusions and recommendations contained in the Sub-Committee's report were not in accordance with the views his delegation had expressed in the Sub-Committee, nor did they accurately reflect the progress towards self-determination which had taken place in the Territories in question.

163. The representative of Italy said that his delegation had not only examined with great care the report of Sub-Committee I, but had followed with close attention the political development of the Territories in question. It had noted with great satisfaction that significant steps had been taken to ensure for their populations the right and the means freely to express their preferences concerning their future status. In the case of Mauritius, it was noteworthy that the Prime Minister intended to organize elections not later than the end of September 1967.

164. Italy's chief concern was that the people of the islands should have the right to determine their future status by democratic means, and such appeared to be the case. Under the circumstances, he viewed with some misgivings the conclusions contained in the report which did not seem to coincide with his delegation's assessment of the situation.

165. The representative of Venezuela said that he had studied with interest the report of Sub-Committee I on the question of Mauritius, Seychelles and St. Helena. Unquestionably, the report gave a very complete account of the political, economic and social conditions prevailing in those three Territories. His delegation was in general agreement with the recommendations and conclusions of the Sub-Committee.

166. He did not, however, share the view expressed in paragraph 127 of the report concerning military bases and installations. There was insufficient proof of the existence of such bases to warrant the claim that they created international tension and aroused concern in neighbouring countries. Nor could it support paragraph 137 of the report, in which the Sub-Committee prejudged the question of future military activities and claimed that they would constitute an act of hostility towards the peoples of Africa and Asia and a threat to international peace and security.

167. The representative of the United States of America said that he wished to comment on the sweeping and unsubstantiated statements made by a petitioner and some representatives with respect to his country. He wished to state categorically that his country had no plans to construct military bases in the British Indian Ocean Territory. In that connexion, he pointed out that a United Kingdom

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spokesman had recently given a similar assurance. Although there was an agreement between his country and the United Kingdom to permit the utilization of the British Indian Ocean Territory for refuelling or communications facilities, no decision had been taken to establish any such facilities.

168. The representative of the United Republic of Tanzania said that his delegation had no intention of disputing the statement made by the United States representative. He wished, however, to know whether the statement had the approval of the United Kingdom also. Had it in fact been made on behalf of that country?

169. The representative of the United States of America replied that he had made no statement on behalf of the United Kingdom; he had simply referred to a similar statement made by a United Kingdom spokesman.

IV. ACTION TAKEN BY THE SPECIAL COMMITTEE

170. The representative of Ethiopia introduced a draft resolution (A/AC.109/L.411/Rev.1) on the three Territories co-sponsored by Afghanistan, Ethiopia, India, Iraq, Mali, Sierra Leone, Syria, Tunisia, the United Republic Tanzania and Yugoslavia.

171. The draft resolution was based on the report of Sub-Committee I (see ann and expressed the serious concern felt by the co-sponsors at the fact that, as stated in paragraph 124 of the report, the administering Power had still not implemented General Assembly resolution 1514 (XV) and other relevant resoluti concerning Mauritius, Seychelles and St. Helena. The co-sponsors urged the administering Power to expedite the process of decolonization in those Terri

172. The representative of Iraq said that he seconded the draft resolution a urged all members of the Special Committee to vote for it. He drew attentio the operative paragraph concerning military bases which the administering P in co-operation with the United States, was proposing to establish in Mauriu Seychelles which constituted a serious threat to the area, to the peace and of Africa, Asia and the Middle East and to the national liberation movement operating in those areas.

173. The representative of Poland said that while his delegation supported t draft resolution in general, it regretted that the preambular paragraphs co no reference to the Sub-Committee's concern that the administering Power w continuing to violate the territorial integrity of the Territories and to i General Assembly resolutions 2066 (XX) and 2232 (XXI) and that the steps i taking in the economic and social sectors to safeguard the interests of th peoples of the Territories were inadequate.

174. At the next meeting, the representative of Ethiopia submitted on beha the co-sponsors, an oral revision to the draft resolution (A/AC.109/L.411/ in which in operative paragraph 7, the phrase "to dismantle such military installations" was replaced by the phrase "to desist from establishing suc military installations". The co-sponsors considered that the revision (A/AC.109/L.411/Rev.2) would make it quite clear that the resolution als to existing military bases.

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175. The representative of Bulgaria said that the draft resolution submitted by the African and Asian countries and Yugoslavia reflected the main recommendations of the Sub-Committee's report and contained the necessary requests to the administering Power to implement fully the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Bulgarian delegation had hoped that the original draft resolution would contain a reference such as that included in the Sub-Committee's report to the activities of the United Kingdom and to the demands addressed to it by the United Nations. It was therefore pleased that the sponsors had accepted the amendment proposed by the Polish delegation to include a new introductory paragraph to express the Special Committee's deep regret that the administering Power had failed to implement resolution 1514 (XV). The General Assembly should pay particular attention to that matter and his delegation thought that, before the opening of the twenty-second session, the Special Committee should have another opportunity to examine the attitude of the administering Power. That had probably also been the sponsors' reason for drafting paragraph 8, requesting the United Kingdom to report to the Special Committee on the implementation of resolution 1514 (XV).

176. The representative of the Ivory Coast said that he would have preferred, as a representative of an African country, not to make any comment on a draft resolution submitted by the Afro-Asian group, which regarded colonialism as a kind of cancerous tumour in the centre of Africa. His delegation was ready to give its full support to the Special Committee's efforts to deal with the last vestiges of the crumbling colonial system. The climate in the Special Committee must be such that all representatives without exception, and particularly the members of the Afro-Asian group, could associate themselves with the Committee's decisions, decisions which, in a general way, expressed the desire of all to help the peoples of the remaining dependent territories. Such a spirit of co-operation and understanding was the vital factor which would enable the Committee to obtain the results expected of it.

177. His delegation would therefore have liked to be among the sponsors of the draft resolution, which, as a whole, reflected the aspirations of the international community as expressed in the basic resolution of the General Assembly,

resolution 1514 (XV), on the granting of independence to colonial countries and peoples. Regrettably, however, it had been unable to join the sponsors because its request for a compromise on operative paragraph 7 relating to military installations had been rejected. The statement appearing in that paragraph was not necessarily in accordance with the facts. Moreover, even if bases existed in certain dependent countries, it was for those countries, when they obtained independence, to negotiate the removal of the bases with the former administering Power, as had happened in all the African countries which had become independent. The question was within the exclusive competence of the countries concerned. The Ivory Coast, which had subscribed to the doctrine of non-intervention in the internal affairs of States, could not go back on the principles which it had endorsed and to which it intended to remain loyal.

178. There should be no misunderstanding of the significance of that reservation, for the Ivory Coast, which had fought against colonialism for many long years and would continue to do so, remained faithful to the principles of decolonization. It was aware that military activities created tensions in the world. It understood the concern of certain delegations and respected their position. The purpose of the Special Committee, however, was to promote decolonization, and it should make sure that its decisions could be applied. It should seek the most objective way of bringing the countries under foreign domination to self-determination and independence and not choose courses which, on the contrary, would tend to harden positions and delay the solution of the problem of decolonization. The Ivory Coast delegation, while expressing reservations on operative paragraph 7, supported the other provisions of the draft resolution and would vote for it.

179. The representative of Italy said that operative paragraph 7 of the draft resolution was extraneous to the colonial issue and involved considerations outside the Special Committee's purview. His delegation would, therefore, abstain from voting.

180. The representative of Venezuela noted with regret that the draft resolution did not take into account the recommendation of Sub-Committee II that the General Assembly should set a time-limit for the granting of independence to Mauritius and accelerate the implementation of resolution 1514 (XV) in respect of Seychelles and St. Helena. There was no reference either to the recommendation concerning the

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ending of a visiting mission to the Territories to ascertain the extent of the progress made in the direction of self-determination and independence. Although his delegation would have preferred a text which took greater account of realities, it would nevertheless vote for the draft resolution.

181. The representative of Chile said that he approved of the general lines of the draft resolution despite certain doubts about the wording. Although the language was somewhat exaggerated, his delegation was, nevertheless, able to support the draft resolution as a whole, in line with its constant policy of supporting any measures designed to further the implementation of General Assembly resolution 1514 (XV), irrespective of the size of the Territory concerned or its distance from world markets. The latter considerations could not, however, be entirely overlooked.

182. The representative of the United States of America said that he intended to vote against the draft resolution which did not constitute a realistic and balanced appraisal of the situation in the Territories in question. The issue of Mauritian independence would be decided in the coming elections to be held this fall. If the population desired independence, it was possible that the Territory would become independent in early 1968. The Seychelles were also moving steadily and impressively in the direction of self-determination. Despite, therefore, his delegation's full approval of operative paragraph 2 of the draft resolution, he was unable to accept later operative paragraphs which were not consistent with the actual situation. It also had reservations concerning the Sub-Committee's report.

183. At its 539th meeting the Special Committee adopted the draft resolution (A/AC.109/L.411/Rev.2) as orally revised, by a roll call vote of 17 to 2 with 3 abstentions, as follows:

In favour: Afghanistan, Bulgaria, Chile, Ethiopia, India, Iran, Iraq, Ivory Coast, Mali, Poland, Sierra Leone, Syria, Tunisia, Union of Soviet Socialist Republics, United Republic of Tanzania, Venezuela, Yugoslavia.

Against: Australia, United States of America.

Abstaining: Finland, Italy, Madagascar.

184. The representative of Australia said, in explanation of his vote, that the normal approach in such a matter would have been to ask the administering Power to explain anything that was not readily apparent in current developments. Not

only had no such approach been made, but a statement by a representative of the administering Power had been completely ignored as had the many practical steps which had been taken in the direction of independence for the Territories in question. Self-determination meant that a Territory was perfectly entitled to decide, by a majority vote, whether or not it desired independence. Operative paragraph 7 was completely unacceptable, especially in view of the statements that had been made by representatives of the Governments of the United Kingdom and the United States that there was no intention of establishing military installatio on the island. Appeals had been launched to the administering Power to grant immediate independence to the Territories on the principle of "Heads I win; tails you lose". If immediate independence were granted, without proper preparation, the administering Power would be blamed. That gambling attitude was not one which should be adopted where the future of nations and populations was at stake. Under the circumstances, his delegation had had no alternative but to vote against the draft resolution.

185. The representative of India remarked he had been both surprised and disappointed that the delegations of Australia and the United States had voted against the draft resolution. He failed to realize what they had found in the te so obnoxious that they were forced to vote against it. It had reaffirmed the inalienable right of the peoples of those Territories to self-determination, freedom and independence; it had urged the administering Power to hold free elections and to grant to the Territories whatever political status their peoples should freely choose. It had deplored any dismemberment of the Territories and had declared that the establishment of military installations would be a violatio of General Assembly resolution 2232 (XXI). He failed to understand that anything in those provisions could cause a freedom-loving country to vote against the resolution.

186. He particularly regretted the unfortunate "gambling" analogy used by the representative of Australia. The sponsors of the draft resolution had made a serious appraisal of the problems facing those Territories and he deplored the fact that the attitude of responsible representatives of responsible Governments should be described as "gambling".

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187. The Chairman added that he was deeply disappointed that the Australian representative should have used such an analogy, after all the work that Sub-Committee I had put into its report. It was regrettable that the administering Power had seen fit to be absent from the Special Committee's deliberations, but that did not justify the use of such intemperate language.

188. The representative of the United States of America said he had made a statement explaining his vote and had been very much surprised by the unprecedented request of India for further explanation. He considered that the statement he had already made fully explained the position of his delegation and Government.

189. The representative of Yugoslavia said that some representatives had explained their abstentions on or opposition to the draft resolution on the grounds of operative paragraph 7. It was denied that either the United States or the United Kingdom had any intention of establishing such bases. In that connexion, he pointed out that The New York Times had reported a story to the effect that the United Kingdom was in the final stages of negotiations to purchase three islands in the Indian Ocean for defence purposes. Another paper had stated that the United States and the United Kingdom were planning to build an airstrip on one of those islands. Those two articles constituted sufficient proof for his delegation that the two Powers in question were intending to construct a military base and that operative paragraph 7 was fully justified.

190. The representative of Mali thanked all who had voted for the draft resolution which was directed towards speeding the process of decolonization in a particularly sensitive region of the world. He regretted that cold war considerations should have been introduced and he associated himself with the statements of the Chairman and the representatives of India and Yugoslavia. He was surprised that colonial Powers which claimed to support the Declaration on the Granting of Independence to Colonial Countries and Peoples should change their attitude when it came to taking concrete measures to give effect to that Declaration. He was particularly astonished by the words of the representative of Australia, a country which had exterminated its indigenous inhabitants and was sending troops to Viet-Nam to prevent the people of that country from enjoying their most elementary rights.

191. The representative of the United States of America said, in reply to the representative of Yugoslavia, that, excellent paper though it was, The New York Times was not an official organ of the United States Government and its reports in no way reflected the policy of his Government.

192. The representative of the United Republic of Tanzania said that the vote against the draft resolution by two delegations had demonstrated, beyond all reasonable doubt, the true position of their countries and their attitude towards the principle of self-determination. In view of the repeated statements by representatives of the United States Government that their country supported the cause of decolonization, that vote had come as a disagreeable surprise. As the representative of the United States had referred to the "British Indian Ocean Territory", he pointed out that the United Nations had refused to recognize that Territory, the establishment of which was no more than a colonialist manoeuvre.

193. The representative of Australia, exercising his right of reply to the representative of Mali, explained that his reference to gambling had been a strictly personal reaction. He had not meant to suggest that the Sub-Committee or the Special Committee approached its work in the spirit of a gambler. The representative of Mali had also referred to the indigenous inhabitants of Australia. That was a matter within the domestic jurisdiction of the Australian Government. Although Australia could not claim that it had no reason for self-reproach, the indigenous inhabitants were not being assassinated as the representative of Mali had stated. He added that the question of Viet-Nam was not within the Special Committee's terms of reference.

194. The text of the resolution on Mauritius, Seychelles and St. Helena (A/AC.109/249), adopted by the Special Committee at its 539th meeting on 19 June 1967 reads as follows:

"The Special Committee,

"Having examined the question of Mauritius, Seychelles and St. Helena,

"Having heard the statement of the petitioner,

"Noting with regret the absence of the representatives of the administering Power,

"Noting with deep regret the failure of the administering Power to implement General Assembly resolution 1514 (XV) of 14 December 1960,

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"Having examined the report of Sub-Committee I concerning these Territories, 15/

"Recalling General Assembly resolution 1514 (XV) of 14 December 1960, and other relevant resolutions concerning Mauritius, Seychelles and St. Helena, in particular General Assembly resolutions 2066 (XX) of 16 December 1965 and 2232 (XXI) of 20 December 1966,

"1. Approves the report of Sub-Committee I concerning Mauritius, Seychelles and St. Helena and endorses the conclusions and recommendations contained therein;

"2. Reaffirms the inalienable right of the peoples of Mauritius, Seychelles and St. Helena to self-determination, freedom and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"3. Urges the administering Power to hold, without delay, free elections in the Territories on the basis of universal adult suffrage and to transfer all powers to the representative organs elected by the people;

"4. Further urges the administering Power to grant the Territories the political status their peoples freely choose and to refrain from taking any measures incompatible with the Charter of the United Nations and with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"5. Reaffirms that the right to dispose of the natural resources of the Territories belongs only to the peoples of the Territories;

"6. Deplores the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI), and calls upon the administering Power to return to these Territories the islands detached therefrom;

"7. Declares that the establishment of military installations and any other military activities in the Territories is a violation of General Assembly resolution 2232 (XXI), which constitutes a source of tension in Africa, Asia and the Middle East, and calls upon the administering Power to desits from establishing such military installations;

"8. Requests the administering Power to report on the implementation of the present resolution to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

"9. Decides to maintain the question of Mauritius, Seychelles and St. Helena on its agenda."

15/ See annex.

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United Kingdom, *Mauritius Independence Act 1968* (1968)

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1968

Mauritius Independence Act 1968

CHAPTER 8

ARRANGEMENT OF SECTIONS

Section
1. Fully responsible status of Mauritius.
2. Consequential modifications of British Nationality Acts.
3. Retention of citizenship of United Kingdom and Colonies by certain citizens of Mauritius.
4. Consequential modification of other enactments.
5. Interpretation.
6. Short title.

SCHEDULES:

Schedule 1—Legislative powers of Mauritius.
Schedule 2—Amendments not affecting the law of Mauritius.

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ELIZABETH II

1968 CHAPTER 8

An Act to make provision for, and in connection with, the attainment by Mauritius of fully responsible status within the Commonwealth. [29th February 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Fully responsible status of Mauritius.

1.—(1) On and after 12th March 1968 (in this Act referred to as " the appointed day ") Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Mauritius.

(2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Mauritius as part of its law; and on and after that day the provisions of Schedule 1 to this Act shall have effect with respect to the legislative powers of Mauritius.

Consequential modifications of British Nationality Acts.

1948 c. 56.

2.—(1) On and after the appointed day the British Nationality Acts 1948 to 1965 shall have effect as if in section 1(3) of the British Nationality Act 1948 (Commonwealth countries having separate citizenship) there were added at the end the words " and Mauritius ".

(2) Except as provided by section 3 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if he becomes on that day a citizen of Mauritius.

(3) Section 6(2) of the British Nationality Act 1948 (registration as citizens of the United Kingdom and Colonies of women who have been married to such citizens) shall not apply

to a woman by virtue of her marriage to a person who on the appointed day ceases to be such a citizen under subsection (2) of this section, or who would have done so if living on the appointed day.

1967 c. 4.

(4) In accordance with section 3(3) of the West Indies Act 1967, it is hereby declared that this and the next following section extend to all associated states.

Retention of citizenship of United Kingdom and Colonies by certain citizens of Mauritius.

3.—(1) Subject to subsection (5) of this section, a person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he, his father or his father's father—

(*a*) was born in the United Kingdom or in a colony or an associated state ; or

(*b*) is or was a person naturalised in the United Kingdom and Colonies ; or

(*c*) was registered as a citizen of the United Kingdom and Colonies ; or

(*d*) became a British subject by reason of the annexation of any territory included in a colony.

(2) A person shall not cease to be a citizen of the United Kingdom and Colonies under the said section 2(2) if either—

(*a*) he was born in a protectorate or protected state, or

(*b*) his father or his father's father was so born and is or at any time was a British subject.

(3) A woman who is the wife of a citizen of the United Kingdom and Colonies shall not cease to be such a citizen under the said section 2(2) unless her husband does so.

(4) Subject to subsection (5) of this section, the reference in subsection (1)(*b*) of this section to a person naturalised in the United Kingdom and Colonies shall include a person who would, if living immediately before the commencement of the British Nationality Act 1948, have become a person naturalised in the United Kingdom and Colonies by virtue of section 32(6) of that Act (persons given local naturalisation in a colony or protectorate before the commencement of that Act).

1948 c. 56.

(5) In this section—

(*a*) references to a colony shall be construed as not including any territory which, on the appointed day, is not a colony for the purposes of the British Nationality Act 1948 as that Act has effect on that day, and accordingly do not include Mauritius, and

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(*b*) references to a protectorate or protected state shall be construed as not including any territory which, on the appointed day, is not a protectorate or a protected state (as the case may be) for the purposes of that Act as it has effect on that day;

and subsection (1) of this section shall not apply to a person by virtue of any certificate of naturalisation granted or registration effected by the Governor or Government of a territory which by virtue of this subsection is excluded from references in this section to a colony, protectorate or protected state.

(6) Part III of the British Nationality Act 1948 (supplemental provisions) as in force at the passing of this Act shall have effect for the purposes of this section as if this section were included in that Act. 1948 c. 56.

Consequential modification of other enactments.

4.—(1) Notwithstanding anything in the Interpretation Act 1889, the expression "colony" in any Act of the Parliament of the United Kingdom passed on or after the appointed day shall not include Mauritius. 1889 c. 63.

(2) On and after the appointed day—

(*a*) the expression "colony" in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 shall not include Mauritius, and 1955 c. 18. 1955 c. 19. 1957 c. 53.

(*b*) in the definitions of "Commonwealth force" in section 225(1) and 223(1) respectively of the said Acts of 1955, and in the definition of "Commonwealth country" in section 135(1) of the said Act of 1957, at the end there shall be added the words "or Mauritius";

and no Order in Council made on or after the appointed day under section 1 of the Armed Forces Act 1966 which continues either of the said Acts of 1955 in force for a further period shall extend to Mauritius as part of its law. 1966 c. 45.

(3) On and after the appointed day the provisions specified in Schedule 2 to this Act shall have effect subject to the amendments specified respectively in that Schedule.

(4) Subsection (3) of this section, and Schedule 2 to this Act, shall not extend to Mauritius as part of its law.

Interpretation.

5.—(1) In this Act, and in any amendment made by this Act in any other enactment, "Mauritius" means the territories which immediately before the appointed day constitute the Colony of Mauritius.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

Short title.

6. This Act may be cited as the Mauritius Independence Act 1968.

SCHEDULES

Section 1.

SCHEDULE 1

LEGISLATIVE POWERS OF MAURITIUS

1865 c. 63.

1. The Colonial Laws Validity Act 1865 shall not apply to any law made on or after the appointed day by the legislature of Mauritius.

2. No law and no provision of any law made on or after the appointed day by that legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including this Act, or to any order, rule or regulation made under any such Act, and accordingly the powers of that legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Mauritius.

3. The legislature of Mauritius shall have full power to make laws having extra-territorial operation.

4. Without prejudice to the generality of the preceding provisions of this Schedule—

1894 c. 60.

(*a*) sections 735 and 736 of the Merchant Shipping Act 1894 shall be construed as if references therein to the legislature of a British possession did not include references to the legislature of Mauritius; and

1890 c. 27.

(*b*) section 4 of the Colonial Courts of Admiralty Act 1890 (which requires certain laws to be reserved for the signification of Her Majesty's pleasure or to contain a suspending clause) and so much of section 7 of that Act as requires the approval of Her Majesty in Council to any rules of court for regulating the practice and procedure of a Colonial Court of Admiralty shall cease to have effect in Mauritius.

Section 4.

SCHEDULE 2

AMENDMENTS NOT AFFECTING THE LAW OF MAURITIUS

Diplomatic immunities

1952 c. 10.

1. In section 461 of the Income Tax Act 1952 (which relates to exemption from income tax in the case of certain Commonwealth representatives and their staffs)—

(*a*) in subsection (2), before the words "for any state" there shall be inserted the words "or Mauritius";

(*b*) in subsection (3), before the words "and 'Agent-General'" there shall be inserted the words "or Mauritius".

1952 c. 18.

2. In section 1(6) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, before the word "and" in the last place where it occurs there shall be inserted the word "Mauritius".

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3. In section 1(5) of the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961, before the word " and " in the last place where it occurs there shall be inserted the word " Mauritius ". SCH. 2 1961 c. 11.

Financial

4. In section 2(4) of the Import Duties Act 1958, before the words " together with " there shall be inserted the word " Mauritius ". 1958 c. 6.

Visiting forces

5. In the Visiting Forces (British Commonwealth) Act 1933, section 4 (attachment and mutual powers of command) shall apply in relation to forces raised in Mauritius as it applies to forces raised in Dominions within the meaning of the Statute of Westminster 1931. 1933 c. 6. 1931 c. 4 (22 & 23 Geo. 5.).

6. In the Visiting Forces Act 1952— 1952 c. 67.

(*a*) in paragraph (*a*) of section 1(1) (countries to which that Act applies) at the end there shall be added the words " Mauritius or " ;

(*b*) in section 10(1)(*a*), the expression " colony " shall not include Mauritius ;

and, until express provision with respect to Mauritius is made by an Order in Council under section 8 of that Act (application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of Mauritius.

Ships and aircraft

7. In section 427(2) of the Merchant Shipping Act 1894, as set out in section 2 of the Merchant Shipping (Safety Convention) Act 1949, before the words " or in any " there shall be inserted the words " or Mauritius ". 1894 c. 60. 1949 c. 43.

8. In section 6(2) of the Merchant Shipping Act 1948, at the end of the proviso there shall be added the words " or Mauritius ". 1948 c. 44.

9. The Ships and Aircraft (Transfer Restriction) Act 1939 shall not apply to any ship by reason only of its being registered in, or licensed under the law of, Mauritius ; and the penal provisions of that Act shall not apply to persons in Mauritius (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships). 1939 c. 70.

10. In the Whaling Industry (Regulation) Act 1934, the expression " British ship to which this Act applies " shall not include a British ship registered in Mauritius. 1934 c. 49.

11. In section 2(7)(*b*) of the Civil Aviation (Licensing) Act 1960, the expression " colony " shall not include Mauritius. 1960 c. 38.

SCH. 2

Commonwealth Institute

1925 ch. xvii.
1958 c. 16.

12. In section 8(2) of the Imperial Institute Act 1925, as amended by the Commonwealth Institute Act 1958 (power to vary the provisions of the said Act of 1925 if an agreement for the purpose is made with the governments of certain territories which for the time being are contributing towards the expenses of the Commonwealth Institute) at the end there shall be added the words "and Mauritius".

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Annex 94

Thomas Mensah, *Self-Determination Under United Nations' Auspices: The role of the United Nations in the application of the principle of self-determination for nations and peoples* (1968)

Annex 94

SELF-DETERMINATION UNDER UNITED NATIONS' AUSPICES

(The role of the United Nations in the application of the principle of self-determination for nations and peoples.)

Presented to

THE YALE LAW SCHOOL

IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF THE SCIENCE OF LAW

By

Thomas A. Mensah
August 1963

Annex 94

SELF-DETERMINATION UNDER UNITED NATIONS' AUSPICES

(The role of the United Nations in the application of the principle of self-determination for nations and peoples.)

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2. HISTORICAL BACKGROUND
3. DELINEATION OF THE PROBLEMS
4. PAST CLAIMS AND DECISIONS -- TRENDS IN DECISION
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a. To participate in the control of territory and people.
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be applied to them too. Those who were planning for the peace of the world, convinced of the ultimate irresistibility of such demands and of their relevance to the success or failure of their plans, finally came round to recognize the principle of self-determination -- no longer as a right of certain "nations" only, no longer as a principle of self-limitation imposed upon themselves by Colonial and other powers, but as a principle of human dignity and of peace, applicable to all peoples: a principle which peace planners could disregard only at their, and the world's, peril.[34] It was against this background that the statesmen gathered in San Francisco in 1945, addressed themselves to the task of "saving succeeding generations from the scourge of war" by ensuring -- among other things -- respect for the "right of self-determination of peoples."

ii. THE PRINCIPLE OF SELF-DETERMINATION AT THE SAN FRANCISCO CONFERENCE:

The United Nations Conference on International Organization began with a concept of self-determination which was basically "non-colonial" in character.[35] When it ended the principle had become very much associated with the question of colonialism. With the possible exception of the United States, the governments which participated in the Dumbarton Oaks Conversations and in the San Francisco Conference were mainly interested in the situation arising from the past war. Their thoughts

were focused on the past war and its causes; and they thought of the projected organization as a means of preventing a repetition of the abuses of the pre-war period. As far as they were concerned the principle that needed to be emphasized the most was the principle that all states -- big and small -- were equal.[36] There was, at this stage, little concern for the rights of "non-state" groups or peoples. In any case, the vital interests of some of these powers were so deeply involved in the colonial area that they considered it prudent to maintain a certain degree of silence on the matter.[37] As a result, the Dumbarton Oaks Proposals did not make any mention of either the principle of self-determination or of dependent peoples. Even the Yalta Agreement which sought to make up for the omission, merely concerned itself with the question of the International Trusteeship System which was designed to replace the old League Mandates System.[38]

By the time the San Francisco Conference convened, however, the "principle of self-determination" had found its way onto the Agenda of the Conference as an Amendment to the Dumbarton Oak Proposals.[39] Similarly, although the question of trusteeship had been raised in neither the original proposals nor in the sponsor's amendments, it was placed on the Conference Agenda with the support of the four sponsoring governments and allocated to Committee 11/4 of the Conference.[40]

Both questions caused a great deal of controversy in the

commissions, committees and sub-committees of the Conference. The principle of self-determination, in particular, was the subject of some delicate soul-searching. None of the participating governments could openly oppose the inclusion of such a "generally accepted" principle in the Charter; and yet there were a number of participants who were not very happy about the prominence that was being given to this principle.[41] According to the original Dumbarton Oaks Proposals, one of the purposes of the organization was to be: "To develop friendly relations among nations and take other appropriate measures to strengthen universal peace."[42] To this the Soviet Union proposed, and the other three powers agreed to add the phrase: "Based on respect for the principle of equal rights and self-determination of peoples."[43] The reasons for this amendment were nowhere spelled out, nor indeed was any attempt made then to clarify the significance that the principle was expected to have in the overall purposes of the United Nations.[44] Some indications were, however, given in later discussions within the committees and commissions of the Conference. The first indication was in the text of the Amendment itself: The Amendment clearly did not limit itself to "states" but extended the right of self-determination to "peoples." While there might have been considerable doubt as to what was meant by "peoples", the doubt was, at least partly, cleared by the discussion in the drafting sub-committee. Here the attempt of the Belgian

Delegate to narrow the application of the principle to "states" as such was not successful.[45] The sub-committee went on to explain that Paragraph 2A Article 1 was intended to "proclaim the equal rights of peoples as such" and consequently their right to self-determination. The equality of rights they were talking about "extends . . . to states, nations and peoples."[46] In spite of subsequent attempts to qualify this interpretation, this view of the matter was allowed to prevail.[47] The notion was allowed to gain currency that the United Nations was deeply concerned with all threats to international peace and that the denial of the right of self-determination to some people (not necessarily a state) may present such a threat. At San Francisco therefore, it appears that final -- howbeit oblique -- recognition was given to the new and gradually developing concept of self-determination which applied to all "peoples" no matter where they were or their political status. It appears that the words of the Atlantic Charter had been given their literal meaning.[48]

Nevertheless the application of the principle of self-determination to Colonial peoples and to other dependent peoples had not been raised specifically in the discussions prior to the Conference. The number of amendments which were submitted by the participating states to the Dumbarton Oaks Proposals, all dealt with the International Trusteeship System, and envisaged an arrangement under which the administering

powers would have the discretion to decide which of their dependent territories they would place under the control of the United Nations.[49] Thus the terms of reference of Committee II/4 to which was allocated the question of Trusteeship, were simply "to prepare . . . draft provisions or principles and mechanisms of such a system of international Trusteeship for such dependent territories as may by subsequent agreement be placed thereunder."[50] With this as its terms of reference, it was not very likely that the Committee would have anything at all to do with the principle of self-determination. It was not until the Governments of the United Kingdom and Australia introduced their proposals on the "Principle of Trusteeship" that the question of self-determination in the "colonial context" was discussed at the Conference. The United Kingdom and Australian proposals related to a Principle of Trusteeship that would apply to all dependent peoples in addition to the "Machinery of Trusteeship" that was to apply only to those territories which would be brought under it by agreement with, and at the discretion of, the powers responsible for their administration.[51] In the discussion of these proposals the principle of self-determination was naturally introduced. At the fourth meeting of Committee II/4 of the Conference, the Soviet Delegate specifically mentioned the principle of self-determination and said that it was relevant to the Trusteeship System that was being discussed.[52] Other delegates followed this lead

and claimed that the right of self-determination which had been proclaimed in the purposes of the Charter should be made applicable to all peoples -- colonial and non-colonial.[53] Although specific mention of the principle was not made in the chapters dealing with the colonial peoples and other dependent peoples (Chapters XI-XIII) the discussions left little doubt that the relevance of the principle to those peoples was recognized.[54] The colonial powers rejected the assumption that "self-determination" was the same as "independence"; but they did not question the validity of the principle of self-determination itself. For example, the United Kingdom delegate warned " . . . against confusing independence with liberty. What the dependent peoples wanted was an increasing measure of self-government. Independence would come, if at all, by natural development," he added.[55] The Charter stressed in Chapters XI-XIII, the principle that the interests of the peoples of the non-self-governing and Trust territories were paramount. It proclaimed that among the factors "to be taken into account" by the administering powers in colonial and Trust territories were "the political aspirations of the inhabitants of these territories, . . . the progressive development of their political institutions and their progressive development towards self-government or independence."[56] Although at a later date different interpretations were to be put on these general proclamations, the impression was not at this time challenged that,

in Chapters XI to XIII, the Charter of the United Nations was guaranteeing, in some form, the right of the colonial and dependent peoples to exercise self-determination -- even if that exercise was to be in the distant future.[57]

In spite, therefore, of the later attempts to tone down some of the over-enthusiastic statements and sweeping assertions made at the San Francisco Conference,[58] it appears that the Conference gave recognition and expression to a concept of self-determination which was very different from the concept as it was generally regarded before 1945. By admitting that the principle applied to all "peoples", by recognizing that its denial would lead to a disturbance of international peace, and by linking it so inextricably with the question of human rights, the great powers of the world had clearly accepted that it could not therefore, be limited by geographical, or racial factors. Before long the international community was to declare -- perhaps less convincingly -- that the application of the principle could not be limited by any conditions whatever.[59] Henceforth the principle of self-determination was to be both a principle for the internal regulation of the state's affairs and of international order and human rights. It is against the background of this "San Francisco Legacy" that we have to examine and appraise the role which the United Nations has played or sought to play in the application of the principle of self-determination.

iii. SELF-DETERMINATION IN THE UNITED NATIONS 1945-1962.

One of the very first resolutions to be passed by the first session of the General Assembly (held in London in 1946) was on the subject of colonial peoples. The resolution on "Non-Self-Governing Peoples" dealt with the measures to be instituted to implement the provisions of the Charter dealing with the peoples "who have not as yet attained a full measure of self-government."[60] The General Assembly expressed the hope that the realization of the objectives of Chapters XI, XII and XIII of the Charter would make possible the attainment of the political, economic, social and educational aspirations of the non-self-governing peoples. Since then the United Nations has, through its many organs and special agencies, expended great effort and much time to hasten the realization of these objectives. In doing this the United Nations has clearly let it be known that it recognizes that the peoples of these territories are entitled to the right of self-determination. The right of self-determination: the right of "every people to determine how and by whom they will be governed" has been one of the corner stones of the United Nations' activities since 1945.

The United Nations had hardly begun to function when it was called upon to participate in the solution of a dispute in which the principle of self-determination featured very prominently. This was the dispute between the government of

the Kingdom of the Netherlands and the (as yet) non-sovereign Republic of the United States of Indonesia. The attempts to settle the dispute through negotiation and the "good offices" of friendly government had failed, and open hostilities had broken out between the two parties. The attempts by friendly states to get a cessation of hostilities were not unsuccessful, so the matter was brought to the notice of the Security Council.[61] Although the two requests for Security Council action did not specifically mention the principle of self-determination, that principle and the related question of colonialism were much in evidence during the debates.

From the beginning the Netherlands Government challenged the competence of the United Nations in the dispute, since it maintained that the whole matter was within its exclusive domestic jurisdiction.[63] This was not accepted, however, and the Council proceeded to assume, at first hesitantly and later more boldly, a direct and significant role in the settlement of the dispute. In the end the Council not only requested, organized and supervised the actual cessation of hostilities, but also set up the "Committee of Good Offices" which participated in and significantly influenced the eventual political settlement.[64] In the very first years of its life the United Nations Organization had exercised a role in this field which few had envisaged it would or could do effectively.[65]

In all this, however, the competence of the United Nations

was persistently challenged and there were many who maintained that the role of the United Nations in the application of the principle of self-determination was to be limited to that of a mere "enunciator of that principle."[66] The equally persistent claims of other members that the organization had "a right and a responsibility to ensure that the principle was universally applied" was written off as a mere attempt to endow the organization with powers it did not have and could not exercise.[67]

Nevertheless the United Nations, through its various organs, continued to receive and act on claims in which the principle of self-determination was invoked. Since the Indonesian dispute the United Nations has acted on a great number of claims in which the principle of self-determination has featured very prominently. There have been claims by independent states against other independent states whom they accuse of trying to subvert their independence and sovereignty. Examples of such claims are the Greek claim against its Northern neighbors in 1946, the Czechoslovakian complaint against the Soviet Union in 1946, the claim of the state of Hyderabad against the Indian Union in 1948, the complaint of the Government of Yugoslavia against the Soviet Union and the other Eastern European communist states in 1951, the Iranian complaint against the Soviet Union in 1946, and the complaint by the government of Imre Nagy against Soviet intervention

in the affairs of Hungary in 1956.[68] There have also been claims by independent states which allege that other states are depriving some people of their right to self-determination. Examples of such claims are the Pakistani claim against India in respect of Kashmir, the Greek claim against the United Kingdom in respect of Cyprus, the Indonesian and Netherlands claims against each other in respect of Dutch New Guinea (West Irian) and the Moroccan claim against France in respect of Mauritannia.[69] The United Nations has also dealt with claims from colonial and other dependent peoples in which the principle of self-determination has been claimed to be relevant. In the disposition of the former Italian colonies the principle of self-determination was raised in the case of Lybia, Eritrea and in some sense in the solution of the Palestine problem.[70] The principle was claimed to be relevant in the United Nations attempts to unify and guarantee the independence of Korea in the first post-war years; and it was invoked frequently in the controversy about the Problem of Unifying the Ewe people of British and French Togoland between 1948 and 1956.[71] The principle has also been invoked in the solution of the problems relating to the future of the Trust territories of Camerroons, Ruanda-Urundi and in the dispute over the administration and future of South-West Africa.[72] Finally the principle of self-determination has been pressed into service in the program of "decolonization" which has become one

of the most important of the United Nations' programs of action especially over the past half decade.[73] In the program of decolonization, the principle of self-determination is invoked in addition to the need to maintain "international peace and security," which is one of the principle objectives of the United Nations. The combined principles of self-determination and the maintenance of international peace have been invoked before the United Nations in a number of situations chief among which are the Algerian situation, the question of Angola, the claims of Morocco and Tunisia against France and the question of South-West Africa. This combination of principles was one of the chief props on which the historic "Declaration on the Granting of Independence to Colonial Peoples and Territories" of 1960 was based.[74]

Moreover the United Nations has discussed and taken action on the principle of self-determination even when there have been no concrete claims by any people for that right. On their own motion, various organs of the United Nations have made extensive studies on different aspects of the principle and in relation to different situations. In 1951, the General Assembly in a resolution, requested that the Commission on Human Rights should include an article on "Self-determination" in the Covenant of Human Rights which that Commission was then discussing in draft form.[75] Since that request, the Commission of Human Rights, the Economic and Social Council, the Third

Committee of the General Assembly and the Plenary Session of the General Assembly have continuously studied and discussed the principle of self-determination from a variety of angles: both in regard to its theoretical contents and in regard to the measures and procedures which the United Nations, "having regard to its limitations in competence and resources" can take with a view to ensuring a wider and more adequate application of the principle.[76] These studies have related to the principle as it is to be applied to peoples in colonial territories and to independent states. In connection with self-determination for colonial peoples, the General Assembly, with the help of special committees (standing committees or temporary ad hoc committees) has made a number of important studies on the principles and modes of applying the principle in particular situations. Perhaps the most important of these studies have been the studies which were made between 1951 and 1960 on the factors and principles which should guide the Assembly and its members in deciding whether in each case a territory has ceased to be a dependent (non-self-governing) territory and has effectively exercised its right of self-determination. The first of these studies was made in 1951 by the Committee on Information from Non-Self-Governing Territories in 1951.[77] On the basis of its report, the General Assembly appointed an ad hoc committee to examine the question further. This committee produced a report in 1953 to which was annexed a

Comprehensive List of Factors indicative of the attainment of certain outcomes that were considered to be equivalent to the "full measure of self-government" which the Charter stipulates.[78] The General Assembly approved this list as a guide for future decision, but asserted that "each concrete case should be considered and decided upon in the light of the particular circumstances of that case and taking into the right of self-determination of peoples."[79] Again, after three unsuccessful attempts in 1956, 1957 and 1958, the General Assembly appointed another Committee to make a study of the "Principles which should guide members (of the United Nations) in determining whether any territory fell under the designation of non-self-governing territory, and hence was one for which the member in charge had assumed the obligations contained in Chapter XI of the Charter."[80] This Committee of six member states, submitted its report in 1960. It embodied 12 principles which the General Assembly later approved in the form of a resolution.[81]

The United Nations concern for the principle of self-determination for colonial peoples reached its culmination in the historic declaration of 1960 in which the General Assembly asked for the immediate and unconditional granting of independence to all colonial peoples and territories.[82] In 1961, and even more revolutionary resolution for the first time set up a United Nations Committee with the express duty

"to supervise and hasten the process of decolonization in consultation and collaboration with the administering authorities."[83] The activities of the Committee of Seventeen as indicated in its report,[84] and the subsequent decision of the General Assembly at its seventeenth session, to enlarge the committee and amplify its terms of reference were all the natural development of the movements that were set in motion in 1945.[85]

The United Nations, which began as a "mere enunciator" of the principle of self-determination, with no admitted competence or function in its application or the machinery to perform any, has gradually but systematically become the most active international agency directly engaged in applying and supervising the application of the principle to all peoples.[85] The United Nations is now not only the "midwife" of new states born under the aegis of that principle, but also the physician and nurse to these new juridical infants. It seeks to give all peoples not only the right to exercise self-determination to choose their political systems and associations, but the right to maintain this independence and to maintain also the other rights which have been found to be part of the principle of self-determination; the right to inviolability of territory and of sovereignty over natural wealth and resources. The United Nations has certainly travelled a long way from San Francisco in the same way that San Francisco was a long way from Versailles and from the days before 1914.[86]

Annex 95

United Kingdom, *The Mauritius Independence Order 1968 and Schedule to the Order: The Constitution of Mauritius* (4 Mar. 1968)

THE MAURITIUS INDEPENDENCE ORDER, 1968

GN No. 54 of 1968

His Excellency the Governor directs the publication, for general information, of the Mauritius Independence Order, 1968.

Le Reduit,
6th March, 1968.

Tom VICKERS,
Deputy Governor.

THE MAURITIUS INDEPENDENCE ORDER 1968

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of March 1968
Present,
THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows –

(1) This Order may be cited as the Mauritius Independence Order 1968.

(2) This Order shall be published in the Gazette and shall come into force on the day on which it is so published:

Provided that section 4(2) of this Order shall come into force forthwith. -

2.-(1) In this Order-

"the Constitution" means the Constitution of Mauritius set out in the schedule to this Order;

"the appointed day" means 12th March 1968;

"the existing Assembly" means the Legislative Assembly established by the existing Orders;

"the existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty. in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Mauritius immediately before the appointed day but does not include any Order
revoked by- this Order;

"the existing Orders" means the Orders revoked by section 3(i) of this Order.

(2) The provisions of sections 111, 112, 120 and 121 of the Constitution shall apply for the purposes of interpreting sections 1 to 17 of this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.
Revocations.

Annex 95

3.-(1) With effect from the appointed day, the Mauritius Constitution Order 1966(a), the Mauritius Constitution (Amendment) Order 1967(b) and the Mauritius Constitution (Amendment No. 2) Order 1967(c) and the Mauritius Constitution (Amendment No. 3) Order 1967(d) are revoked.

(2) The Emergency Powers Order in Council 1939(e), and any Order in Council amending that Order, shall cease to have effect as part of the law of Mauritius on the appointed day:

Provided that if Part 11 of the Emergency Powers Order in Council 1939 is in operation in Mauritius immediately before the appointed day a Proclamation such as is referred to in paragraph (b) of section 19(7) of the, Constitution shall be deemed to have been made on that day and to have been approved by the Assembly within seven days of that day under paragraph (a) of section 19(8) of the Constitution.

4.-(1) Subject to the provisions of this Order, the Constitution shall come into effect in Mauritius on the appointed day.

(2) The Governor (as defined for the purposes of the existing Orders) acting after consultation with the Prime Minister (as so defined) may at any time after the commencement of this subsection exercise any of the powers conferred upon the Governor-General by section 5 of this Order or by the Constitution to such extent as may in his opinion be necessary or expedient to enable the Constitution to function as from the appointed day.

5.-(1) The revocation of the existing Orders shall be without prejudice to the continued operation of any existing laws made, or having effect as if they had been made, under any of those Orders; and any such laws shall have effect on and after the appointee, day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Mauritius Independence Act 1968 (f) and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing Orders that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Mauritius Independence Act 1968 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may, by order published in the Gazette, at any time before 6th September 1968 make such amendments to any existing law (other than the Mauritius Independence Act 1968 or this Order) as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that, save as otherwise provided either expressly or by necessary implication, nothing in this Order shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Order or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

6.-(1) Where any office has been established by or under the existing Orders or any existing law and the Constitution establishes a similar or an equivalent office any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed on the appointed day to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oaths under the Constitution and, in the case of a person who holds or is acting in the office of a judge of the Supreme Court, to have complied with the requirements of section 79 of the Constitution (which relates to oaths):

Provided that any person who under the existing Orders or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution at the expiration of that period or upon the attainment of that age.

(2) Section 113(1) of the Constitution shall have effect-

(a) in relation to the person holding the office of Electoral Commissioner immediately before the appointed day as is it permitted him to be appointed to that office on the appointed day for a term expiring on .30th November 1969 or such later date as may be determined by the Judicial and Legal Service Commission; and

(b) in relation to the person holding the office of Commissioner of Police immediately before the appointed day as if it permitted him to be appointed to that office on the appointed day for a term expiring on such date (not being, earlier than 31st March 1969 or later than 3m September 1969) as may be determined by the Police Service Commission; and those persons shall be deemed to have been appointed as aforesaid and, in relation to them, the reference in section 113 (1) to the specified term shall be construed accordingly.

(3) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

Annex 95

7.-(1) Until such time as it is otherwise provided under section 39 of the Constitution, the respective boundaries of the twenty constituencies in the Island of Mauritius shall be the same as those prescribed by the Mauritius (Electoral Provisions) Regulation, 1966 (a) for the twenty electoral districts established by those Regulations in pursuance of the Mauritius (Electoral Provisions) Order 1966(b).

(2) If any election of a member of the Assembly is held in any constituency before 1st February 1969, and it is prescribed that any register of electors published before 1st February 1967 is to be used, then no person shall be entitled to vote in that constituency-

(a) in the case of a constituency in the Island of Mauritius, unless, in pursuance of the Mauritius (Electoral Provisions) Order 1966, he has been registered as an elector in the electoral district corresponding to that constituency;

(b) in the case of Rodrigues, unless, in Pursuance Of the Mauritius (Electoral Provisions) Order 11965(a)y he has been registered as an elector in Rodrigues as if Rodrigues had been established as an electoral district for the purposes of that Order.

8. (1) The persons who immediately before the appointed day were members of the existing Assembly shall as from the appointed day be members of the Assembly established by the Constitution as if elected as such in pursuance of section 31(2) of the Constitution and shall hold their seats in that Assembly in accordance with the provisions of the Constitution:

Provided that persons who immediately before the appointed day represented constituencies in the existing Assembly shall so hold their seats as if respectively elected to represent the corresponding constituencies under the Constitution.

(2) Any person who is a member of the Assembly established by the Constitution by virtue of the preceding provisions of this section and who, since he was last elected as a member of the existing Assembly before the appointed day, has taken the oath of allegiance in pursuance of section 49 of the Constitution established by the existing Orders shall be deemed to have complied with the requirements of section 55 of the Constitution (which relates to the oath of allegiance).

(3) The persons who immediately before the appointed day were unreturned candidates at the general election of members of the existing Assembly shall, until the dissolution of the Assembly next following the appointed day, be regarded as unreturned candidates for the purposes of paragraph 5 (7) of Schedule I to the Constitution; and for those purposes anything done in accordance with the provisions of Schedule I to the constitution established by the existing Orders shall be deemed to have been done in accordance with the corresponding provisions of Schedule 1 to the Constitution.

(4) For the purpose of section 57(2) of this Constitution, the Assembly shall be deemed to have had its first sitting after a general election on 22nd August 1967 (being the date on which the existing Assembly first sat after a general election).

9. The rules and orders of the existing Assembly, as those rules and orders were in force immediately before the appointed day, shall, except as may be otherwise provided under section 48 of the Constitution, have effect after the appointed day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

10. If by virtue of section 10(i) of the Mauritius (Constitution) Order 1966 the person referred to in section 9(i) of the Mauritius (Constitution) Order 1964(a) is immediately before the appointed day holding the office of Speaker of the existing Assembly, then, with effect from the appointed day-

(a) that person shall be deemed to be a member of the Assembly and to have been elected Speaker of the Assembly under section 32 of the Constitution; and
(b) the provisions of the Constitution (other than paragraphs (a), (b) and (e) of section 32(3)) shall apply to him accordingly,

until such time as he vacates the office of Speaker under paragraph (c) or (d) of section 32(,I) of the Constitution or under section 32(b) of the Constitution or becomes a candidate for election as a member of the Assembly.

11. All proceedings commenced or pending before the Supreme Court, the Court of Civil Appeal or the Court of Criminal Appeal of Mauritius immediately before the appointed day may be carried on before the Supreme Court, the Court of Civil Appeal or the Court of Criminal Appeal, as the case may be, established by the Constitution.

12.-(l) Unless it is otherwise prescribed by Parliament, the Court of Appeal in Court of Appeal may exercise on and after the appointed day such jurisdiction and powers in relation to appeals from the Supreme Court of Seychelles as may be conferred upon it by or in the pursuance of the Seychelles Civil Appeals Order 1967 (b) or of any other law in that behalf for the time being in force in Seychelles.

(2) The provisions of section 81 of the Constitution shall not apply in relation to decisions -of the Court of Appeal given in the exercise of any jurisdiction and powers conferred upon it in relation to appeals from the Supreme Court of Seychelles, and appeals shall lie to Her Majesty in Council from such decisions in accordance with the Seychelles (Appeals to Privy Council) Order 1967 (a) or any other law in that behalf for the time being in force in Seychelles.

(3) The Seychelles Civil Appeals Order 1967 and the Seychelles (Appeals to Privy Council) Order 1967 shall cease to form part of the law of Mauritius with effect from the appointed day.

13.-(1) Until such time as a salary and allowances are prescribed by Parliament, there shall be paid to the holder of any office to which section 108 of the Constitution applies a salary and allowances calculated at the same rate as the salary and allowances paid

immediately before the appointed day to the holder of the office corresponding thereto.

(2) If the person holding the office of Governor immediately before the appointed day becomes Governor-General his terms and conditions of service, other than salary and allowances, as Governor-General shall, until such time as other provisions are made in that behalf, be the same as those attaching to the office of Governor immediately before the appointed day.

14. Any power that, immediately before the appointed day, is vested in a Commission established by any of the existing 0rders and that, under that Order, is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority on the appointed day in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the appointed day may be carried on before the appropriate Commission established by the Constitution.

15.-(1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officer's in that branch to whom this section applies and whose retirement would in the opinion of those authorities cause vacancies that could appropriately be filled by such suitably qualifi6d local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) A notice given under the preceding subsection requiring an officer to retire from the public service shall be not less than six months from the date he receives the notice, at the expiration of which he shall proceed on leave of absence pending retirement:

Provided that, with the agreement of the officer or if the Officer is on leave when it is given, a notice may specify a shorter period.

(3) This section applies to any officer who is the holder of a pensionable office in the public service and is @a, designated Officer for the purposes of the Overseas Service (Mauritius) Agreement 1961.

16.-(1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:-

(a) a decision of the appropriate Commission to give such concurrence as is required by subsection (1) or (2) of section 95 of the Constitution in relation to the refusal,

withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer;

(b) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or

(c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer,

(2) Where any such decision as is referred to in the preceding subsection is taken by any authority, the authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the Prime Minister in writing of that application and the Prime Minister shall thereupon appoint an Appeals Board consisting of-

(a) one member selected by the Prime Minister;

(b) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and

(c) one member selected by the two other members jointly (or, in default of agreement between those members, by the judicial and Legal Service Commission) who shall be the chairman of the Board.

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose-

(a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;

(b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case, and

(c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(6) When the Appeals Board has completed its consideration of the case, then-

(a) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (a) of

subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision but-

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he tad so retired; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(6) In this section-

"pensions benefits" has the meaning assigned to that expression in section 94 of the Constitution; and

"legal representative" means a person lawfully in or entitled to be in Mauritius and entitled to practise in Mauritius as a barrister or as an attorney-at-law;

(7) This section applies to an officer who is the holder of a pensionable office in the public service and-

(a) who is a member of Her Majesty's Overseas Civil Service or of Her Majesty's Overseas judiciary;
(b) who has been designated for the purposes of the Overseas Service (Mauritius) Agreement 1961; or
(c) who was selected for appointment to any office in the public service or whose appointment to any such office was approved by a Secretary of State,

17.-(1) Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of this Constitution not specified in section 47(2) of the Constitution:

Provided that section 6 and section 8(4) and this section may be altered by Parliament only in the same manner as the provisions so specified.

(2) Section 47(4) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in section 47 of the Constitution to any provision of the Constitution and to the alteration of any such provision.

W. G. AGNEW.

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CHAPTER I
THE STATE AND THE CONSTITUTION

1. Mauritius shall be a sovereign democratic State.

2. This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
OF THE INDIVIDUAL

3. It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely-

(a) the right of the individual to life, liberty, security of the person and the protection of the law;

(a) shall remain in force for such period, not exceeding twelve months, as the Assembly may specify in the resolution;
(b) may be extended in operation for further periods not ,exceeding twelve months at a time by a further resolution supported by the votes of a majority of all the members of the Assembly;
(c) may be revoked at any time by resolution of the Assembly.

CHAPTER III

CITIZIENSHIP

20.-(1) Every person who, having been born in Mauritius, is on 11th March 1968 a citizen of the United Kingdom and Colonies shall become a citizen of Mauritius on 12th March 1968.

(2) Every Person who on the 11th March 1968, is a citizen of the United Kingdom and Colonies-

(a) having become such a citizen under the British Nationality Act 1948(a) by Virtue of his having been naturalized by the Governor of the former colony of Mauritius as a British subject before that Act came into force; or
(b) having become such a citizen by virtue of his having been naturalized or registered by the Governor of the former colony of Mauritius under that Act,

shall become a citizen of Mauritius on 12th March 1968.

(3) Every person who, having been born outside Mauritius is on 11th March 1968 a citizen of the United Kingdom and Colonies shall, if his father becomes or would, but for his death have become a citizen of by virtue of subsection (1) or subsection (2) of this section, become a citizen of Mauritius on 12th March 1968.

(4) For the purposes of this section a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former colony of Mauritius immediately before 8th November 1965 but were not so comprised immediately before 12th March 1968 unless his father was born in the territories which were comprised in the colony of Seychelles immediately before 8th November 1965.

21.-(1) Any woman who, on 12th March 1968 is or has been married to a person-

(a) who becomes a citizen of Mauritius by virtue of the preceding section; or
citizens.
(b) who, having died before 12th March 1968 would, but for his death, have become a citizen of Mauritius by virtue of that section,

shall be entitled upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius.

(2) For the purpose of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Mauritius or the Consolidated Fund and the service and redemption of debt thereby created.

110.-(1) There shall be a Director of Audit, whose office shall be a public office and who shall be appointed by the public Service Commission, acting after consultation with the Prime Minister and the Leader of the Opposition.

(2) The public, accounts of Mauritius and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the Assembly.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER XI
MISCELLANEOUS

111.-(1) In this Constitution, unless the context otherwise requires-

"the Assembly" means the Legilative Assembly established by this Constitution;

"the Commonwealth" means Mauritius and any country to which section 25 of this Constitution for the time being applies, and includes the dependencies of any such country;

"the Court of Appeal" means the Court of Civil Appeal or the Court of Criminal Appeal;

"disciplined force" means-

(a) a naval, military or air force;
(b) the Police Force;
(c) a fire service established by any law in force in Mauritius; or
(d) the Mauritius Prison Service;

"disciplinary law" means a law regulating the discipline-

(a) of any disciplined force; or

(b) of persons serving prison sentences;

"financial year" means the period of twelve months ending on the thirtieth day of June in any year or such other day as may be prescribed by Parliament;

"the Gazette means the Government Gazette of Mauritius;

"the Island of Mauritius" includes the small islands, adjacent thereto;

"Local Authority" means the Council of a town, district or village in Mauritius;

"local government officer" means a person holding or acting in any office of emolument in the service of a Local Authority but does not include a person holding or acting in the office of Mayor, Chairman or other member of a Local Authority or Standing Counsel or Attorney Local Authority;

"Mauritius" means the territories which immediately before 12th March 1968 constituted the colony of Mauritius;

"oath" includes affirmation;

"oath of allegiance" means such oath of allegiance as prescribed in schedule 3 to this Constitution;

"Parliament" means the Parliament established by this Constitution;

"the Police Force" means the Mauritius Police Force and includes any other police force established in accordance with such provision as may be prescribed by Parliament;

"prescribed" means prescribed in a law:

Provided that-

(a) in relation to anything that may be prescribed only by Parliament, it means prescribed in any Act of Parliament; and

(b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an order made by that other person or authority;

"public office" means, subject to the provisions of the next following section, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"the public service" means the service of the State in a civil capacity in respect of the government of Mauritius;

"Rodrigues" means the Island of Rodrigues.

"session" means the sittings of the Assembly commencing when Parliament first meets after any general election or its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

"subordinate court" means any court of law subordinate to the Supreme Court but does not include a court-martial.

(2) Save as otherwise provided in this Constitution, the Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as is applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

112.-(1) In this Constitution, unless the context otherwise requires, the expression "public office"-

(a) shall be construed as including the offices of judges of the Supreme Court, the offices of members of all other courts of law in Mauritius (other than courts-martial), the offices of members of the Police Force and the offices on the Governor-General's personal staff; and

(b) R: A 48/91

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown or under a Local Authority.

(3) For the purposes of sections 38(3), 88(2) and 90(2) of this Constitution, a person shall not be considered as holding public office or a local government office, as the case may be, by reason only that he is in receipt of fees and allowances by virtue of his membership of a board, council, committee, tribunal or other similar authority (whether incorporated or not).

113.- (R& R: Act 2/82)

114.-(1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable, to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

115. (1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

116.-(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that-

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any person, to whom the provisions of section 78(2) to (6) or section 92(2) to (5) apply to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

117. Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant-

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

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Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

118. (1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any such Commission shall require the concurrence of a majority of all the members thereof and subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the chairman shall have and shall exercise a casting vote

(3) Subject to the provisions of this section, any such Com mission may regulate its own procedure.

(4) In the exercise of their functions under this Constitution, no such Commission shall be subject to the direction or co of any other person or authority.

(5) In addition to the functions conferred upon it by or under this Constitution any such Commission shall have such power and other functions (if any) as may be prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) The provisions of subsections (1), (2), (3) and (4) of the section shall apply in relation to a tribunal established for the purposes of section 5(4), 15(4), 18(3), 78(4), 92(4), or 93(4) of this Constitution as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

119. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

120. Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, etc. rule or direction.

121. Where any person or authority other than the President is directed by this Constitution to exercise any function after consultation with

any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

122. All laws other than Acts of Parliament that make any such provision as is mentioned in section 5 (1) or section 15 (3) of this Constitution or that establish new criminal offences or impose new penalties shall be laid before the Assembly as soon as is practicable after they are made and (without prejudice to any other power than may be vested in the Assembly in relation to any such law) any such law may be revoked by the Assembly by resolution passed within thirty days after it is laid before the Assembly:

Provided that-

(a) if it is so prescribed by Parliament in relation to any such law, that law shall not be laid before the Assembly during a period of public emergency within the meaning of Chapter 11 of this Constitution;
(b) in reckoning the period of thirty days after any such law is laid before the Assembly no account shall be taken of any period during which Parliament is dissolved or prorogued or is adjourned for more than four days.

SCHEDULE I TO THE CONSTITUTION

ELECTION OF MEMBERS OF LEGISLATIVE ASSEMBLY

1. -(1) There shall be sixty-two seats in the Assembly for members representing constituencies and accordingly each constituency shall return three members to the Assembly in such manner as may be prescribed, except Rodrigues, which shall so return two members.

(2) Every member returned by a constituency shall be directly elected in accordance with the provisions of this Constitution at a general election held in such manner as may be prescribed.

(3) Every vote cast by an elector at any election shall be given by means of a ballot which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast; and no vote cast by any elector at any general election shall be counted unless he cast valid votes for three candidates in the constituency in which he is registered or, in the case of an elector registered in Rodrigues, for two candidates in that constituency.

2.-(1) Every political party in Mauritius, being a lawful association, may, within fourteen days before the day appointed for the nomination of candidates for election at any general election of members of the Assembly, be registered as a party for the purposes of that election and paragraph 5(7) of this schedule by the Electoral Supervisory Commission upon making application in such manner as may be prescribed:

Provided that any two or more political parties may be registered as a party alliance for those purposes, in which case they shall be

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CHAPTER I – THE STATE AND THE CONSTITUTION

1. The State

Mauritius shall be a sovereign democratic State which shall be known as the Republic of Mauritius.

[S. 1 amended by Act 48 of 1991.]

2. Constitution is supreme law

This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUAL

3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms—

(a) the right of the individual to life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and

(c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. Protection of right to life

(1) No person shall be deprived of his life intentionally save in execution of the

charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Mauritius or the Consolidated Fund and the service and redemption of debt thereby created.

110. Director of Audit

(1) There shall be a Director of Audit, whose office shall be a public office and who shall be appointed by the Public Service Commission, acting after consultation with the Prime Minister and the Leader of the Opposition.

(2) The public accounts of Mauritius and of all Courts of law and all authorities and officers of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Director of Audit shall submit his reports to the Minister responsible for the subject of finance, who shall cause them to be laid before the Assembly.

(4) In the exercise of his functions under this Constitution, the Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER XI – MISCELLANEOUS

111. Interpretation

(1) In this Constitution—

"Assembly" means the National Assembly established by this Constitution;

"Commonwealth" means Mauritius and any country to which section 25 of this Constitution for the time being applies and includes the dependencies of any such country;

"Court of Appeal" means the Court of Civil Appeal or the Court of Criminal Appeal;

"disciplinary law" means a law regulating the discipline—

(a) of any disciplined force; or

(b) of persons serving prison sentences;

"disciplined force" means—

(a) a naval, military or air force;

(b) the Police Force;

(c) a fire service established by any law in force in Mauritius; or

(d) the Mauritius Prison Service;

"financial year" means the period of 12 months ending on 30 June in any year or such other day as may be prescribed by Parliament;

"*Gazette*" means the Government *Gazette* of Mauritius;

"Government" means the Government of the Republic of Mauritius;

"Island of Mauritius" includes the small islands adjacent to the Island of Mauritius;

"Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833 of the United Kingdom as from time to time amended by any Act of Parliament of the United Kingdom;

"local authority" means –

(a) the Municipal Council of any city or town;

(b) the District Council of any district;

(c) the Village Council of any village; or

(d) any new local authority created under any enactment;

"local government officer" means a person holding or acting in any office of emolument in the service of a local authority but does not include a person holding or acting in the office of Lord Mayor, Mayor, Chairperson, or other member of a local authority or standing Counsel or attorney of a local authority;

"Mauritius" includes—

(a) the Islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius;

(b) the territorial sea and the air space above the territorial sea and the islands specified in paragraph (a);

(c) the continental shelf; and

(d) such places or areas as may be designated by regulations made by the Prime Minister, rights over which are or may become exercisable by Mauritius;

"oath" includes affirmation;

"oath of allegiance" means the oath of allegiance prescribed in the Third Schedule;

"Parliament" means the Parliament established by this Constitution;

"Police Force" means the Mauritius Police Force and includes any other police force established in accordance with such provision as may be prescribed by Parliament;

"prescribed" means prescribed in a law:

Provided that—

(a) in relation to anything that may be prescribed only by Parliament, it means prescribed in any Act of Parliament; and

(b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an Order made by that other person or authority;

"President" means the President of the Republic of Mauritius;

"public office" means, subject to section 112, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"public service" means the service of the State in a civil capacity in respect of the Government of Mauritius;

"Rodrigues" means the Island of Rodrigues;

"session" means the sittings of the Assembly commencing when Parliament first meets after any general election or its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Assembly is sitting continuously without

adjournment, and includes any period during which the Assembly is in committee;

"State" means the Republic of Mauritius;

"subordinate Court" means any Court of law subordinate to the Supreme Court but does not include a Court martial;

"Vice-President" means the Vice-President of the Republic of Mauritius.

(2) Except as otherwise provided in this Constitution, the Interpretation Act 1889* shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation to it as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

[S. 111 amended by Act 2 of 1982; Act 48 of 1991; s. 22 of Act 4 of 2008 w.e.f. 1 July 2008; s. 6 of Act 1 of 2009 w.e.f. 1 July 2009; s. 3 of Act 35 of 2011 w.e.f. 12 Decmener 2011.]

112. References to public office

(1) In this Constitution, "public office"—

(a) shall be construed as including the offices of Judges of the Supreme Court, the offices of members of all other Courts of law in Mauritius (other than Courts martial), the offices of members of the Police Force and the offices of the President's personal staff; and

(b) shall not be construed as including—

(i) the office of member of the Assembly or the Rodrigues Regional Assembly or its Chairperson;

(ii) any office, appointment to which is restricted to members of the Assembly or the Rodrigues Regional Assembly; or

(iii) the office of member of any Commission or tribunal established by this Constitution.

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service of the State or under a local authority.

(3) For the purposes of sections 38 (3), 88 (2) and 90 (2), a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of fees and allowances by virtue of his membership of a board, council, committee, tribunal or other similar authority (whether incorporated or not).

[S. 112 amended by Act 48 of 1991; s. 3 of Act 32 of 2001 w.e.f. 18 January 2002.]

113. Appointment to certain offices

(1) A suitably qualified person may, irrespective of his age, be appointed to hold the office of Electoral Commissioner, Director of Public Prosecutions, Chief Justice, Senior Puisne Judge, Puisne Judge, Commissioner of Police or Director of Audit for such term, not exceeding 4 years as may be specified in the instrument of appointment and this Constitution shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(2) Notwithstanding any provision to the contrary in this Constitution, but subject to subsection (3), an appointment made under section 87 or 89 (3) (h) shall be for such term as may be specified in the instrument of appointment.

(3) An appointment to which subsection (2) applies—

* 1889 c 63 (UK).

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Samuel A. Bleicher, "The Legal Significance of Re-Citation of General Assembly Resolutions", *American Journal of International Law*, Vol. 63 (1969)

THE LEGAL SIGNIFICANCE OF RE-CITATION OF GENERAL ASSEMBLY RESOLUTIONS

By Samuel A. Bleicher*

In recent years,[1] scholarly attention has increasingly focused on the law-making effect of General Assembly resolutions.[2] The citation of previous resolutions in later resolutions of the General Assembly is one potentially significant aspect of this question, yet there has been no examination of it in legal literature. Anyone familiar with the Assembly's work knows that the phenomenon is pervasive. 1,149 resolutions, just over half of the 2,247 passed in the first twenty-one sessions of the General Assembly, refer to previous resolutions, and the cited resolutions have been invoked an average of 2.68 times.[3] More important from a legal standpoint is the fact that a very few resolutions have been cited much more often than the average. Resolution 1514(XV) was cited in 95 subsequent resolutions in the first six sessions following its passage, and Resolution 217(III) was cited 75 times in its first nineteen years. Seven resolutions have been referred to on more than sixteen occasions since their approval by the General Assembly, and seven have been cited more than twice in each session since passage.[4] A consideration of the legal relevance of this phenomenon seems worth pursuing, and any such inquiry must begin first of all with an over-all theoretical analysis of General Assembly resolutions as a source of international law.

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1 Outstanding pioneering efforts are found in Sloan, "The Binding Force of a 'Recommendation' of the General Assembly of the United Nations," 25 Brit. Yr. Bk. Int. Law 1 (1948), and Johnson, "The Effect of Resolutions of the General Assembly of the United Nations," 32 *ibid.* 97 (1955–1956).

2 *E.g.*, Bailey, "Making International Law in the United Nations," 1967 Proceedings, American Society Int. Law 233; Higgins, The Development of International Law Through the Political Organs of the United Nations (1963); Asamoah, The Legal Significance of the Declarations of the General Assembly of the United Nations (The Hague: Martinus Nijhoff, 1966); and the papers given at the 1965 meeting of the American Society of International Law, 1965 Proceedings, American Society Int. Law 108–139.

3 The data used in this article were produced as part of a computerized study of General Assembly resolutions being carried on by the author. See 62 A.J.I.L. 143 (1968). A note of thanks is due to Ronald Webster and the staff of the University Computation Center for their assistance in assembling this material.

4 An enumeration of the most-cited resolutions, in terms of both total citations and average number of citations per session, appears below.

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I. The Lawmaking Rôle of General Assembly Resolutions

Although the General Assembly is not a legislature in the ordinary sense of the term,[5] there are two special contexts in which it has generally recognized lawmaking powers. First, the Assembly clearly has legislative authority with respect to most of the *internal* operations of the United Nations. It directs and supervises the work of the Secretary General, the Economic and Social Council, and the Trusteeship Council, as well as the subsidiary organs it has established.[6] It also approves the budget of the Organization and allocates its expenses,[7] and it has the power, upon recommendation of the Security Council, to admit new Members[8] and expel from the Organization Members which have "persistently violated the principles contained in the present Charter."[9] As a result of its broad powers, the General Assembly is, except in the field of international peace and security, the predominant organ in the United Nations, and its decisions are largely responsible for the tasks and direction that the Organization undertakes.

Second, in relation to the rules of international law which govern the conduct of Member States *outside* the United Nations, it has been pointed out that decisions of the General Assembly which settle legal disputes have a legal significance independent of any formal lawmaking power given by the Charter.[10] The settlement of any dispute, inside or outside the United Nations, constitutes a precedent which enters into the stream of decisions which may ultimately give rise to a rule of international law. The disposition of such disputes in the General Assembly typically hastens this evolution by providing a more extensive expression of state opinion on the dispute at hand and the legal rules which are invoked to justify the conduct of the parties. Thus, for example, the admission of the state of Israel to the United Nations over the objections of several Arab states and the United Kingdom that Israel did not have a defined territory and therefore was not a state, constituted a precedent for the proposition that disputed borders do not deprive an entity of the "defined territory" required for statehood.

[5] A proposal by the Philippine Delegation at the United Nations Conference on International Organization that the Assembly be given legislative power was defeated overwhelmingly. Doc. 507, II/2/22, 9 U.N.C.I.O. Docs. 70 (1945); *cf.* Doc. 571, II/2/27, *ibid.* 80–81 (1945).

[6] U.N. Charter, Arts. 98, 66, 87, and 22, respectively. One authority has suggested that the primary legal significance of General Assembly resolutions arises not from the content of the resolutions themselves, but from the ability of the Assembly, by the "executive" activities of establishing committees of investigation and peace forces, to bring about some compliance with international law. See Skubiszewski, "The General Assembly of the United Nations and Its Power to Influence National Action," 1964 Proceedings, American Society Int. Law 153.

[7] U. N. Charter, Art. 17.

[8] U.N. Charter, Art. 4, par. 2.

[9] U.N. Charter, Art. 6.

[10] This theory of the importance of the practice of the General Assembly and the Security Council is the underlying rationale for the excellent work by Rosalyn Higgins, The Development of International Law Through the Political Organs of the United Nations (1963).

The rejection of similar objections to the admission of Kuwait and Mauritania has strengthened this rule.[11] But the legal significance of these precedents derives not from the content of the resolutions passed by the General Assembly, but from the fact that on a specific controverted question in a concrete case a particular decision was reached by the community of nations. The resolution admitting Israel to membership says nothing about defined territory as an attribute of statehood, either as a general matter or in relation to Israel specifically.[12] The resolutions admitting Mauritania[13] and Kuwait[14] similarly make no reference to this matter. The precedent and its legal relevance come from the decision, not from the resolution, and it is equally valuable if the decision is not embodied in a resolution at all, as is the case with the Security Council rule that abstention by a Great Power does not constitute a veto.[15] The mechanism of law-creation involved here is custom, not convention or legislation.

The crucial question remains: Can a General Assembly resolution which announces in abstract form a rule governing state conduct outside of the United Nations have, by virtue of its content, a lawmaking effect? The United Nations Charter makes no allocation of formal prescriptive authority to the General Assembly. It provides only for General Assembly recommendations[16] in such fields as the maintenance of international peace and security and the principles on which it is based, the development and codification of international law, and the settlement of particular disputes among Member States.[17] It might be argued that a state which has voted in favor of a resolution which "recommends" a rule of international law is obliged to act in accordance with that rule because of the expectations it has created. From a jurisprudential perspective, virtually all limitations on the conduct of states are properly justified on the basis of the expectation of others that their conduct will be so limited. Typically these limitations arise out of the universally recognized formality of signing a document containing an expression of these limitations or out of the

[11] *Ibid.* 17–20.

[12] Res. 273(III).

[13] Res. 1631(XIV).

[14] Res. 1872(S-IV).

[15] An eminent authority has recently concluded: "As a practical matter, it would seem extremely unlikely that any major enforcement measures under Chapter VII of the Charter would be taken with all the permanent members abstaining. . . . If such cases do arise in the future, the permanent members must be deemed to be aware of the consequences in the light of the previous interpretation which they originated and which they have applied consistently since the establishment of the United Nations with respect to voluntary abstentions on their part under Article 27, paragraph 3, of the Charter. That practice has been acquiesced in by other Members of the Organization, and can now be considered a firm part of the constitutional law of the United Nations." Stavropoulos, "The Practice of Voluntary Abstention by Permanent Members of the Security Council under Article 27, Paragraph 3, of the Charter of the United Nations," 61 A.J.I.L. 736, at 752 (1967).

[16] Sloan, note 1 above, at 7–14, demonstrates rather convincingly that the word "recommend" was widely used before the drafting of the U.N. Charter to represent a higher degree of obligation than its "natural" meaning would indicate. His analysis leaves the question of its actual significance largely unanswered, however.

[17] U.N. Charter, Arts. 10–14.

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previous conduct of the same or other states in similar contexts.[18] The question here is whether there are circumstances in which assent to a proscription in the form of a vote in the General Assembly, either alone or in conjunction with other elements, can create such an expectation.[19]

The difficulty is that there is no justifiable basis for any expectation about future conduct if it is clear at the outset that the assertion is not intended to control that conduct. There should be no obstacle to a "change of heart" by a state which finds advantage in altering its view of the law, unless there was initially some reason for others to believe that the asserting party intended to constrain itself by its words.[20] While it may be legitimate to expect some continuity in state policy, a vote for a particular General Assembly resolution by itself creates little more basis for a fixed expectation than does a unilateral declaration of intended future behavior by a representative of that state, which in the absence of special circumstances can be altered at will. This conclusion is particularly necessary in light of the emphasis on formalities in international legal doctrine.

However, if some basis is found for a reasonable expectation that a favorable General Assembly vote was thought by the voters to *require* conforming conduct, the difficulty of attributing legal significance to the General Assembly resolution is largely overcome. If, for example, a resolution declares a rule to be pre-existing law and attributes it to a recognized source of international law, a foundation has been established for reliance upon that resolution as a limitation on the freedom of action of at least those who voted for it. A nation's vote for such a resolution is in effect a public statement of adherence to the legal principles embodied in the resolution. Supporting states have thereby declared that an accepted rule of international law requires them to behave in the manner described by the resolution, and they must reasonably foresee that other states will take them at their word. If a state does rely on that assertion, it has a right to legal protection to avoid any injury that might flow from subsequent non-

[18] An excellent analysis of the broad problem is presented in Schachter, "Towards a Theory of International Obligation," 8 Virginia Journal Int. Law 300 (1968).

[19] The problem could be approached as one of estoppel, which is a generally accepted international law doctrine. MacGibbon, "Estoppel in International Law," 7 Int. and Comp. Law Q. 468 (1958). But an examination of the requisites of a "promissory estoppel" leads to the same problem described in the text. The principle underlying estoppel is the foreseeable creation of a reasonable expectation that a party will behave in a manner consistent with its assertions, followed by action by another in reliance upon that expectation which will result in injury to the acting party if the asserting party is permitted to ignore his own assertions. Invoking the doctrine of estoppel raises, but does not answer, the crucial question of how and to what extent a General Assembly vote *creates* the required expectation.

[20] This is not to say that votes in the General Assembly cannot be relied upon because they are "politically" motivated. A state which, for whatever reason, openly supported a resolution in which it did not believe, should not be permitted to use that fact as a defense to an obligation built upon its public expression of support for the resolution, any more than a party to a treaty can avoid that obligation by demonstrating an ulterior motive for adherence. "True" motive on the part of the state voting for a resolution is not the missing element here, but reasonable basis for relying upon the public expression embodied in that vote.

compliance by any of those states. Additional justification can be found in the concurrent expression of the same obligation by other states which also proclaim their belief that they are bound by law to conduct themselves in the same manner. This analysis can be better understood through a systematic examination of its operation in relation to the generally accepted sources of international law.[21]

A. *Treaties—The United Nations Charter*

The most obvious way in which a General Assembly resolution can be linked with an unquestionably binding source of law is for it to elaborate in specific terms an obligation found in the United Nations Charter. The legal force of such an elaboration is analogous to the effect given generally to subsequent interpretations of a treaty. It can be argued that, insofar as a resolution deviates from the Charter's "original meaning," *i.e.*, the interpretation reached if one ignores everything subsequent to signature, a later resolution has no binding effect, even on those parties who announced their belief that the resolution did in fact express their Charter obligation.[22] The rationale for this emphasis on the original text is summed up in the following statement by Max Huber, which is cited with approval in the commentary to Articles 27 and 28 of the International Law Commission's Draft Articles on the Law of Treaties:

> le texte signé est, sauf de rares exceptions, la seule et la plus récente expression de la volonté commune des parties.[23]

But it is significant that the Draft Articles provide that, in interpreting a treaty, "there shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty; . . ."[24] The Commission rejected proposals that the draft refer only to subsequent agreements between all the parties.[25] The Draft Articles actually exclude constitutive treaties because of their special character[26] which, among other things, calls for an extra degree of latitude in giving effect to the subsequent practice and understandings that develop around such treaties.[27] This approach is desirable not only because the

[21] The analysis that follows was inspired in large part by the oral argument presented by Ernest A. Gross on behalf of Ethiopia and Liberia in the South West Africa Cases, [1966] I.C.J. Rep. 6. The relevant portions are reprinted in Falk and Mendlovitz, The United Nations 79 (1966), Vol. III of the Strategy of World Order series.

[22] See Separate Opinion of Sir Percy Spender, Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151, at 184–197.

[23] "The signed text is, with rare exceptions, the sole and most recent expression of the common will of the parties." Huber, 44 Annuaire de l'Institut de Droit International 199 (1952).

[24] Draft Articles on the Law of Treaties, U.N. Doc. No. A/6309, 61 A.J.I.L. 263 (1967).

[25] See comments by Rosenne in 1 I.L.C. Yearbook (1966) 187, par. 25.

[26] Art. 4, Draft Articles, note 24 above.

[27] The literature on the flexibility that must be permitted when interpreting a constitutive treaty is voluminous. See, for example, Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. Rep. 174; Dissenting Opinion of Judge

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survival and effectiveness of the organization are often more important to the parties than their precise obligations under particular treaty provisions, but also because, by contrast with Huber's general statement, the members of an international organization are constantly in a position to elaborate and elucidate their common understanding through the pronouncements of their assemblies. General Assembly resolutions that declare the meaning of the Charter are one method of carrying on that process, and they should be accorded the weight that they deserve as an authoritative expression by the parties to a constitutive treaty of the scope and extent of their obligations under it.

What of the states that abstain or oppose the resolution in question? Abstention can be treated, without any injustice, as an acquiescence in the obligations specified, on the basis that any real objection could have been expressed by a negative vote, which was equally available to the abstaining state. A negative vote cannot in any sense be construed as an approval of the resolution. But that state might still be bound by the interpretation if it was a reasonable choice from among various rational alternatives.[28] Since it is obvious that no linguistic expression can be clear in all its aspects and in relation to all its implications and all subsequent events, it must be assumed that a state agreeing to be bound by the terms of a constitutive instrument necessarily accepts the possibility that some of the subsequent interpretations will not be those that the state would have preferred, even though they were interpretations that it might have expected if it could have imagined the context in which they were made. Having chosen to bind itself by the Charter in spite of this awareness, the state must be held to subsequent reasonable interpretations of it. The fact that the particular interpretation which was ultimately adopted was not the one the objecting state had hoped for cannot be accepted as a basis for considering that state free from the effect of the interpretation.

B. *Custom*

Another source of law from which a General Assembly resolution may draw binding legal effect is customary international law. According to standard definitions[29] a customary rule comes into existence only where there are acts of states in conformity with it, coupled with a belief that those acts are required by international law. In this context, General Assembly resolutions purporting to set out a customary rule of international

Jessup in South West Africa Cases, [1966] I.C.J. Rep. 6, at 352–353; Pollux, "The Interpretation of the Charter," 23 Brit. Yr. Bk. Int. Law 54 (1946); McDougal and Gardner, "The Veto and the Charter: An Interpretation for Survival," 60 Yale Law J. 258 (1951); Gordon, "The World Court and the Interpretation of Constitutive Treaties," 59 A.J.I.L. 794 (1965).

[28] *Cf.* Engel, "Procedures for De Facto Revision of the Charter," 1965 Proceedings, American Society Int. Law 109–111.

[29] 1 Lauterpacht, Oppenheim's International Law 25–27 (8th ed., 1955); Brierly, The Law of Nations 59–62 (6th ed., 1963); see Wolfke, Custom in Present International Law 28–42 (1964).

law can serve several functions. First, a resolution declaring that a particular principle is binding as customary law supplies outstanding evidence of one of the requisites for the existence of such a rule: a belief on the part of states that they must behave according to its dictates.[30] Together with prior or subsequent conforming conduct, the resolution "creates" a customary law by fulfilling the precondition of recognition.[31]

A second and perhaps equally significant rôle for General Assembly resolutions is the clarification of the "acts" the rule is based upon. The series of phenomena which are the "acts" giving rise to a proscriptive or permissive custom may be susceptible of many interpretations, even when the diplomatic correspondence which usually attends them is taken into consideration. The significance of the custom growing out of the famous "Cutting Incident," [32] for example, has been deprecated by one writer on the ground that the arguments misconstrued or overlooked certain crucial aspects of the factual situation.[33] A communal assessment of the facts of an "incident" and related state conduct could assist in crystallizing the rule.

Third, a resolution can deal with the intricacies and scope of a customary rule in a way that diplomatic correspondence is unlikely to do, because a

[30] Bin Cheng, in "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?" 5 Indian Journal Int. Law 23 (1965), says (p. 36) that "there need . . . be no usage at all in the sense of repeated practice, provided that the *opinio juris* of the States concerned can be clearly established." He concludes that

"8. Provided that the intention is expressed articulately and without ambiguity, there appears to be no reason why an Assembly resolution may not be used as a means for identifying the existence and contents of a new *opinio juris.*" (P. 46.)

[31] A Memorandum by the Office of Legal Affairs, U.N. Doc. E/CN.4/L.610 (1962), stated that

"3. In United Nations practice, a declaration is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Declaration on Human Rights. A recommendation is less formal.

"4. Apart from the distinction just indicated, there is probably no difference between a 'recommendation' or a 'declaration' in United Nations practice as far as strict legal principle is concerned. A 'declaration' or a 'recommendation' is adopted by resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'. However, in view of the greater solemnity and significance of a 'declaration', it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, *in so far as the expectation is gradually justified by State practice,* a declaration may by custom become recognized as laying down rules binding upon States.

"5. In conclusion, it may be said that in United Nations practice, a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where *maximum compliance* is expected." (Emphasis added.)

This concept can be substantially extended by taking into account *past* practice which conforms to the principles set forth in the resolution, as well as subsequent practice.

[32] 2 Moore, Digest of International Law 231–240 (1906).

[33] See Ebb, International Business Transactions 76–78 (1964). It may be that, whatever the actual nature of the facts, it is usually what the states *thought* took place that is crucial. But what happens to the customary rule when in a subsequent case a state points out that "the Emperor has no clothes"? Are either the actual events or the perceived outcomes customary law?

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resolution will normally focus on the general principle and its application in future cases, rather than the concrete sets of past events which evoked the diplomatic concern. While the "core" or normal case may be thoroughly covered in diplomatic exchanges, various special situations and ramifications are likely to be left unexplored. An appropriate resolution can fill these gaps.

Fourth, a General Assembly resolution can express a consensus viewpoint. Although diplomatic correspondence often expresses the views of the parties involved in detail, and over a series of several disputes may result in the expression of opinion of a large number of states, such communication often lacks this one important element. A General Assembly resolution cannot merely state the conflicting precedents or views of various states on a particular matter. It must be so drafted that it can win the support of a majority of the Assembly, and in practice much more than a bare majority must be assured before a vote will be called. A resolution and the debate that precedes it can serve to harmonize conflicting views on both the facts and the law in a generally satisfactory way, producing a more valuable expression than the arguments of the parties alone.

States that abstain in the vote on a resolution declaring a rule of customary international law would certainly be considered to be bound by the resulting resolution, not only because they could have cast a negative vote, but also because tacit or presumed acceptance of a custom is an accepted element of this method of law-creation.[34] States opposing the resolution would be protected from the application of the custom to them, assuming that they had not by their previous acts either within or outside the United Nations already accepted the custom.[35]

C. *Other Sources*

Another basic source of international law is "general principles of law recognized by civilized nations."[36] Many of these principles relate primarily to matters of procedural fairness and the equitable behavior of the parties toward one another,[37] including such doctrines as "he who asks equity must do equity"[38] and *res judicata*.[39] It is in the nature of some of these rules that they cannot readily be developed through state practice into customary law, because they serve primarily as guidelines for decision-making by impartial third parties. Whether one conceives of "general principles" as being principles recognized in the municipal law of the major legal systems[40] or as "particularizations of a common underlying sense

[34] Wolfke, note 29 above, at 157–165.

[35] See Fisheries Case (United Kingdom *v.* Norway), [1951] I. C. J. Rep. 138–139.

[36] I. C. J. Statute, Art. 38, par. (c).

[37] W. Friedmann, The Changing Structure of International Law 196–200 (1964).

[38] It was in part this doctrine which provided the rationale for the decision in Diversion of Waters from the River Meuse, [1937] P.C.I.J., Ser. A/B, No. 70, at 24–25, 73–80.

[39] U. N. Administrative Tribunal Case, [1954] I.C.J. Rep. 47, at 53.

[40] See Jenks, The Common Law of Mankind 106, 120–167 (1958).

of what is just in the circumstances,"[41] one difficulty with their use is the absence of satisfactory evidence of the widespread acceptance of a given rule. A General Assembly resolution stating that a particular doctrine is accepted in every legal system substantially solves this problem by providing a formal expression by the members of the international community that they recognize the existence of the rule in their various legal systems. When such a resolution is supported by an overwhelming proportion of the states represented in the General Assembly, that statement itself demonstrates the general acceptance of the principle involved. The abstention or negative vote of a few states, at least where they were not the major representatives of a particular legal system, would not defeat the legal significance of the resolution for all of the community.

Decisions of the International Court of Justice are not formally binding "except between the parties and in respect of that particular case,"[42] but a General Assembly resolution formally declaring the belief that an opinion of the Court did in fact articulate a generally accepted legal doctrine that bound all states, whether its origin were treaty, custom, or some other source, would provide a basis for reliance by Member States upon one another's assertions. This rationale would apply with equal force to advisory opinions of the Court. A similar argument, though perhaps slightly less persuasive, can be made with respect to "teachings of the most highly qualified publicists" which are formally adopted by a General Assembly resolution.

In summary, there are several ways in which a resolution, by being linked to one or more of the traditional sources of international law, can serve as a law-creating mechanism. A resolution can interpret the United Nations Charter or other treaty, accelerate the development and clarify the scope of a customary rule, or identify and authenticate a "general principle of law recognized by civilized nations." A resolution tied in this way to a traditional source of international law may reasonably be relied upon as a definitive statement of international law.

II. The Rôle of Re-citation

Perhaps the greatest difficulty with the theoretical analysis presented above is the result it reaches. It proves too much to be politically acceptable. There are few states that would happily contemplate the prospect of finding themselves bound by the principles announced even in the General Assembly resolutions which they have supported over the years, let alone those resolutions on which they abstained or cast a negative vote. And it must be admitted that there might be an element of unfair surprise in holding a state, notwithstanding the bad faith inherent in its argument, bound by pronouncements that it believed were meaningless on the basis of the accepted legal doctrine of the time. The prospect of being required to comply with dozens of such resolutions, with sometimes haphazard and

[41] Rosenne, The International Court of Justice 423 (1957).
[42] I.C.J. Statute, Art. 59.

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occasionally conflicting language, can be expected to arouse almost universal apprehension.

For legal purposes the argument would be couched in terms of the unreasonableness of the reliance by other states upon a single General Assembly resolution whose significance was not apparent. There are several ways of overcoming this contention. It is widely recognized that the subject matter of a resolution, the language of the title and operative paragraphs, and the comments of governments at the time of passage may separately or together give it special significance.[43] This article will focus on another variable that may be able to effectively serve this function: the repeated subsequent citation of a particular resolution by the General Assembly. Continual reference to a resolution which declares that international law requires a given kind of conduct will impress the importance of the resolution upon all states and put them on notice of its potential legal relevance. The phenomenon of re-citation can distinguish significant resolutions from the thousands of others that the Assembly has passed in a period of over twenty years. In addition, the persistent re-citation of a given resolution indicates that it embodies a view of the community which has some continuity, rather than an ephemeral "accident" of General Assembly politics.

In considering the persuasiveness of this proposition, it is perhaps worthwhile to analogize this context to another realm in which re-citation is important: the citation by common-law courts of their previous opinions. The basic elements of similarity are easily seen. While the General Assembly structure mimics that of a legislative organ and while it often performs "legislative" functions, it also serves in a "judicial" capacity, dealing with particular disputes by means of fact-finding, law-formulation, and law-application. In both capacities, the General Assembly often refers to its previous resolutions, whether "legislative" or "judicial" in character. The presence of this phenomenon in the decision-making process of both the common-law courts and the General Assembly grows out of certain similarities in their decision-making process. Both institutions are continually faced with similar if not identical situations upon which antagonistic parties call for a pronouncement. In an effort to persuade the decision-makers to favor their respective positions, each party attempts to relate its preferred result to previous general statements of the same or related institutions.[44] The elaboration of the decision, in response to these arguments, will naturally make reference to those previous pronouncements which support the decision-maker's result. These general statements may be either "legislative" or "judicial," in terms of their origin, breadth, and

[43] See, *e.g.*, Res. 1884(XVIII) on the placing of weapons of mass destruction in outer space, the comments of Ambassador Stevenson before the First Committee of the General Assembly (reprinted in 49 Dept. of State Bulletin 753–754 (1963)), the statement by Ambassador Fedorenko at the 1244th Plenary Meeting of the General Assembly, Oct. 17, 1963, at which the resolution was approved, and Bin Cheng, note 30 above.

[44] See Schachter, "Law and the Process of Decision in the Political Organs of the United Nations," 99 Hague Academy, Recueil des Cours 171–200 (1958, II).

relation to a concrete case at the time of promulgation. To be worthy of citation, however, they must be of sufficient generality to be relevant to subsequent disputes and at the same time sufficiently precise that they cannot be invoked with equal persuasiveness by both antagonists in the dispute, in which case little is gained by the reference.

It may be argued that an important distinction between re-citation in General Assembly decisions and in common-law court decisions arises out of the fact that courts are bound to follow their previous precedents by the doctrine of *stare decisis*. But although this doctrine may affect the *quantity* of citations, from a realistic jurisprudential point of view it could as well be said that a case is law because it is cited, as that a case is cited because it is law. It is the later decision-maker who chooses to cite a particular previous decision, and *stare decisis*, at least for a court of last resort, has never been properly understood to mean more than an appropriate respect for the wisdom of earlier decisions and a concern for the expectations that they have generated.[45] On the other hand, the technique of turning to prior decisions for guidance was widespread long before the doctrine of *stare decisis* was articulated,[46] and its use far transcends the judicial context. The political organs of the United Nations have shown in their debates a deep concern for the significance of their previous decisions and the precedential value of the decision being made.[47]

Another arguable difference between General Assembly decisions and those of a municipal court is the fact that the General Assembly cannot always enforce its decisions, while a municipal court is more often capable of doing so. This difference is not crucial, since a court decision, while binding the parties to a given solution, may not effectively resolve the legal problems which gave rise to the dispute. The same issues may reappear before the court in substantially identical form between different parties and require reconsideration or further elaboration of the legal principles invoked in the earlier decision. Re-citation may also be symptomatic in either case of instances of non-compliance, but that does not by itself deprive a decision of its legal character.[48]

The underlying rationale for differentiating frequently cited General Assembly resolutions is the increased reasonableness of the expectation that principles which have been often reiterated will be followed. Insofar

[45] See Moschzisker, "Stare Decisis in Courts of Last Resort," 37 Harvard Law Rev. 409 (1924); Cross, "Stare Decisis in Contemporary England," 82 Law Q. Rev. 203 (1966); and the materials collected in Fryer and Orentlicher, Legal Method and Legal System 469–503 (1967).

[46] See, on the development of *stare decisis* in the United States, Kempin, "Precedent and Stare Decisis: The Critical Years, 1800–1850," 3 Am. J. Legal History 28 (1959).

[47] See, *e.g.*, the Security Council debate on the appointment of a subcommittee on Laos, 14 U.N. Security Council, Official Records, Meetings 847–848 (1959), and the General Assembly debate of the scope of the "important question" provision of Art. 18, 11 U.N. General Assembly, Official Records 1153–1166 (1957), both reprinted in Sohn, Cases on United Nations Law (2nd ed., 1967).

[48] For example, the widely cited and widely disobeyed Brown *v.* Board of Education of Topeka, 347 U. S. 483 (1954), requiring school integration, is the law of the land in the United States as far as lawyers, if not sociologists, are concerned.

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as the analogy between court citation of previous decisions and General Assembly citation of previous resolutions is valid, one can conclude that the legal significance of a resolution correlates with subsequent citation in much the same way that the importance of a court decision is indicated by repeated reference to it in later opinions. The degree of expectation which has been generated in any given case will of course depend on a whole range of factors relating to the context of the original approval of the resolution as well as its re-citation. But continual re-citation by the General Assembly of certain principles that are described as binding obligations because of their roots in established sources of international law does serve to reinforce the claim that the particular resolution enunciates legally binding principles.

III. A Foray into Empiricism

Having constructed this theoretical foundation on which to build legal obligations out of certain resolutions of the General Assembly, it is appropriate to examine in some detail those resolutions which have been most cited in subsequent resolutions to see to what extent the practice can be related to the theory. Choosing the most-cited resolutions raises a methodological problem. The most obvious criterion, the gross number of citations, of necessity favors the older resolutions which, though referred to only occasionally in any one session, have over the years accumulated a large number of citations. Thus, of the eleven resolutions which have been cited over a dozen times, four (one third of the total) come from the first four sessions of the General Assembly and none come from the four most recent sessions studied (seventeen through twenty-one). On the other hand, selection on the basis of the most citations per session (including the session of passage) gives an unfair precedence to the more recent resolutions which, though they are cited relatively often now, may not stand the test of time. The reality of this concern is demonstrated by the fact that of the eleven resolutions which were cited an average of more than twice per session, four were passed in the twentieth or twenty-first sessions. It is difficult to believe that all of these resolutions will retain their places on this list by the end of the twenty-fifth or thirtieth session. A sort of *de minimis* rule can be invoked to arbitrarily exclude those resolutions which have been cited fewer than five times, regardless of their high averages, and replace them with the next-highest-ranking resolutions. The tables that follow list the highest-ranking resolutions by each test:[49]

[49] For convenience, the resolutions are listed here in chronological order:

Highest total citations		*Highest average citations*		*Highest total citations*		*Highest average citations*	
65	(13)	217	(3.95)	749	(34)	1904	(2.50)
194	(19)	749	(2.43)	1514	(95)	1956	(1.75)
217	(75)	1514	(13.57)	1654	(24)	1966	(1.50)
302	(17)	1654	(4.00)			2105	(2.50)
393	(16)	1710	(2.00)			[2118	(2.00)]*
449	(20)	1805	(1.60)			[2150	(2.00)]*
513	(16)	1810	(2.40)			[2189	(2.00)]*
614	(13)	1899	(1.50)				

HIGHEST TOTAL CITATIONS

Resolution	*No. of cits.*
1514(XV)—Colonialism Declaration	95
217(III)—Human Rights Declaration	75
749(VIII)—South West Africa	34
1654(XVI)—Colonialism	24
449(V)—South West Africa	20
194(III)—Palestine	19
302(IV)—Palestine Refugees	17
513(VI)—Palestine Refugees	16
393(V)—Palestine Refugees	16
614(VII)—Palestine Refugees	13
65(I)—South West Africa	13

HIGHEST AVERAGE CITATIONS

	Cits./session	*Total*
1514(XV)—Colonialism Declaration	13.57	95
1654(XVI)—Colonialism	4.00	24
217(III)—Human Rights Declaration	3.95	75
2105(XX)—Colonialism	2.50	5
1904(XVIII)—Racial Discrimination Declaration	2.50	10
749(VIII)—South West Africa	2.43	34
1810(XVII)—Colonialism	2.40	12
1710(XVI)—U. N. Development Decade	2.00	12
[2118(XX)—Scale of Assessments	2.00	4]*
[2150(XXI)—U. N. Administration	2.00	2]*
[2189(XXI)—Colonialism	2.00	2]*
1956(XVIII)—Colonialism	1.75	7
1805(XVII)—South West Africa	1.60	8
1899(XVIII)—South West Africa	1.50	6
1966(XVIII)—Friendly Relations Principles	1.50	6

* Brackets indicate resolutions excluded by the *de minimis* rule of five or more citations.

Perhaps the first question that should be asked about this list of most-cited resolutions is whether the resolutions selected by this process appear to be of particular significance as a group. Examining the ten top-ranking resolutions (those above the broken lines), the answer seems to be a clear affirmative. First, as an indication of the non-random nature of the selection, it is worth noting that although 45% of the 2,247 resolutions [50] passed by the General Assembly came from the Second (Economic and Financial),

[50] The proportion of resolutions produced by the various committees of the General Assembly over the first 21 sessions is as follows:

First Committee	7.2%	Sixth Committee	7.7%
Second Committee	11.5%	Ad Hoc Political Committee *	3.0%
Third Committee	11.4%	Special Political Committee	2.2%
Fourth Committee	16.6%	No Committee	10.5%
Fifth Committee	25.7%	Other Committees	4.2%

* After several years of existence as the Ad Hoc Political Committee, this committee was given permanent status as the Special Political Committee.

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Fifth (Administrative and Budgetary), and Sixth (Legal) [51] Committees, none of the resolutions on this list were reported out by those committees. By contrast, four of these ten resolutions were approved without reference to any committee at all. Two came from the Third Committee, two from the Fourth Committee, and one each from the First and *Ad Hoc* Political Committees. Second, these ten resolutions deal with only four subject-matter areas: the Palestine question, the question of South West Africa, human rights, and independence for colonial countries and peoples. These subjects are of course matters that have occupied a major portion of the time and energy of the General Assembly over the years, and all of them are live issues today.

More important for the purposes of this discussion is the extent to which these resolutions concern themselves with the assertion of rules of state behavior. Three of the resolutions are Declarations which lay down explicit rules in a legal format: Resolution 217(III)—An International Bill of Rights (The Universal Declaration of Human Rights); Resolution 1514(XV)—Declaration on the Granting of Independence to Colonial Countries and Peoples; and Resolution 1904(XVIII)—Declaration on the Elimination of All Forms of Racial Discrimination. The two resolutions on the Question of South West Africa [52] are devoted to setting out, formally accepting, and urging South Africa to accept, the International Court's Advisory Opinion on the *International Status of South West Africa.*[53] The five remaining resolutions cannot be fairly described as being primarily oriented toward the expression of legal principles. But two of these resolutions do refer to and apply juridical principles. Resolution 194(III) resolves that the Holy Places in Palestine "should be protected and free access to them assured, *in accordance with existing rights and historical practice,*" [54] and that permanently displaced refugees should be compensated for losses "which, *under principles of international law or in equity,* should be made good by the Governments or authorities responsible." [55] (Emphasis added.) Similarly, Resolution 2105(XX) describes the "dislocation, deportation and transfer of the indigenous inhabitants" as a "policy of violating the *rights* of colonial peoples" [56] and "*Recognizes* the *legitimacy* of the struggle by the peoples under colonial rule to exercise their *right to self-determination and independence. . . .*" [57]

[51] The absence of any resolutions from the Sixth Committee on this list is intriguing. Perhaps it can best be explained by the fact that one of its primary responsibilities is the development of the more traditional areas of international law, such as the law of the sea and diplomatic intercourse, by the more traditional means of preparing conventions for formal consideration. As a result it has involved itself in the least controversial rather than the most controversial areas of international law.

[52] Res. 449(V): Question of South West Africa; Res. 749(VIII): Question of South West Africa.

[53] Advisory Opinion on the International Status of South West Africa, [1950] I.C.J. Rep. 128.

[54] Res. 194(III): Palestine—Progress Report of the United Nations Mediator, par. 7.

[55] Res. 194(III), par. 11.

[56] Res. 2105(XX), par. 5.

[57] *Ibid.*, par. 10.

(Emphasis added.) Significantly, in these statements, as in the resolutions devoted primarily to the expression of legal principles, an effort was made to invoke one or more of the traditional sources of international law, rather than to make bare assertions and give them independent legal force. Of the three remaining resolutions, two—Resolutions 1654(XVI) and 1810(XVII) [58]—are implementing supplements to Resolution 1514(XV), and Resolution 302(IV)—Assistance to Palestine Refugees—bears a similar relation to the portions of Resolution 194(III) dealing with the refugee problem. These resolutions were typically cited in conjunction with those more fundamental resolutions, and their importance is largely derived from the earlier, "lawgiving" pronouncements.

The summary analysis presented above indicates that the resolutions chosen on the basis of either most total citations or highest average citations per session do have a significant legal content. One of the most striking features of the two lists presented above is the fact that despite their opposite statistical biases (one favoring earlier resolutions, the other favoring more recent resolutions), there are four resolutions which rank high on both lists: Resolution 217(III)—the Universal Declaration of Human Rights; Resolution 749(VIII)—Question of South West Africa; Resolution 1514(XV)—Declaration on the Granting of Independence to Colonial Countries and Peoples; and Resolution 1654(XVI)—Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. With respect to these resolutions, a more detailed analysis seems appropriate, dealing with five major questions:

(1) What principles does the resolution assert?
(2) Was the resolution when passed intended to express binding rules of law?
(3) What was understood to be the source of those rules?
(4) Do the subsequent citations of the resolution invoke it for the legal principles it asserts?
(5) Based on the argument presented above, can the resolution be considered law today?

The answers to these questions seem most crucial in assessing the ultimate legal meaning of these resolutions.

IV. An Examination of the Most-Cited Resolutions

Resolution 217(III)—The Universal Declaration of Human Rights

The passage of Resolution 217(III) marked the first step in the program of the Commission on Human Rights of the Economic and Social Council. The Declaration was intended as a forerunner of an International Covenant

[58] Both Res. 1654(XVI) and Res. 1810(XVII) are titled: "The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples."

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of Human Rights being drafted by the Commission at a slower pace.[59] As such, and because it was not in treaty form, the Declaration was, in the view of one commentator, a "maximum program" of human rights, the scope of which would probably be significantly narrowed in the later covenant.[60] The Declaration set forth in thirty articles a basic enumeration of civil and political rights, the principles of non-discrimination because of race, religion or nationality, and the rghts of participation in the economic, social and cultural benefits of the nation.

The introductory paragraph

> *Proclaims* this Universal Declaration of Human Rights as a common standard of achievement . . . to the end that every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . .[61]

Without yet asking about the binding nature of the Declaration, it is apparent that it does not provide even in its language for the immediate vindication of these rights. Instead it calls for recognition and observance "by progressive measures." States are not asked to implement these guarantees within a specific period or even as quickly as possible. The one limitation on state action it does contain, by clear implication, is that the introduction of governmental policies directly antagonistic to these rights would be contrary to the call to progressively incorporate them into national law.

Even this requirement of movement in the direction of these guarantees is watered down by the provisions of Article 29, paragraph 2, which permit their limitation in order to protect the rights of others, and to meet "the just requirements of morality, public order and the general welfare in a democratic society." A provision of this kind necessarily allows governments a significant degree of freedom to curtail human rights in the face of real or perceived threats to the national welfare, and provides a poten-

[59] Discussion of the program of the Human Rights Commission can be found in articles by Hendrick, 18 Dept. of State Bulletin 195 (1948), and 19 *ibid.* 159 (1948), and by Simsarian, 20 *ibid.* 18 (1949), 21 *ibid.* 3 (1949), 42 A.J.I.L. 879 (1948), 43 *ibid.* 779 (1949), 45 *ibid.* 170 (1951) and 46 *ibid.* 710 (1952). See also Brunson MacChesney, "International Protection of Human Rights in the United Nations," 47 Northwestern U. Law Rev. 198 (1952–1953).

[60] Kunz, "The United Nations Declaration of Human Rights," 43 A.J.I.L. 316, at 322 (1949). The International Covenants on Human Rights do not seem to bear out that expectation, but they are many years overdue.

[61] The full paragraph is as follows:

"*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

For full text of Declaration see 43 A.J.I.L. Supp. 127 (1949).

tial defense to the claim that a state has violated the provisions of the Universal Declaration.

The legal significance of the Declaration in the minds of those who approved it depends on what kinds of evidence are relied upon in reaching the conclusion. The formal statements made at the time of passage were typified by the statement of Mrs. Franklin Roosevelt, the representative of the United States and the Chairman of the Commission on Human Rights:

> In giving our approval to the Declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. . . . It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by a formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.[62]

On the other hand, several representatives indicated an intention to ascribe to the Declaration something more than a "purely optional significance," based on its relationship to the Charter and customary international law.[63] Professor Lauterpacht, writing shortly after the passage of the Declaration, felt compelled to attack this aura of legal significance, apparently because he feared that romanticism on this point would tend to weaken the pressure for an indisputably binding covenant of human rights.[64]

Furthermore, the behavior of the Members in drafting and adopting the Declaration indicated a deep concern over its contents which is difficult to explain in terms other than their fear that it would in some way limit their freedom of action. For example, the presence of Article 29, paragraph 2, allowing for emergency situations, suggests that states were afraid to express these human rights in inflexible terms. Probably the most significant indication of this fear was the refusal of eight states to approve the Declaration. The eight abstaining states—the Eastern European states, Saudi Arabia, and the Union of South Africa—apparently felt that there

[62] Statement by Mrs. Franklin D. Roosevelt, 19 Dept. of State Bulletin 751 (1948). See also 62 A.J.I.L. 918 at 920 (1968).

[63] *Cf.* the statements of the delegates from Belgium, France, Lebanon, and Uruguay, U.N. General Assembly, 3rd Sess., Official Records, Third Comm., pp. 32, 35, 51, 61, 64, 199–200; and *ibid.*, Plenary Meetings, pp. 860, 862, 866, 880, 887, 933–934. For a more detailed treatment, see Sohn, "A Short History of United Nations Documents on Human Rights," Commission To Study the Organization of Peace: The United Nations and Human Rights 60–72 (1968).

[64] H. Lauterpacht, "The Universal Declaration of Human Rights," 25 Brit. Yr. Bk. Int. Law 354 (1948), at 376:

"At the time when this article is being written it is not yet clear whether the Declaration will become a stepping-stone to a true Bill of Rights—that is what is meant by a covenant and provisions for implementation—or whether it will become a factor in causing the postponement or abandonment of the main instrument for which it was intended to pave the way. For although the Declaration can claim no legal authority and, probably, only inconsiderable moral authority, that circumstance does not deprive it altogether of significance or potential effect. Somewhat paradoxically, the realization of the ineffectiveness of the Declaration *per se* must tend to quicken the pace of less nominal measures for the protection of human rights."

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was something to be lost by approving it, something more important than the propaganda benefits to be gained. Andrei Vishinsky, representing the U.S.S.R., said the Declaration "seems to support the view that the conception of sovereignty of governments was outdated."[65] The delegate from South Africa explained its abstention by saying that the Declaration was being treated as if it created legal obligations for those who approved it.[66] And while most of the articles were adopted unanimously, there were abstentions, varying in number from two to nine, in eight of the thirty-eight votes taken on the individual articles and preambular paragraphs. On Articles 14 and 20 there were also six and seven negative votes respectively.[67]

Finally, the Members had a foretaste of the way in which the Declaration would be invoked when, even before it was approved by the General Assembly, Chile protested the refusal of the Soviet Union to allow a Russian wife of a member of the Chilean Ambassador's family to emigrate to Chile with her husband. Chile, the United States, and the United Kingdom all invoked the relevant articles of the Declaration, not as a source of law *per se,* but as a statement of fundamental human rights which all states should recognize.[68] In the context of our present international legal structure, it is not clear that invocation of a universally recognized rule of international law would have had a more persuasive effect. It can hardly be said that when the vote was taken in the General Assembly on the Declaration, the Members were unaware of its potential impact.

While the specific provisions of the Universal Declaration clearly are not drawn from the United Nations Charter itself, the Charter makes several references to human rights, and in Articles 55 and 56 requires the United Nations and Member States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." The term "human rights" is exactly the kind of phrase that is used in a constitutive document when it is expected that interpretation and elaboration will progress over a period of years: It invokes undefined standards instead of describing the required conduct in factually observable form. A reasonable and generally accepted definition and expansion of that term should result, therefore, in a set of principles which Member States are required by the Charter to promote. An examination of the procedure used in drafting the Universal Declaration reveals that an unexceptionable technique of elaboration was used: The source material for the provisions of the Declaration was the existing human rights provisions in national constitutions. The work of the Human Rights Drafting Committee of the Commission on Human Rights was grounded in an outline draft prepared by the Secretariat with anno-

[65] U.N. Doc. A/PV.183 (1948).

[66] U.N. Doc. A/PV.182, at 176 (1948).

[67] A tabulation of the votes can be found in 1948 Year Book on Human Rights 465.

[68] See Res. 285(III), and 3 U.N. General Assembly, Official Records, Sixth Comm. 718–781 (1948), reprinted in abridged form in Sohn, Cases and Materials on United Nations Law 670–691 (1st ed., 1956).

tations to the constitutions of the Members of the United Nations.[69] According to a State Department commentator, the draft "was designed to cover most of the rights commonly contained in constitutions of member states or in drafts of international bills of rights."[70] It could well be argued that the articles of the Declaration represented an elaboration of the Charter by means of "general principles of law recognized by civilized nations." It would be difficult for any Member State to argue that a definition of the Charter term "human rights" based on the rights guaranteed by Member State constitutions produced an arbitrary or unreasonable interpretation.

It is important to note, moreover, that while certain Eastern European Members abstained when the Universal Declaration of Human Rights was originally adopted, the final paragraph of the Declaration on the Granting of Independence to Colonial Countries and Peoples[71] declares that all states "shall observe faithfully and strictly" the Universal Declaration of Human Rights. Although several Western states abstained on that resolution,[72] those states favoring the resolution, including the Communist bloc, clearly expressed at that time their belief that the Universal Declaration must be complied with. This prescription was reiterated in similar language in the Declaration on Elimination of All Forms of Racial Discrimination, Resolution 1904(XVIII), which was approved unanimously.

Considering the references to "human rights" in the Charter, the drafting technique, the unanimous approval given to twenty-two of the thirty articles of the Declaration, and its adoption by every group of states but the Eastern European bloc, which originally objected on grounds other than the content of the substantive rights and which later approved it, it seems fair to say that the Universal Declaration does embody principles which are generally recognized in the laws of Member States and can serve as an accepted elaboration of the Charter language.

The Universal Declaration may also have significance from the point of view of customary international law. Admittedly, in 1948 there was no substantial practice of international diplomatic intervention in relation to the treatment which a state meted out to its own citizens, although the customary rules on state responsibility toward aliens contain principles which parallel some of the provisions of the Universal Declaration. But by 1968 a body of customary law may have developed around the Universal Declaration, which requires that states direct their energies toward the promotion of certain policies and the eradication of certain others. While a complete exploration of this possibility is not within the scope of this paper, the

[69] U.N. Doc. E/CN.4/AC.1/3/Add. 1 (1947).

[70] Hendrick, "An International Bill of Human Rights," 18 Dept. of State Bulletin 195, at 198 (1948).

[71] Res. 1514(XV), par. 7:

"7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

[72] A discussion of Res. 1514(XV) appears below.

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examination of citations of the Universal Declaration in the subsequent resolutions of the General Assembly will shed some light on one source of evidence for the proposition that the invocation of the Declaration by states in relation to particular concrete situations and policies has given rise to a custom based on the principles found in the Universal Declaration.

The 75 citations of the Universal Declaration of Human Rights appear in a variety of contexts, from a resolution on interference with radio signals[73] to one on the world campaign for literacy.[74] The Declaration has been cited in every session but the non-voting Nineteenth, and it was cited at least four times in every session (again excluding the Nineteenth) from the Fifteenth Session to the Twenty-First Session.[75] The major focal points have been declarations and conventions in the field of human rights,[76] resolutions dealing with colonialism,[77] and resolutions on conditions in South Africa and South West Africa. Of this last group, four deal with *apartheid* in South Africa,[78] nine deal with discrimination against people of Indian origin in South Africa,[79] and six deal with South West Africa.[80] An example of this kind of citation is paragraph 6 of Resolution 1663(XVI):

> 6. *Reaffirms* that the racial policies being pursued by the Government of South Africa are a flagrant violation of the Charter of the United Nations and the Universal Declaration of Human Rights and are totally inconsistent with South Africa's obligations as a member state.

Other citations relating to specific claims of violation of human rights involve the Soviet wives case, discussed above, and the Tibet Question.[81]

[73] Res. 424(V): Freedom of Information: Interference with Radio Signals.

[74] Res. 1937(XVIII): World Campaign for Universal Literacy.

[75] The number of citations in these sessions was as follows:

Session	*No. of Citations*	*Session*	*No. of Citations*
15	10	19	0
16	4	20	10
17	7	21	6
18	4		

[76] Examples are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, Res. 2200(XXI); the Declaration on the Rights of the Child, Res. 1386(XIV); the Convention on the Elimination of All Forms of Racial Discrimination, Res. 2106(XX); and the Draft Declaration on the Elimination of Discrimination Against Women, Res. 1921(XVIII).

[77] Res. 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples; Res. 2022(XX), 2023(XX), 2107(XX), and 2238(XXI), dealing with Rhodesia, Aden, Portuguese Territories, and Oman, respectively; Res. 446(V) and 1538(XV), on information about human rights and the United Nations in non-self-governing territories; and Res. 644(VII) and 2144(XXI) on racial discrimination in non-self-governing territories.

[78] Res. 721(VIII), 820(IX), 1598(XV), and 1663(XVI). Res. 2144(XXI), although it deals with *apartheid* policies generally, makes specific reference to South Africa, South West Africa, and Rhodesia.

[79] Res. 265(III), 395(V), 511(VI), 615(VII), 719(VIII), 1179(XII), 1302(XIII), 1597(XV), and 1662(XVI).

[80] Res. 1142(XII), 1360(XIV), 1565(XV), 1567(XV), 1568(XV), and 2145(XXI).

[81] Res. 1353(XIV), 1723(XVI), and 2079(XX).

In 14 resolutions a specific article of the Universal Declaration was cited, and in four of those resolutions the cited article was quoted either in full or in substantial part.[82] Six of the 14 citing resolutions (and three of the four quoting resolutions) related to either presentation of a convention for signature and ratification or a Declaration on some specific area of human rights by the General Assembly. Only one of the 14 resolutions was concerned with judging whether the conduct of a specific country or group of countries constituted a violation of the principles of the Universal Declaration: Resolution 285(III)—Violation by the U.S.S.R. of Fundamental Human Rights, Traditional Diplomatic Practices and Other Principles of the Charter. Except for this early case, in which the denial of rights was more directly connected to international relations than normally, no resolution has formally pronounced that the conduct of a specific state was contrary to the provisions of a specific article of the Universal Declaration of Human Rights. While the contexts of these resolutions normally leave little doubt about which articles of the Universal Declaration are involved, condemnations of this kind have refrained from invoking them specifically, and have chosen instead to cite the Declaration generally, often in conjunction with an equally general reference to the Charter.

There can be no question that the Universal Declaration of Human Rights has had a seminal influence on the entire field of human rights from the programs of the United Nations system to the series of declarations and multilateral conventions which have been drafted in the twenty years since it was approved by the General Assembly. Its direct legal significance is not quite so clear. The formal expressions of many of the Member States at the time of its approval and the degree to which its principles expand the pre-existing conventional and customary international law tend to militate against its recognition as a limitation on state conduct with which compliance can reasonably be expected and demanded. On the other hand, the nature of the drafting process and the attitudes taken by the Member States toward that process, the relation of the Declaration to the provisions of the Charter and the constitutions of the Member States, and the repeated invocation of the Declaration both as an inspiration for subsequent pronouncements on human rights and as a measure of the conduct of various states, all indicate that the provisions of the Declaration can be reasonably expected to control, within the stated limits, the scope of state conduct in the field of human rights. Looking back on the multitude of statements of human rights prepared by the General Assembly that have drawn upon the Universal Declaration, as well as its continued invocation in conjunction with Articles 55 and 56 of the United Nations Charter, it seems ever more apparent that the Universal Declaration is in fact an authoritative inter-

[82] The resolutions, by article cited, are: Art. 1 (Res. 2106(XX)) †; Art. 2 (Res. 446(V)); Art. 4 (Res. 1841(XVII)) *†; Art. 13 (Res. 285(III)); Art. 14(2) (Res. 428(V), 429(V)) †; Art. 15 (Res. 1040(XI)) *†; Art. 16 (Res. 285(III), 1763 (XVII),*† 2018(XX))†; Art. 19 (Res. 424(V),*† 633(VII), 1313(XIII)); Art. 26 (Res. 1779(XVII), 1937(XVIII)).

* resolutions in which the article was quoted.

† resolutions which presented a convention for signature.

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pretation of the term "human rights" which appears throughout the Charter. Although the recent completion of the International Covenants on Human Rights may be viewed as an indication that the Member States did not consider the Universal Declaration as expressing a binding obligation, there are sufficient points of difference in both substance and implementing machinery to make the existence of overlapping obligations perfectly plausible.[83] And there can be no question that the obligations contained in the United Nations Charter are unaffected by the presentation and signature of the International Covenants.

Furthermore, the repeated invocation of the Declaration as a standard of conduct in specific situations has crystallized a custom that certain approaches to the matter of human rights are unacceptable to the world community. In this context it is important to recall that the Declaration itself does not provide for the immediate implementation of these rights. Instead it calls upon states to pursue a path designed to attain them. The intense and virtually unanimous condemnation of South Africa, which has ignored this injunction and deviated onto a contrary course, has been reinforced by action; it has paid a price in diplomatic isolation and economic sanctions as great as that which is typically imposed for violation of universally accepted principles of international law. The extent to which the Declaration has been responsible for conforming national conduct can never be known, but the willingness of states to impose the traditional international law sanctions upon those states which refuse to conform indicates the earnestness of the community's belief that movement in a direction contrary to the principles spelled out in the Declaration is unlawful.

Resolution 749(VIII)—Question of South West Africa

Resolution 749 was one of a long series of resolutions attempting to bring South West Africa under the effective supervision of the international community. It marked a turning point in the United Nations approach, resulting from the fact that negotiations between South Africa and the *Ad Hoc* Committee on South West Africa, established by Resolution 449(V), on the conditions for United Nations supervision of the Mandate, had completely broken down, and the General Assembly was establishing by Resolution 749(VIII) a Committee on South West Africa to hear petitions and gather information on South West Africa without South Africa's co-operation.[84] In doing so, the resolution sets out a series of legal propositions which invoke the conclusions of the International Court in its *Advisory Opinion* on the *International Status of South West Africa*[85] as a basis for

[83] The simultaneous existence and effectiveness of several overlapping treaties is not unusual. See, for example, the list of treaties on white slave traffic and on narcotic drugs in the List of Signatures, Ratifications, Accessions, etc. of Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions, U.N. Doc. ST/LEG/SER.D/1 (1968).

[84] A short summary of the history of the negotiations can be found in Sohn, United Nations Law 694–699 (1st ed., 1956).

[85] [1950] I.C.J. Rep. 128; 44 A.J.I.L. 757 (1950).

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establishing the Committee on South West Africa and authorizing it to gather data and hear petitions on the situation in South West Africa. The content of these principles, some of which appear in the body of the resolution, some in the preamble, and some in both, can be summarized as follows:

(1) South West Africa is a Territory under the Mandate assumed by the Union of South Africa;
(2) The Union of South Africa cannot modify the status of South West Africa without United Nations consent;
(3) The Union of South Africa is obligated to carry out its duties under Article 22 of the League of Nations Covenant, and to submit information and petitions to the United Nations;
(4) The International Court of Justice has compulsory jurisdiction over disputes related to the Mandate under Article 7 of the Mandate;
(5) The United Nations has an obligation to the inhabitants of South West Africa to exercise its supervisory powers on their behalf; and
(6) The normal way of modifying the status of South West Africa would be to place it under the Trusteeship System.[86]

[86] The relevant portions of Res. 749(VIII) are the following paragraphs:

"*The General Assembly,*

"*Having accepted,* by resolution 449 A (V) of 13 December 1950 and by resolution 570 (VI) of 19 January 1952, the advisory opinion of the International Court of Justice with respect to South West Africa,

"*Recalling* that the advisory opinion of the International Court of Justice with respect to the Territory of South West Africa sets forth, *inter alia,* that:

"(a) The Territory of South West Africa is a Territory under the international Mandate assumed by the Union of South Africa on 17 December 1920,

"(b) The Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa, and that the comptence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations,

"(c) The Union of South Africa continues to have the international obligations stated in Article 22 of the Covenant of the League of Nations and in the Mandate for South West Africa as well as the obligation to transmit petitions from the inhabitants of that Territory, the supervisory functions to be exercised by the United Nations to which the annual reports and the petitions are to be submitted;

"*Considering* that, in accordance with the opinion of the International Court of Justice, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court as provided by Article 37 of the Statute of the International Court of Justice, by Article 80, paragraph 1, of the Charter of the United Nations and by article 7 of the Mandate for South West Africa,

* * * * *

"10. *Considers* that without United Nations supervision the inhabitants of the Territory are deprived of the international supervision envisaged by the Covenant of the League of Nations:

"11. *Believes* that it would not fulfill its obligation towards the inhabitants of South West Africa if it were not to assume the supervisory responsibilities with regard to the Territory of South West Africa which were formerly exercised by the League of Nations;

* * * * *

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The language of the resolution, as well as the context of its passage, leaves no doubt that these propositions are intended to express positive legal obligations of South Africa and the United Nations. It is couched in terms of present-tense, unconditional verbs, with liberal use of such phrases as "competence to modify the international status of the Territory of South West Africa" and "obligation to accept the compulsory jurisdiction of the Court."

Resolution 749(VIII) was not the first resolution to concern itself with the conclusions reached by the International Court in this opinion on South West Africa. Five of the propositions set forth above had been previously stated in very similar terms in Resolution 449(V), which was passed immediately after the Court announced its decision. The resolutions are not precisely identical, however, in their statement of the relevant legal principles. The earlier resolution makes slightly more elaborate reference to the substantive duties of the Mandatory toward the inhabitants of South West Africa, noting the obligation to promote to the utmost the "material and moral well-being and social progress of its inhabitants."[87] More significantly, Resolution 449(V) makes no reference to the fifth item above, the *obligation* of the United Nations to supervise the conduct of the Mandatory Power. This principle was particularly important in light of the General Assembly's more militant approach to supervision of the Mandate. The General Assembly apparently chose to reiterate the conclusions of the International Court of Justice in positive terms, rather than merely to refer to Resolution 449(V), in order to generate support for its broad definition of the authority of the Committee on South West Africa.

B

"*The General Assembly,*

"*Having accepted,* by resolution 449 A (V) of 13 December 1950, the advisory opinion of 11 July 1950 of the International Court of Justice concerning South West Africa, *inter alia,* to the effect that:

"(a) While 'the provisions of Chapter XII of the Charter do not impose on the Union of South Africa a legal obligation to place the Territory under the Trusteeship System', they 'are applicable to the Territory of South West Africa in the sense that they provide a means by which the Territory may be brought under the Trusteeship System',

"(b) '. . . the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South West Africa,' and '. . . the competence to determine and modify the international status of the Territory rests with the Union of South Africa acting with the consent of the United Nations',

* * * * *

"2. *Reasserts* that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter."

[87] Res. 449(A)(V), seventh preambular paragraph:

"*Considering* that it is incumbent upon the Government of the Union of South Africa to promote to the utmost in the administration of the Territory the material and moral well-being and social progress of its inhabitants as a sacred trust of civilization, subject to the existing Mandate, and to give effect to the obligations which it assumed under the Mandate."

The source of the legal principles expressed by Resolution 749(VIII) is of course the Advisory Opinion of the International Court, which in turn derived its conclusions from the Covenant of the League of Nations, the United Nations Charter, the Mandate Agreement, and the statements and actions of South Africa. In many respects the resolution's provisions are literal or nearly literal restatements of the Court's opinion. It must be recognized, however, that even what is apparently a bare restatement of the law inevitably introduces variations. The most obvious change found in Resolution 749(VIII) involves the assertion by the General Assembly that the United Nations has an *obligation* to the inhabitants of the Territory to exercise international supervision over the conduct of the Mandatory Power. The Opinion of the International Court discusses the transfer of supervisory powers from the League of Nations to the United Nations, and the "sacred trust" underlying the Mandate System.[88] But nowhere does it express the view that these supervisory *powers* give rise to supervisory *responsibilities* of the international agency to fully exercise those powers on behalf of the inhabitants of the Mandated Territory. There can be no doubt that the powers were provided with the purpose that they would be exercised, but the General Assembly was elaborating a previously unarticulated principle when it asserted the Organization's duty to act.

Another interpretation appears in the resolution in the guise of a restatement of the Court's Opinion. The resolution "*Reasserts* that the normal way of modifying the international status of the Territory would be to place it under the Trusteeship System by means of a Trusteeship Agreement in accordance with the provisions of Chapter XII of the Charter." This very language appears in the Opinion of the International Court.[89] But it is a gloss of a fuller, and somewhat weaker, expression of the Court's views presented on the previous page of the Opinion:

> It is true that, while Members of the League of Nations regarded the Mandates System as the best method for discharging the sacred trust of civilization provided for in Article 22 of the Covenant, the Members of the United Nations considered the International Trusteeship System to be the best method for discharging a similar mission. It is equally true that the Charter has contemplated and regulated only a single system, the International Trusteeship System. It did not contemplate or regulate a co-existing Mandates System. It may thus be concluded that it was expected that the mandatory States would follow the normal course indicated by the Charter, namely, conclude Trusteeship Agreements. The Court is, however, unable to deduce from these general considerations any legal obligation for mandatory States to conclude or to negotiate such agreements. It is not for the Court to pronounce on the political or moral duties which these considerations may involve.
>
> For these reasons, the Court considers that the Charter does not impose on the Union an obligation to place South-West Africa under the Trusteeship System.[90]

[88] [1950] I.C.J. Rep. 128 at 136–137.
[89] *Ibid.* at 141.
[90] *Ibid.* at 140.

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The Court's more direct language should properly be read in conjunction with this more elaborate statement of its views. The General Assembly, by choosing the more forceful statement and putting it forward as the Court's determination, is strengthening the decision by merely repeating a selected portion *verbatim*.[91]

An examination of the resolutions in which Resolution 749(VIII) has been cited highlights the significance of the fact that the original elaboration of all but one of these legal principles is found in Resolution 449(V). Of the 34 references, 16 are for the purpose of noting the fact that Resolution 749(VIII) authorized the Committee on South West Africa to hear petitions from individuals residing in the Territory.[92] Six more resolutions refer to Resolution 749(VIII) in relation to its instruction to the Committee to make reports to the General Assembly about conditions in the Territory,[93] one more in relation to the composition of the Committee.[94] Much of the justification for these authorizations of Committee action comes from the one principle found in Resolution 749(VIII) that is not present in Resolution 449(VIII): the *obligation* of the United Nations to exercise its supervisory powers on behalf of the inhabitants of the Territory. By contrast, where the intention in the citing resolution was to reinforce the other principles contained in Resolution 749(VIII), the General Assembly invoked Resolution 449(V), the resolution passed in direct response to the opinion of the International Court. All but 3 of the 20 references to that resolution serve the purpose of drawing attention to the opinion of the International Court and the acceptance of that opinion by the General Assembly. Resolution 904(IX) clearly makes this distinction by invoking Resolution 449(V) on the point of acceptance of the Court opinion and Resolution 749(VIII) on the United Nations supervisory obligation. While six resolutions cite Resolution 749(VIII) for the proposition that the normal way of modifying South West Africa's status would be to place it under the Trusteeship System, all cite Resolution 449(V) as well, and five of those resolutions also make reference to the General Assembly's acceptance of the I.C.J. Advisory Opinion by Resolution 449(V).[95] The most recent citations of Resolution 749(VIII) were in Resolutions 1702(XVI) (transferring the duties of the Committee on South West Africa to a new United Nations Special Committee for South West Africa), 1703(XVI) (condemning South African violations of the Mandate, in response to petitions heard by the Committee on South West Africa), and 1704(XVI)

[91] Res. 449(V) and 749(VIII) also give the impression that they are repeating the language of previous resolutions in making this statement. But the resolutions passed before the I.C.J. Advisory Opinion have no linguistic similarity to this provision, and they have no normative quality. Instead they simply recommend that South West Africa be placed under the Trusteeship System.

[92] Res. 935–939, 942(X), 1057–1058(XI), 1138–1139(XII), 1244(XIII), 1356–1358 (XIV), 1563(XV), and 1703(XVI).

[93] Res. 851(IX), 941(X), 1054(XI), 1140(XII), 1245(XIII), and 1360(XIV).

[94] Res. 1061(XI).

[95] Res. 852(IX), 940(X), 1055(XI), 1141(XII), 1246(XIII), and 1359(XIV). All but Res. 940(X) expressly refer to Res. 449(V) as accepting the I.C.J. Opinion.

(dissolving the Committee on South West Africa), passed at the Sixteenth Session of the Assembly. Resolution 449(V) was cited only once after that time, in Resolution 2145(XXI), which terminated the Mandate for South West Africa. The thrust of these resolutions merged into the general call to abolish colonialism enunciated in Resolution 1514(XV).

An evaluation of the legal significance of Resolution 749(VIII) in light of its frequent re-citation must begin with a recognition of the fact that much of the content of the resolution is in fact a repetition of the principles announced in Resolution 449(V). The one rule announced by the resolution which was not found in Resolution 449(V), and the one for which the resolution was most often cited, was that the United Nations had an obligation to exercise its supervisory powers over the conduct of the Mandatory Power. The power and the duty to exercise it were invoked by the international community through the United Nations on numerous occasions over the years, in both the General Assembly and the International Court.[96] Although South Africa never accepted the proposition, this interpretation of its treaty obligations was almost universally accepted and acted upon by the international community. The exercise of this power by the United Nations in fulfillment of its responsibilities had developed into a fixed expectation on the part of all states, including South Africa. After a few years the regular objection by South Africa was no longer taken seriously. The constant invocation of Resolution 749(VIII) and its overwhelming approval by the General Assembly left no significant doubt that it was considered the law by the international community.

Resolution 1514(XV)—Declaration on the Granting of Independence to Colonial Countries and Peoples

Resolution 1514(XV), the most cited resolution of the General Assembly, grew out of a proposal presented to the General Assembly by Nikita Khrushchev, the Premier of the U.S.S.R., in his address to the General Assembly on September 23, 1960. The Soviet draft itself was ultimately voted down, but the 43-nation draft which finally passed by a vote of 89–0, with 9 abstentions, was similar in many respects.[97] The resolution was never referred to a General Assembly committee. Its substantive provisions, set out in numbered paragraphs in the body of the resolution, can be summarized as follows:

(1) Colonial rule is unlawful.

(2) All peoples have the right to determine freely their political status and pursue their economic, social, and cultural development.

(3) Unpreparedness should not be used as a pretext for delaying independence.

[96] South West Africa—Voting Procedure, Advisory Opinion, [1955] I.C.J. Rep. 67, 49 A.J.I.L. 565 (1955); Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, [1956] I.C.J. Rep. 23, 50 A.J.I.L. 954 (1956).

[97] A summary of the history of Res. 1514(XV) can be found in 1960 U.N. Yearbook 44–50. The nine states abstaining were Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, and United States.

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(4) Forcible measures to maintain colonialism shall cease.

(5) Immediate steps shall be taken to transfer all powers to the indigenous inhabitants.

(6) Disruption of the national unity or territorial integrity of a country is unlawful.[98]

These six paragraphs were followed by a seventh, which makes clear the intention of the drafters that the resolution be considered a declaration of binding rules of law:

> 7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

The language of the resolution is of a normative character throughout. Paragraphs 1 and 6 describe activities which are respectively "contrary to" and "incompatible with" the United Nations Charter. Paragraphs 4 and 5 provide respectively that certain actions "shall cease" and that certain others "shall be taken." Paragraph 2 speaks of "the right to self-determination," and paragraph 3 provides that certain matters "should never serve as a pretext" for delay.

The apparent source of the rules set out in the Declaration is the United Nations Charter itself. Paragraph 2 above can be derived from Article 1, paragraph 2, of the Charter, which describes one of the purposes of the United Nations to be "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . ," and Article 55, which also refers to "equal rights and

[98] The full text of these paragraphs is as follows:

"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.

"2. 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.

"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 or all other territories which have not yet attained independence, 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 and 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 of the United Nations.

"7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

self-determination of peoples." Paragraph 3 of the Declaration, insofar as its use of the word "pretext" implies a lack of good faith on the part of the colonial Power, can be linked to Article 2, paragraph 2, of the Charter, which requires good faith fulfillment of Charter obligations. Paragraph 4, which deals with the cessation of repressive measures, can be tied to Article 73, paragraph a, which requires that the colonial Power ensure the "just treatment" and "protection against abuses" of the inhabitants. Paragraph 5, which calls for immediate steps to transfer power to the peoples of the territories, grows out of the requirement of Article 73, paragraph b, that the colonial Power "assist them in the progressive development of their free political institutions." Similarly, paragraph 6 of the Declaration, which attacks the disruption of "the national unity or the territorial integrity of a country," can be derived from Article 73, paragraphs a and b, in their references to "due respect for the culture of the peoples." Paragraph 1 of the Declaration stands essentially as a derivation of a general principle from the specifics of the subsequent paragraphs, stating the conclusion to be drawn from them: Colonialism is unlawful.

There can be no question, of course, that Resolution 1514(XV) does far more than simply restate the norms set forth in the Charter. Goodrich and Hambro report that at the San Francisco Conference a Chinese amendment to the draft of Article 73 that would have obligated colonial Powers "to promote development toward independence or self-government as may be appropriate" was withdrawn after some consideration.[99] Similarly, they comment that the inclusion of a reference to self-determination in Article 1, paragraph 2, was "not intended to encourage demands for immediate independence or movements for secession."[100] Resolution 1514(XV) was not completely without connection to previous developments under the Charter, however. As early as the Seventh Session, the General Assembly in Resolution 637(VII) called upon all states to "recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories" by ascertaining the wishes of the people "through plebiscites or other democratic means, preferably under the auspices of the United Nations." In part B of that resolution it recommended that colonial Powers "voluntarily include in the information transmitted by them under Article 73 e of the Charter details regarding the extent to which the right of peoples and nations to self-determination is exercised by the peoples of those Territories . . ."; and in part C asked the Economic and Social Council to recommend steps which might be taken by the United Nations "to develop international respect for the right of peoples to self-determination." Resolution 1514(XV), while it marked a major step, was not an unprecedented plunge into an area new to the General Assembly or the United Nations Charter.[101]

[99] Goodrich and Hambro, The Charter of the United Nations, Commentary and Documents 410 (2d ed., 1949).

[100] *Ibid.* at 95–96.

[101] See Sohn, Cases on United Nations Law 772–790, 804–812 (1st ed., 1956), for a review of the General Assembly's action in this field.

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Subsequent citations of the resolution are ubiquitous; 13%, better than one in eight, of the resolutions passed since December 14, 1960, have made reference to it. Furthermore, these references gave no sign of tapering off in the period through the 21st Session. There were more citations in the 20th Session than any other, and the 21st Session cited it more often than the 17th, 18th, or 19th Sessions.[102] Nine of the 95 citations are found in resolutions dealing with further elaborations of the obligations of colonial Powers and/or machinery to implement the provisions of these resolutions. An additional nine are concerned with human rights problems and programs, and 14 more relate to economic and social programs such as training for indigenous peoples, literacy, economic development, and dissemination of information about the United Nations and its resolutions on colonialism. Most significantly, 63 of the 95 citations occur in resolutions concerned with the progress of a specific colony or group of colonies toward the goals set out in Resolution 1514(XV). This continual re-citation of the resolution, which establishes general rules on the conduct of colonial Powers, in the context of review of the developments in specific colonies has the earmarks of a traditional law-applying process, in which a general standard is used as the basis for judging individual conduct.

On 33 occasions the General Assembly has adverted to a specific paragraph of Resolution 1514(XV) in a subsequent resolution.[103] Citations by paragraph number appear four times; quotations, five times.[104] The most common type of reference, however, was to refer generally to the resolution in support of a legal proposition which is a virtual quotation of a specific paragraph of Resolution 1514(XV); for example: "5. *Considers* that any attempt to partition the territory or to take any unilateral action, directly or indirectly, preparatory thereto constitutes a violation of the Mandate and of Resolution 1514(XV)."[105] While this type of reference involves neither explicit citation nor quotation of the particular paragraph, the closeness of the paraphrasing typically leaves little doubt as to the

[102] Res. 1514(XV) citations were distributed among the sessions as follows:

Session	*Number of Citations*	*Session*	*Number of Citations*
15	4	19	0
16	19	20	23
17	15	21	18
18	16		

The lack of citations in the 19th Session is of course an outgrowth of the U.N. financing crisis, which prevented voting on any controversial questions.

[103] Because some resolutions contain more than one such reference, there are only 24 resolutions in which this type of citation occurs.

[104] Explicit reference to a particular paragraph can be found in Res. 1654(XVI) (pars. 4 and 6), 1747(XVI) (par. 5), and 1955(XVIII) (par. 5). Quotation of a specific paragraph is found in Res. 1603(XV) (pars. 1 and 5), 1650(XVI) (par. 4), 1654(XVI) (par. 5), and 1951(XVIII) (par. 5).

[105] Res. 2074(XX), Question of South West Africa, Dec. 17, 1965. Another typical case can be found in Res. 1951(XVIII), Question of Fiji, Dec. 11, 1963, par. 1:

"1. *Affirms* the inalienable right of the people of Fiji to self-determination and national independence in conformity with the provisions of General Assembly Resolution 1514(XV)."

derivation of the statement.[106] In these situations the General Assembly is definitely using Resolution 1514(XV) as a source, not merely for the generalized proposition that colonialism is undesirable, but for the more specific rules of conduct which it sets out.

Of all of the resolutions of the General Assembly, Resolution 1514(XV) seems most closely to approximate a lawmaking act whose content grows out of Article 1, paragraph 2, Article 55, and Article 73 of the United Nations Charter. While none of those provisions called for the abolition of the colonial system, they contained the seeds of its eventual condemnation. The goal of self-determination of peoples, the obligation to promote international economic and social progress, and the duty to assist non-self-governing territories "in the progressive development of free political institutions" forewarned an eventual call for independence. After fifteen years had passed, and given the progress of those who co-operated with those goals, it was not unreasonable for the international community to conclude that those colonial Powers which showed no progress toward these ends were not fully meeting their Charter obligations. By the same token, those who signed the Charter, even if they voted against Resolution 1514 (XV), would be hard pressed to honestly affirm that it was not a reasonably foreseeable interpretation of their obligations after the passage of several years.

The language and the circumstances of the passage of Resolution 1514(XV), set out briefly above, indicate that the resolution was intended to set out a binding interpretation of the Charter, and the continual re-citation and other actions of the General Assembly in support of the resolution display the seriousness of the belief. The establishment of a Special Committee on the situation with regard to the implementation of Resolution 1514(XV) by Resolution 1654(XVI) [107] began a process of United Nations investigation into colonial situations and bilateral and multilateral political pressure of an intensity which is not always seen in enforcing universally accepted principles of international law. While one writer has concluded that, at least as of 1964 when he wrote, "The failure of the Organization to impose its will on recalcitrant Members shows the ineffectiveness of resolutions [like Resolution 1514(XV)]," [108] one might suggest that the results achieved by the United Nations in this area compare favorably with those, for example, of the United States

[106] Such paraphrases can be found in the following resolutions:

Par. 2: 1807(XVII), 1913(XVIII), 1949(XVIII), 1951(XVIII), 2012(XX), 2068(XX), 2145(XXI), 2151(XXI), 2183(XXI), 2185(XXI), 2227(XXI), 2228(XXI), 2229(XXI), 2230(XXI), 2238(XXI).

Par. 4: 1807(XVII).

Par. 5: 1596(XV), 1697(XVI), 1807(XVII), 1913(XVIII), 2229(XXI), 2238(XXI) [*Cf.* 1747(XVI), 1760(XVII)].

Par. 6: 2074(XX), 2232(XXI).

[107] See discussion of this resolution below.

[108] Skubiszewski, "The General Assembly of the United Nations and Its Power to Influence National Action," 1964 Proceedings, American Society Int. Law 153, at 157–158.

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Government in its efforts to desegregate American schools. Such major social changes are not accomplished overnight. The continual re-citation of the resolution has given rise, along with other factors, to a fixed and universal expectation that the international community considers colonialism unacceptable, and will take steps to terminate existing colonial regimes and to prevent the creation of any new colonial territories. No state could honestly claim that it was unaware of this expectation or that the resolution was merely a "recommendation" with no normative force as an authoritative interpretation of the United Nations Charter, and few colonial Powers have attempted to permanently obstruct decolonization. In short, Resolution 1514(XV) is as much a part of our international law as any of the familiar traditional doctrines.

Resolution 1654(XVI)—The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Resolution 1654(XVI) was passed by the General Assembly for the purpose of implementing the "objectives and principles" established in Resolution 1514(XV). The item was originally placed on the General Assembly agenda by the Soviet Union with the explanation that, despite the passage of the Declaration on Granting Independence to Colonial Countries and Peoples nine months earlier, 70 million people remained under colonial rule. The Soviet draft resolution called for the establishment of a commission to inquire into the situation and for the complete liquidation of colonialism by the end of 1962. The Assembly ultimately approved a 38-Power draft, without two amendments proposed by the Soviet Union, by a vote of 97–0, with four recorded abstentions.[109] A Nigerian draft resolution calling for the end of colonialism before December 1, 1970, was withdrawn after the passage of the 38-Power draft.[110]

The content of Resolution 1654(XVI) clearly indicates that it was not designed to announce any principles of law, but to set up machinery to deal with colonialism. Paragraph 1 "*Solemnly reiterates and reaffirms*" Resolution 1514(XV), and paragraph 2 "*Calls upon* States concerned to take action without further delay" to apply the Declaration. The remaining seven paragraphs establish a Special Committee and describe its duties and powers. The purpose of the Committee is "to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration" and to make periodic reports to the General Assembly.[111]

Similarly, subsequent references to Resolution 1654(XVI) indicate that it does not have the character of a statement of substantive legal principles.

[109] France, South Africa, Spain, and the United Kingdom. The representative of Portugal announced that its delegation would not participate in the voting on this resolution.

[110] A brief discussion of the history of this resolution can be found in 1961 U.N. Yearbook 44–51, 55–56.

[111] Par. 4.

23 of the 24 citations occurred in conjunction with Resolution 1514(XV).[112] The 14 resolutions that focus on specific colonies all draw their general principles from Resolution 1514(XV), and the references to Resolution 1654(XVI) are actually concerned with the reports on those colonies made by the Special Committee.[113] Six of the resolutions citing Resolution 1654(XVI) are concerned with the relationship between the Special Committee and other General Assembly committees.[114] Four citing resolutions deal with the general problem of decolonization,[115] and in each case the reference to Resolution 1654(XVI) is solely concerned with the activities of the Special Committee, while substantive principles are derived from Resolution 1514(XV) or other sources.

From what has been said, it is clear that Resolution 1654(XVI) does not set forth binding principles of international law, nor was it intended to do so. Its frequent reiteration by the General Assembly does not indicate that the Assembly is invoking it for the principles it contains; on the contrary, it is cited essentially as an adjunct to Resolution 1514(XV). Why then the reiteration? Perhaps because the unwillingness of certain states to accept the principles laid down in Resolution 1514(XV) manifested itself in the form of a refusal by those states to co-operate with the Special Committee established by Resolution 1654(XVI). Thus the action of the General Assembly of re-citing Resolution 1654(XVI) with the purpose of encouraging co-operation with the Special Committee was in effect a means of pressuring recalcitrant states to accept the principles of Resolution 1514(XV). The battle over the Declaration is being fought in part on the issue of co-operation with the Special Committee. Or perhaps it was simply a desire of the draftsmen to cite as many resolutions as possible in their later resolutions, in the hope of exploiting whatever additional moral force might be gained from doing so. Whatever the

[112] Only Res. 1846(XVII) cites Res. 1654(XVI) without also referring to Res. 1514(XV). Res. 1846(XVII) is concerned with the Committee on Information from Non-Self-Governing Territories, and simply notes that information gathered by it was forwarded to the Special Committee.

[113] Aden (Res. 1949(XVIII)); Angola (Res. 1819(XVII)); Basutoland, Swasiland, and Bechuanaland (Res. 1817(XVII), 1954(XVIII), 2063(XX)); British Guiana (Res. 1955(XVIII), 2071(XX)); Fiji (Res. 1951 (XVIII), 2068(XX)); (Island Colonies) (Res. 2069(XX), 2232(XXI)); Nyasaland (Res. 1818(XVII)); Rhodesia (Res. 1745(XVI)); Zanzibar (Res. 1811(XVI)).

[114] Four resolutions deal with relations with the Committee on Information from Non-Self-Governing Territories: Res. 1700(XVI), 1846(XVII), 1847(XVII) and 1970(XVIII). Res. 1702(XVI) covers relations with the Committee on South West Africa, and Res. 2106B(XX) covers relations with the Committee on the Elimination of Racial Discrimination which will be established under the International Convention on the Elimination of All Forms of Racial Discrimination.

[115] Res. 1810(XVII): The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (this resolution enlarged by 7 the membership of the Special Committee to 24); Res. 1956(XVIII): The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; Res. 2105(XX): Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; and Res. 2189(XXI): Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

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motive, it has more to do with the lawmaking character of Resolution 1514(XV) than with any substantive principles that might be gleaned from Resolution 1654(XVI).

V. Some Conclusions

Examination of the recognized processes for the creation of international law reveals several means of using General Assembly resolutions as a lawmaking vehicle. A resolution can serve as an authoritative interpretation of the United Nations Charter, as an expression of the community's belief that certain conduct is required by customary law, or as a determination that certain rules are "general principles of law recognized by civilized nations." The lawmaking character of this type of resolution arises not from the formal powers of the General Assembly, but from the reasonableness of the expectation that states which have collectively expressed the view that the law requires certain conduct will act in accordance with that expression.

In this context, the repeated reference by the General Assembly to certain previous resolutions as a standard by which to judge the behavior of a specific state, or as an expression of principles which should be respected by all states, reinforces the expectation that those principles will in fact be followed. This process of re-citation distinguishes those resolutions which express deeply-held, temporally stable convictions from those which are of only passing or mild concern. The extent of re-citation which is required to solidify a specific principle into a rule of law will depend upon the language of the resolution, the motives that lead to its passage, the contexts in which it is re-cited, and a host of other factors.

When the empirical data on re-citation of resolutions by the General Assembly are examined, the difficulty of the question of whether the frequently cited resolutions have become binding law becomes apparent. Of the four most cited resolutions, one, Resolution 1654(XVI), appears not to have the appropriate content for this purpose, and it is cited only to reaffirm the competence of the United Nations to act through subordinate committees on questions of colonialism. Similarly, Resolution 749(VIII) is not primarily cited for the legal principles it announces. It does establish the principle that the United Nations is *obligated* to act on behalf of the people of South West Africa, but that obligation was certainly not one that a majority of the General Assembly was reluctant to undertake.

Resolutions 217(III) and 1514(XV), on the other hand, do appear to have attained, or at least progressed well down the road toward attaining, the status of accepted principles of international law. The Universal Declaration of Human Rights sets out a series of principles which elaborate and clarify the concept of "human rights" referred to in the Charter, and calls upon all states, as does the Charter, to move toward the implementation of those rights. While South Africa has refused, despite rising pressure, to accept even the ultimate desirability of these principles, and only minimal progress has been achieved in some other states, immediate imple-

mentation is clearly not the crucial test of the obligatory nature of a principle of international law. In fact, some of the traditional enforcement mechanisms of international law have already been invoked in support of the Universal Declaration. Resolution 1514(XV) most explicitly declares that the principles it promulgates are to be "faithfully and strictly" observed. Again, while colonialism has not been eradicated throughout the world in the years since its passage, a great deal of progress has been made in that direction. Substantial energy has been devoted toward its implementation, and there can be little doubt that colonialism is well on its way toward complete and permanent eradication.

Despite these rather positive conclusions about the lawmaking significance of continually re-cited General Assembly resolutions, it is fair to say that the General Assembly has not yet really tried to exercise its quasi-legislative powers. Only recently, in Resolution 1514(XV), has the Assembly formally expressed the view that a resolution must be observed by all Member States, and it has yet to detail in a resolution what it believes to be the source of such an obligation. Similarly, the Assembly has only rarely taken advantage of the opportunity to cite a specific paragraph or article of a lawmaking resolution in connection with a specific case in which a violation is considered to have taken place. And it has never formally expressed the view in a resolution that an earlier resolution being cited stated a binding principle of international law. When and if the General Assembly does begin to exercise its full lawmaking potential, a resolution of the following variety may appear:

> *The General Assembly,*
>
> *Convinced* that Resolution ———— declares in paragraph — a principle of customary international law which is evidenced by the Case of the ———— and by the ———— Incident,
>
> *Recognizing* that the recent events involving State X have created a situation which Resolution ————, paragraph —, was intended to govern,
>
> 1. *Reaffirms* that Resolution ———— is an accurate and complete expression of the scope and extent of the rule that ———— and that all states are legally bound to conform to that rule as it is there set forth;
>
> 2. *Determines* that State X has acted in a manner contrary to the requirements of paragraph — of Resolution ————;
>
> 3. *Calls upon* State X to act in accordance with this international principle in the interests of international peace and security, and justice.

It may be that it is impossible in the present world condition for the General Assembly to pass a resolution in this form. If that is the case, the General Assembly will simply continue to legislate by the slower, less precise, and more invisible technique presently being employed. Member States might seriously consider, however, whether this more haphazard process might not in the long run create more dangers of undesirable "legislation" than would frank recognition and careful control of the mechanisms by which the General Assembly creates international law.

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Letter from the British High Commission in Port Louis to the Prime Minister of Mauritius (26 June 1972)

CONFIDENTIAL

BRITISH
HIGH COMMISSION
CHAUSSÉE · PORT LOUIS · MAURITIUS

32/1

26 June 1972

Dr the Rt Hon Sir Seewoosagur Ramgoolam Kt MLA
Government House
PORT LOUIS

My dear Prime Minister,

I refer to the meeting in London on 23 February, 1972, between yourself, Sir Harold Walter and Lord Lothian, and to your meeting with Baroness Tweedsmuir on 23 June, 1972, at which the Mauritius Government scheme for the resettlement of the persons displaced from the Chagos Archipelago was discussed.

2. The scheme has been fully appraised in London and I have been authorised to inform you that the British Government are prepared to pay £650,000 (the cost of the scheme) to the Mauritius Government, provided that the Mauritius Government accept such payment in full and final discharge of my Government's undertaking, given at Lancaster House, London, on 23 September, 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Chagos Archipelago.

3. Accordingly, I should be most grateful if you would confirm that you are willing to accept the payment of £650,000 in full and final discharge of my Government's undertaking, and to agree that the British Government may state this in public, should the need arise.

4. When replying, perhaps you would indicate the date and manner in which the Mauritius Government wish payment to be made.

Yours very sincerely

R C Giddens

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Annex 99

Andrés Rigo Sureda, *The Evolution of the right of self-determination: a study of United Nations Practice* (1973)

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THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION

A study of United Nations Practice

by

A. RIGO SUREDA
Licenciado en Derecho (Madrid); Ph. D. (Cantab.)

A. W. SIJTHOFF – LEIDEN – 1973

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d. French Somaliland.

France transmitted information on this territory from 1946 until 1957, the year in which this information was discontinued because, according to France, French Somaliland by referendum became a Self-Governing Territory.[1] In 1966 the Committee of 24 considered the question of French Somaliland,[2] and on the basis of its report[3] the General Assembly re-affirmed the inalienable right of the people of French Somaliland to self-determination and independence in accordance with resolution 1514(XV).[4]

While Algeria and Oman had never been in the category of Non-Self-Governing Territories, the Cook Islands and French Somaliland at one time or another had belonged to this class of territories. These two last cases show how the General Assembly, on the basis of resolution 1514(XV), has extended its competence to decide whether or not a Non-Self-Governing Territory has exercised self-determination even after the General Assembly itself has admitted that the territory in question is fully self-governing, though not independent,[5] so that Chapter XI did not apply any longer.[6]

General Assembly on the Dutch territories could be considered to be a precedent for the Cook Islands case, though in resolution 945(X) the General Assembly did not go as far as to affirm its responsibility towards the people of the territories concerned should they wish to change their status in the future.

1. See above p.56 n.76.
2. Mtgs. 438th, 470th and 471st.
3. A/6300/Rev.1. Chapter XII.
4. Resolution 2228(XXI).
5. On the content of self-determination see below Chapter III.
6. In 1967 there was an attempt to re-open the question of Puerto Rico. A proposal in this sense was received by the Committee of 24, but after a short debate the discussion was adjourned sine die. See United Nations Law Reports vol.I (1966-67) p.49(9), and

This development with respect to Non-Self-Governing Territories is in accordance with the claim of the General Assembly to be competent to decide whether or not any territory has exercised self-determination whatever its constitutional status as regards another state -as in the case of Algeria- or whatever the special relationship placing the territory concerned in a position of dependence vis-à-vis another state -as in the case of Oman.

* * *

Thus the General Assembly has gradually built up its competence to decide on the question of whether or not a territory has exercised self-determination or whether or not a territory should exercise it. During the early years of the U.N. the General Assembly developed this competence on the basis of Chapter XI of the Charter. In more recent years, especially since 1960 when the existence of a right to self-determination gained wide acceptance, it has affirmed its competence to declare that a colonial situation exists with respect to self-determination without referring to the provisions of Chapter XI. This assumption of competence has invariably been challenged by the states concerned as an invasion of their domestic jurisdiction or the domestic jurisdiction of -according to them- the Self-Governing Territory or state the status of which is being questioned. States have claimed that the constitutional

---

U.N.Y.B.(1967) pp.622-23. There was another attempt to re-open this question in 1971 but the item failed to be included in the agenda of the General Assembly (A/8441 and add.1). The same fate occurred in 1967 to a proposal to include the Comoro Archipelago* in the list of territories to which resolution 1514(XV) applied.

* France ceased to transmit information on this territory in 1957. See above p.56 n.76.

relationship between the metropolis and its territories is something that only the metropolis has competence to modify. However, it is doubtful whether states can claim domestic jurisdiction, since these constitutional changes purport to affect the international status of territories with respect of which they have pledged themselves to fulfil certain obligations.[7] Besides, the General Assembly as well as the Security Council can decide on the status of a particular territory for the purposes of the Charter; this is true in the case of admission of states to U.N. membership and the Security Council also has to determine what is the status of a state as regards Article 32. Hence, there is no reason why the General Assembly cannot decide what is the status of a territory with respect to Chapter XI or Article 1(2). Therefore, though it is true that a state has the competence to define its constitutional relationship with territories under its sovereignty, any implications which follow from this relationship for the international status of the territory affected will depend, so far as the Charter of the U.N. is concerned, not on the decision of the member state but of the General Assembly.[8]

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7. See Article 73 of the Charter.

8. See Q. Wright, "Recognition and Self-determination" P.A.S.I.L.(1954) pp.32-33 and 69. See also I.C.J. Reports (1962) p.163. In favour of the General Assembly's competence O. Schachter argues that "when the practice of states in the United Nations has served by general agreement to rest in the organs the competence to deal definitively with certain questions, then the decisions of the organs in regard to those questions acquire an authoritative juridical status even though these decisions had not been taken by unanimous decision or "general approval". In this way evolutionary growth in regard to fields of competence has an important positive effect on the law-making potentialities of the organs." Schachter considers the right of the General Assembly to determine which territories fall within the scope of Article 73 as an example of this evolutionary growth of

C. The competence of the General Assembly on "non-self-determined" territories and claims of third states.

So far we have considered the competence of the General Assembly to decide the status of a territory as regards the exercise of self-determination vis-à-vis the competence of the state having jurisdiction or controlling, in one way or another, this territory. But the question of competence does not end there since the assumption by the General Assembly of the role described above has unveiled new conflicts of competence, especially with respect to those third states which entertain certain claims in relation to the territory considered by the General Assembly as appropriate for self-determination. These questions of competence can be placed under the three following headings: a) competence to decide on the claim that a plebiscite should be held in a "non-self-determined" territory; b) competence to determine when the Charter prevails over the obligations undertaken in other agreements, and, finally, c) competence to deal with territorial claims.

a. Competence to decide on the claim that a plebiscite should be held in a "non-self-determined" territory.

i. The case of Cyprus.

In 1954 Greece asked the General Assembly to include on the agenda of its ninth session the following item: "Application, under the auspices of the United Nations, of the principle of equal rights and self-determination of peoples in the case of the population of the island

competence. "Law, Politics and Action in the United Nations" 109 Rec. des Cours (1963) vol.II pp.187-88. See also Castañeda, op.cit. pp.126-127.

of Cyprus". The letter of the Greek Government to the Secretary-General specified that this request was based on Articles 10, 14 and 1(2) of the Charter, and that the Greek Government reserved its right "to refer to Article 35(1) if it considered such a course to be justified by subsequent developments."[9]

The real question was whether Greece could ask for a plebiscite to be held in Cyprus under U.N. auspices without interfering in the internal affairs of the United Kingdom. Greece considered that, although the island of Cyprus was a Non-Self-Governing Territory under British administration, "the freedom of the people of Cyprus was not a matter falling within the domestic jurisdiction of the United Kingdom".[10] A statement along the same lines can be found in the opinion on Cyprus given by Judge Alejandro Alvarez at the request of the Government of Greece: it says that

> "Greece has an incontestable right to request that a plebiscite should be held in Cyprus to determine whether that island should belong to Greece or to Turkey."11

The United Kingdom contended that "a discussion of British administration in Cyprus, based upon the avowed objective of transferring sovereignty over that island to another Member of the United Nations was a violation of Article 2(7),"[12] since sovereignty over territory acknowledged internationally by treaty[13] is a matter falling within the domestic jurisdiction of the state concerned.[14]

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9. A/2703, August 20, 1954.
10. G.A.O.R. 9th sess. 1st Cttee. 750th mtg. para.31.
11. A/AC.1/814 para.48.
12. G.A.O.R. 9th sess. Gral. Cttee. 93rd mtg. para.22.
13. In the present case the Treaty of Lausanne (Article 20).
14. G.A.O.R. 9th sess. plen. mtg.477th para.119.

The question of competence in this case is remarkably similar to the one described in the case of the Aaland Islands.[15] We have seen how on that occasion a Commission of Jurists found that the decision to organise a plebiscite was within the domestic jurisdiction of the territorial sovereign, except in those cases in which the sovereign was not clearly formed. The representative of Turkey expressed his Government's point of view in a way that recalls the arguments used by the Commission of Jurists[16] in the Aaland Islands question. He stated that

> "The Charter, as well as the accepted practice of International Law, had an entirely different set of rules concerning sovereign countries and Non-Self-Governing Territories which constituted a national entity on the one hand, and concerning certain Non-Self-Governing Territories which lacked the characteristics of a nation or of a juridical state organisation on the other."17

Then he proceeded to apply this distinction to Article 73(b) of the Charter and to the case of Cyprus and maintained that Cyprus fell within the second category: it did not constitute a nation because of the two communities living there; it did not constitute a state because it was a Non-Self-Governing Territory.[18] However, contrary to the Commission of Jurists' conclusion, the Turkish representative did not accept that in the case of Cyprus the Greek claim should be upheld, because,

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15. See above pp.29-34.
16. See above pp.31-32.
17. G.A.O.R. 12th sess. 1st Cttee. 928th mtg. para.5. The Turkish representative made it clear that such distictions had nothing to do with any such situations which might exist in "independent countries whose political status had already been formed." Ibid. para.8.
18. Ibid. para.6-8.

he contended, the General Assembly should take into account "the particular circumstances of each territory and its peoples",[19] and a plebiscite such as was proposed by Greece would be a denial of self-determination for the Turkish Cypriots. Turkey would accept the Greek claim if a separate right of self-determination was recognised to the Turkish minority.[20]

Therefore, it can be concluded that both the Turkish position and the Greek position supported the General Assembly's competence to decide on a claim that a plebiscite should be held in a Non-Self-Governing Territory, though, of course, the two countries disagreed radically on the merits of the case. Unfortunately, no mention of this issue was made by the General Assembly in the resolutions which it adopted on Cyprus.

ii. The case of West Irian.

In 1961 the Netherlands proposed to the General Assembly a draft resolution[21] on West Irian[22] providing for the establishment of a U.N. Commission for Netherlands New Guinea with, inter alia, the functions of inquiring into the possibility of organising a plebiscite under the supervision of the U.N. to ascertain the wishes of the population about its future and consider the timing of the plebiscite necessary to this end. This draft resolution was not pressed to a vote when another draft with a specific reference to the wishes of the population of West Irian was proposed by a group of states.[23] This second draft resolution failed to obtain the re-

19. This is the wording used in Article 73(b).
20. See G.A.O.R. 12th sess. 1st Cttee. 928th mtg. para.8-9.
21. A/L.354 and Rev.1, Rev.1/Corr.1.
22. The sovereignty of the Netherlands over West Irian was contested by Indonesia. See below p.77.

quired two-thirds majority for its adoption.[24]

iii. The case of French Somaliland.

In 1965 the Republic of Somalia brought to the attention of the Committe of 24 the colonial situation in French Somaliland.[25] The Committee did not consider this question until 1966, and, by then, France had promised the inhabitants a plebiscite in the territory not later than July 1967. Somalia expressed its misgivings on the way that such a consultation would be carried out and asked the U.N. to supervise it. The General Assembly adopted a resolution requesting the Administering Power to make, in consultation with the Secretary General, "appropriate arrangements for a United Nations presence before, and supervision during, the holding of a referendum."[26] France did not comply

23. A/L.368.

24. The vote, by roll-call, was 53 to 41, with 9 abstentions. A separate vote had been taken on the last preambular paragraph of this draft resolution; by this paragraph the General Assembly expressed its conviction that "any solution which affects the final destiny of a Non-Self-Governing Territory must be based on the principle of self-determination of peoples in accordance with the Charter of the United Nations". Here the vote was 53 to 36 with 14 abstentions; the paragraph was deleted from the draft resolution since it did not get two-thirds of the votes. It must be noted that on both occasions the affirmative votes were superior to the ones obtained by another draft in which no reference to the wishes of the people was contained. (A/L.367 and Add.1-4; A/L.367/Rev.1). The vote in this case was 41 to 40 with 21 abstentions.

25. A/AC.109/121. The Republic of Somalia did not actually claim French Somaliland; it only asked that France give independence to this territory so that, then, it could decide whether or not it wanted to join the Somali Republic, as did British Somaliland a few days after becoming independent in 1960. The Somali plan included a proposal whereby "The United Nations should, immediately upon the grant of independence to the Territory, assume the administration of the Territo-

with this request, and at the next session the General Assembly, taking into account the circumstances in which the referendum took place, regretted the lack of co-operation of France and maintained that French Somaliland had not yet fully exercised its right to self-determination.[27]

iv. The case of Gibraltar.

The United Kingdom decided in 1967 to hold a referendum in Gibraltar on September 10th of that year. This move was prompted by the fact that it had not been possible to resume talks with Spain on the future of Gibraltar in spite of the General Assembly's resolution 2231(XXI) asking both countries to negotiate. On September 1st, 1967 the Committee of 24 adopted a resolution declaring that the holding of a referendum in Gibraltar would contradict the provisions of the said resolution 2231 in which a negotiated solution, taking into account the interests of the inhabitants of this territory, was recommended. The plebiscite took place as announced, and in December of the same year the General Assembly confirmed the resolution adopted by the Committee of 24 before the plebiscite took place and declared that the United Kingdom had contravened the resolution of its last session which had recommended further negotiations.[28]

v. The case of the Spanish Sahara.

The Spanish Sahara is claimed by Mauritania and Morocco

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ry for a period of two years so as to allow the formation of a political consensus within the Territory as to its future". Ibid.

26. Resolution 2228(XXI) para.4.
27. Resolution 2356(XXII).
28. Resolution 2353(XXII). See also A/6700/Rev.1. Report of the Special Committee of 24, Chapter X.

to be an integral part of their respective national territories. Spain, on the other hand, has adopted the position that the status of this territory should be determined by its people. The General Assembly, by resolutions 2229(XXI), 2354-II(XXII), 2428(XXIII), 2591(XXIV) and 2711(XXV), has invited the Administering Power, Spain,

> "to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination."

So far, this referendum has not taken place.

Thus the General Assembly has been faced with claims that a plebiscite be held in a non-self-determined territory advanced either by the Administering Power or by a third state. The General Assembly was reluctant to intervene in cases such as Cyprus and West Irian and no decision was taken on the question of plebiscites being held in these territories. After 1965 a change in the General Assembly's policy has occurred and it has openly endorsed or disapproved of plebiscites conducted by the administering states themselves, or it has fixed the conditions under which a plebiscite will be considered appropriate for the purposes of the exercise of the right of self-determination by the people of the territory concerned. Unfortunately, there is no recent practice on claims of third states of the Cyprus type,[29]

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29. The claim of Somalia that a plebiscite be held in French Somaliland under U.N. auspices resembles the Greek claim on Cyprus. But in this case by the time the

however, it seems possible to conclude that the General Assembly, because of its competence to decide when a territory has exercised self-determination, could take the initiative and determine that a plebiscite should be held in a particular territory as a condition for recognising that it has exercised self-determination. Hence it could also uphold or dismiss a claim by a third state that a plebiscite should be held in a non-self-determined territory according to its own interpretation of what self-determination means for the territory in question.[30]

b. The competence of the General Assembly to decide on the applicability of Article 103 of the Charter.

i. The Moroccan and Tunisian questions.

During the discussion of the questions of Tunisia and Morocco it was pointed out by France that the U.N. had not been given competence to revise treaties.[31] This issue was taken up by other delegates in the general context of the General Assembly's competence to deal with questions relating to these two territories, and it was argued that, since both territories were non-self-governing, the General Assembly could decide on the basis of Article 103 of the Charter whether the treaties by which Tunisia and Morocco became French protectorates were in conformity with the principle of self-determination recognised in the Charter. The Indian delegate put it in the following terms:

General Assembly took any action the colonial Power itself had taken the initiative of holding a plebiscite in this territory.

30. See below Chapter IV, section 2(a).

31. G.A.O.R. 7th sess. plen. mtg. 392nd para.92.

> "...the fact remained that when an international treaty was interpreted or applied by a Member State in a manner inconsistent with the Charter, the United Nations was certainly entitled to call the attention of the Member State to that divergence, particularly when international relations and human rights were affected."32

A counter-argument was put forward by the United Kingdom[33] and by Australia. The latter country's delegate stated that

> "In the present case there was no conflict of obligations within the meaning of Article 103; yet even assuming that there were, that fact would not confer competence upon the General Assembly, as Article 103, on a careful reading of the Charter and study of its context, had nothing to do with conferring competence."34

The General Assembly in the resolutions[35] adopted on the Tunisian and Moroccan questions expressed the hope that "the parties will continue negotiations on an urgent basis with a view to bringing about self-government...in the light of the relevant provisions of the Charter of the United Nations". In the preamble to these resolutions the General Assembly referred to "the necessity of developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples", and considered that the U.N. "should strive towards removing any causes and factors of misunderstanding among Member States."

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32. G.A.O.R. 8th sess. 1st Cttee. 653rd mtg. para.4. For other relevant statements see G.A.O.R. 7th sess. 1st Cttee. 538th mtg. para.64; 539th mtg. para.11 and 47; and 543rd mtg. para.69.
33. G.A.O.R. 7th sess. 1st Cttee. 548th mtg. para.25.
34. G.A.O.R. 7th sess. 1st Cttee. 545th mtg. para.32.
35. See resolutions 611 and 612(VII).

ii. The case of Cyprus.

A reference by Greece to Article 103, while maintaining that Cyprus should be able to choose, in full freedom, the administration it desired,[36] was taken up by Colombia to imply that the U.N. was competent to decide that particular treaties had been superseded by the Charter. Colombia denied that such a contention could be construed on a reading of the relevant provisions of the Charter.[37] The General Assembly recommended a negotiated solution in 1956 and 1959.[38]

It must be noted that in recent years, though Article 103 has not been mentioned in cases such as the Falkland Islands or Gibraltar, it seems that Argentina and Spain have relied on the proposition that, a right of self-determination having come into existence, the titles on which the United Kingdom bases its sovereignty over those territories should be revised along the lines of the Spanish and Argentinian interpretations of self-determination. The General Assembly has been more eager in these cases than on previous occasions to find that a dispute existed and to recommend negotiations to solve it. In the light of these initiatives it is suggested that the earlier reluctance of the General Assembly to take any steps which could be interpreted as favourable to a revision of certain treaties was due not to a belief of lack of competence to take such an initiative (indeed, Articles 10, 11(2) and 14 can very well cover this competence to determine when Article 103 applies) but to a lack of consolidation of the right of self-determination itself, and hence there was no firm basis

36. G.A.O.R. 9th sess. plen. mtg. 477th para.169.
37. Ibid. para.223. See also G.A.O.R. 9th sess. 1st Cttee. 750th mtg. para.73.
38. Resolutions 1013(XI) and 1287(XIII).

on which to claim revision: after 1960 -i.e. General Assembly resolution 1514(XV)- it would be difficult to doubt the basis of self-determination.

c. Territorial claims.

i. West Irian.

When the Charter of Transfer of Sovereignty was signed by the Netherlands and Indonesia in 1949, the dispute over Netherlands New Guinea or West Irian was left to be settled in further negotiations.[39] These took place on several occasions but failed to achieve any positive result. Indonesia then brought the question before the U.N. and maintained that negotiations with the Netherlands could only be concerned with the transfer of sovereignty over West Irian to Indonesia. The Netherlands on the other hand opposed this restricted view of the object of eventual negotiations.[40]

As regards competence the Netherlands stated that

> "When legal questions concerning sovereignty were discussed, it was easy to loose sight of one aspect of paramount importance. That was that the First Committee was not a court of law dealing with a dispute about a piece of territory, but an organ which,if indeed it had a legitimate interest in the matter, should be primarily concerned with the welfare of the human beings concerned. It was with that in mind that the Netherlands Government's policy had been formulated."41

Indeed, the Netherlands delegate had stated that the Netherlands administration of West New Guinea was "a peaceful endeavour to create conditions for the self-

39. Article 2.
40. See below pp.143-151 for a more extensive description of these arguments.
41. G.A.O.R. 9th sess. 1st Cttee. 726th mtg. para.64.

determination of a population".[42] To this last statement Indonesia opposed the contention that West Irian had already exercised self-determination when the Republic of Indonesia proclaimed itself independent in 1945 and, furthermore, the General Assembly was competent to deal with this question because it concerned a Non-Self-Governing Territory.[43]

The Netherlands opposed a draft resolution in which the General Assembly expressed the hope that the parties would pursue their endeavours with respect to the dispute which existed between them so as to find a solution in conformity with the principles of the Charter.[44] The reason given by the Netherlands to justify its position was that this paragraph, however harmless it might seem, meant that the General Assembly endorsed the Indonesian position and this was outside the General Assembly's competence.[45]

Although an item on West Irian was on the agenda of the next three General Assembly's sessions, and also on the agenda of the sixteenth session, no initiative was taken by the General Assembly on this question.

ii. Gibraltar.

Before the Committee of 24 Spain claimed in 1964 that Gibraltar was an integral part of its territory and that the only way in which it could exercise self-determination was by being returned to Spain by the United Kingdom. The United Kingdom maintained that it had no doubts about its sovereignty over Gibraltar. The Committee of 24 adopted a consensus on October 16, 1964 whereby it noted that a dispute existed between the

42. Ibid. para.60.
43. See below Chapter III, section 1(a,i).
44. A/C.1/L.110.
45. G.A.O.R. 9th sess. plen. mtg. 509th para.106-108.

United Kingdom and Spain regarding the status of Gibraltar and it invited the two parties to find a negotiated solution to this dispute. The United Kingdom objected to such a consensus because, in the view of the United Kingdom, it exceeded the terms of reference of the Committee, since it was not competent to consider or discuss any dispute concerning sovereignty or territorial claims nor to make recommendations on a dispute.[46] The United Kingdom representative had already made it known to the Committee, before the consensus was adopted, that his government believed the Committee lacked competence to deal with the Spanish claims. Spain, on the other hand, contended that Gibraltar was a Non-Self-Governing Territory to which resolution 1514(XV) fully applied and, therefore, the Committee of 24 was competent to discuss any problem related to this territory, even if it meant discussing matters concerned with sovereignty.[47]

A way out of the impasse created by the British and Spanish arguments was sought by the representative of Cambodia, who distinguished between two aspects of the question of Gibraltar: one concerned the status of the territory which, in so far as it was a Non-Self-Governing Territory, fell within the competence of the Committee of 24. The other aspect concerned the claim to this territory put forward by Spain. With respect to this second aspect he stated that

> "it is true that the Special Committee is perhaps not qualified to deal with the question of sovereignty, but this does not mean that this question should be kept outside the auspices of the Committee...since the territory of Gibraltar is at present non-self-governing, in order to make it possible to implement the right of self-determination

46. A/AC.109/SR.291.
47. A/AC.109/PV.282.

> and independence. There is no doubt that this question of sovereignty should be dealt with first of all...Therefore...[Cambodia] hopes to see talks held between the interested Powers and is ready to support any recommendation along these lines."[48]

In the following year objections to the General Assembly's competence to handle the problem of Gibraltar were voiced in the Fourth Committee by Australia. This country's delegate stated after voting in favour of a draft resolution[49] inviting the United Kingdom and Spain to negotiate on Gibraltar that his vote was "without prejudice to its position that questions of sovereignty over colonial territories were not the concern [of the Committee]".[50] In 1967 the United Kingdom said (when explaining its vote on a draft resolution on Gibraltar)[51] that it had voted against it because the wording used could be interpreted as an endorsement of the Spanish claim to Gibraltar, and this was not a question to be settled by the Fourth Committee but by the International Court of Justice.[52]

The General Assembly recognised that a dispute existed on Gibraltar, endorsed the consensus of the Committee of 24 and asked the parties to negotiate. In 1967 it went as far as actually recommending terms of settlement, and in 1968 it fixed a deadline for the settlement of the dispute.[53]

iii. The Falkland Islands.

The dispute between Argentina and the United Kingdom

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48. A/AC.109/PV.213. See also a similar statement by the representative of Venezuela in A/AC.109/PV. 285.
49. That once it was adopted by the General Assembly became resolution 2070(XX).
50. G.A.O.R. 20th sess. 4th Cttee. 1578th mtg. para.49.
51. Resolution 2353(XXII).
52. G.A.O.R. 22nd sess. 4th Cttee. 1754th mtg. para. 58-65.

over the Falkland Islands bears great similarity to the dispute over Gibraltar and the arguments put forward by both parties have run along the same lines. However, it must be noted that the United Kingdom did not object to the competence of the Committees of the General Assembly as it did in the case of Gibraltar. The reason for this different approach is perhaps to be found in the more moderate attitude taken by the claimant state and by the General Assembly itself. The Committee of 24 and the Fourth Committee have adopted several consensus on the Falkland Islands[54] and the General Assembly passed a resolution on this question in 1965.[55] All are identical in the sense of declaring that resolution 1514 applies to the territory in question, they note that a dispute exists concerning sovereignty over the Falkland Islands and they finally invite the parties to negotiate.

It is a common feature of the cases reviewed above that the respective Administering Powers at first opposed any claim contesting their sovereignty over a Non-Self-Governing Territory, and argued on the basis of the validity of the title they had to the territory in dispute. Afterwards, since the claimant states argued their cases on the basis of self-determination, the Administering Powers counter-attacked on the same grounds, and in the several years in which the disputes have been on the General Assembly's agenda the arguments used by both parties have relied more and more on different interpretations of what self-determination means for the contested territory. This development has diminished the emphasis placed by the colonial Powers

53. See resolutions 2353(XXII) and 2429(XXIII).
54. See U.N.Y.B. (1964) p.432, (1966) p.659, and U.N. Monthly Chronicle (January 1970) p.124.
55. Resolution 2065(XX).

on the incompetence of the General Assembly to deal with territorial claims, and there has been a marked unwillingness to separate the question of the territorial dispute from the question of self-determination.[56] As a consequence of these developments in practice it can be concluded that the General Assembly has competence to determine that a state which lays claim to a non-self-determined territory on the basis of the right of self-determination has a locus standi to carry out negotiations on it.

5. The competence of the U.N. organs to decide on the status of a state for the purposes of Article 4 of the Charter and claims to self-determination: the case of Mauritania.

Article 4 of the Charter names the Security Council and the General Assembly as the competent organs to recommend and decide respectively on whether or not an applicant state fulfils the conditions to become a member of the U.N. These organs, in exercising such powers, can actually be placed in the position of deciding between contending claims to self-determination; this was the case when Mauritania became independent and therefore a potential member of the U.N. Before this happened Morocco took the problem of Mauritania to the General Assembly and claimed that this country -within the borders assigned to it by France- had always been an integral part of Moroccan national teritory.[57] The General Assembly took no action[58] and

56. As it was suggested by some states. See statements by Cambodia and Venezuela mentioned above, and in the case of the Falkland Islands, Turkey expressed a similar opinion. See G.A.O.R. 20th sess. 4th Cttee. 1558th mtg. para.67.
57. A/4445. August 20, 1960.
58. The item was discussed during the sixteenth se-

on November 28, 1960 Mauritania was granted independence by France and it applied for U.N. membership.[59] Eventually Mauritania was admitted to the U.N.[60] after some delaying tactics by the Soviet Union in the Security Council. These tactics are best interpreted as manoeuvres in the context of the cold war and not as evidence of doubts on the competence of the U.N. to pass a judgment on the Moroccan claims. Indeed, Morocco itself argued its case before the Security Council as if this organ were a court of law competent to give a final decision on its claims. The Moroccan delegate said that Morocco appeared before the U.N. as

> "a plaintiff seeking to gain its rights, which the French Government continues to disregard. We have called upon all the peoples of the world to witness the injustice of which we are victims and which France has sought to perpetuate by its efforts to persuade an international organisation to ratify its act of force."61

He had earlier stated that

> "with the proposal that you should advocate the admission of Mauritania to this world organisation you are being asked to take a decision which... would injure my country by amputating a part of its national territory."62

It is clear that admission of the disputed territory to the U.N. as a member state renders claims, such as those put forward by Morocco, pointless; since if the claimant state thereafter has to settle the dispute in a manner consistent with the dispositions of the Charter, that is to say, peacefully and without recourse to

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ssion. See especially G.A.O.R. 16th sess. 1st Cttee. 1109th, 1111th, 1113th and 1118th mtgs.

59. S/4563 and Corr.1.

60. On October 27, 1961.

61. S.C.O.R. 16th yr. 971st mtg. para.140.

force, there is little hope of its being successful. For it is highly improbable that any new state will ever be willing to negotiate on a claim to the whole of its own territory. Thus, the decision of the General Assembly admitting a state to membership is final as regards the status of such a country, especilly with respect to claims put forward by other member states.[63]

6. The case of Southern Rhodesia.[64]

Southern Rhodesia, though a Non-Self-Governing Territory, is dealt with here and not together with other territories falling within this category, because it is the only Non-Self-Governing Territory the situation of which the Security Council has found to be a threat to international peace. This finding of the Security Coun-

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62. Ibid. para.95.

63. The admission of Israel to the U.N. is another case in point. Further evidence is provided by the attitude taken by the Philippines and Indonesia towards the creation of Malaysia. It was then contended by these two states that Malaysia was a new state and needed to be admitted to the U.N., therefore it could not automatically take the place of Malaya. The Philippines and Indonesia did not gather much support, but this episode can be viewed as a proof of the significance that these two countries attached to admission to the U.N. with respect to their territorial claims to Sabah and Sarawak. See G.A.O.R. 18th sess. plen. mtg. 1283rd pp.2 and 5.

64. For the consideration of the Rhodesian question at the U.N. see R. Higgins, "International law, Rhodesia and the United Nations" World Today (March 1967) pp. 94-106; J.W. Halderman, "Some legal aspects of sanctions in the Rhodesian case" 17 I.C.L.Q. (1968) pp.672-705; T. Venkatavoradan, The question of Southern Rhodesia" Indian Yearbook of International Affairs (1964) pp.112-150; G. Fisher, "Le probleme rhodésien" A.F.D.I. (1965) pp.41-70; M.S. McDougal and W.M. Reisman, "Rhodesia and the United Nations: the lawfulness of international concern" 62 A.J.I.L. (1968) pp.1-19; and J.E.S. Fawcett, "Security Council Resolutions on Rhodesia" B.Y.I.L. (1965-66) pp.103-121. The terms Southern Rhodesia and Rhodesia are used interchangeably.

Annex 100

Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts)* (1974-2017)

REFERENCE TO CHAGOS ARCHIPELAGO IN ANNUAL STATEMENTS MADE BY MAURITIUS TO THE UNITED NATIONS GENERAL ASSEMBLY

1974 Statement by Sir Abdul Razack Mohamed at the 29th Session of the United Nations General Assembly (27 September)

Declared a zone of peace by the Assembly three years ago the Indian Ocean is at present the scene of dangerous rivalries. Any decision of the United Kingdom and the United States to extend communications and military facilities on the island of Diego Garcia would constitute a flagrant violation of the United Nations resolution on the subject. May we appeal to those directly concerned, especially the United States of America, to reconsider their present policy which, certainly, far from being conducive to the creation of a zone of peace is rather conducive to the creation of one of tension. Mauritius, therefore, with other countries bordering the Indian Ocean, views with grave concern the activities of the great Powers, which could create an explosive situation. The peoples of the countries of the Indian Ocean must be allowed to live in peace and security. Mauritius will therefore continue to explore with others every possibility of maintaining peace in the area.

1980 Statement by Sir Seewoosagur Ramgoolam, Prime Minister, at the 35th Session of the United Nations General Assembly (9 October)

Here it is necessary for me to emphasize that Mauritius, being in the middle of the Indian Ocean, has already – at the seventeenth ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity [OAU], held at Freetown from 1 to 4 July this year – reaffirmed its claim to Diego Garcia and the Prime Minister of Great Britain in a parliamentary statement has made it known that the island will revert to Mauritius when it is no longer required for the global defence of the West. Our sovereignty having thus been accepted, we should go further than that, and disband the British Indian Ocean Territory and allow Mauritius to come into its natural heritage as before its independence. The United States should make arrangements directly with Mauritius for the continued use of the island for defence purposes. And then, there are the inhabitants of Diego Garcia who are domiciled in Mauritius and for whom better arrangements should be made. It must be the duty of both the United States and Great Britain to discuss with the Mauritius Government how best to give satisfaction to all concerned and at the same time provide better prospects for the islanders.

1982 Statement by Hon. Anerood Jugnauth, Prime Minister, at the 37th Session of the United Nations General Assembly (15 October)

At this juncture I should like to dwell on an issue which affects the vital interests of Mauritius; I mean the Mauritian claim of sovereignty over the Chagos Archipelago, which was excised by the then colonial Power from the territory of

Mauritius in contravention of General Assembly resolutions 1514 (XV) and 2066 (XX). This dismemberment of Mauritian territory, the violation of our territorial integrity, has been made all the more unacceptable by the fact that one of the islands of that very Archipelago, Diego Garcia, is now a full-fledged nuclear base, which poses a constant threat to the security of Mauritius and to that of all the littoral and hinterland States of the Indian Ocean, the very Ocean declared to be a zone of peace by this Assembly in 1971.

I solemnly appeal to the peace-loving Members of the Organization to extend all their support to the legitimate Mauritian claim of sovereignty over the Chagos Archipelago. In helping Mauritius to regain its national heritage, the United Nations will be living up to its own principles and proclaiming loud and clear that it expects its resolutions to be implemented by its Members. As the Diego Garcia issue involves two fundamental principles of the United Nations, namely respect by the administering Power for the territorial integrity of its colony, and the right of peoples to live in peace and security, I venture to say that the return of the archipelago to Mauritius will bring the Organization the respect that is so indispensable to its continued existence.

1983 Statement by Hon. Anerood Jugnauth, Prime Minister, at the 38th Session of the United Nations General Assembly (27 September)

I would like at this juncture to impress upon the Assembly the just and legitimate claim of my country over the Chagos Archipelago, which was excised from our national territory in contravention of General Assembly resolutions. I hope that in our endeavours to recover this part of our national territory by diplomatic and political means we shall continue to enjoy the unstinted support of all peace-loving countries.

1986 Statement by Sir Satcam Boolell QC, Minister of External Affairs and Emigration, at the 41st Session of the United Nations General Assembly (8 October)

In the same context of the objectives of the Declaration we note with satisfaction the renewed unanimous support of the non-aligned Member States as well as the backing of other members of the Assembly for our claim to sovereignty over the Chagos Archipelago, including Diego Garcia. The decolonization of Mauritius will not be complete and its territorial integrity restored until the Chagos Archipelago is returned to Mauritius. Moreover, the continuous expansion of the military base on Diego Garcia has led to increased rival military activity in the Indian Ocean region, thus seriously compromising the objectives of the Declaration of the General Assembly.

1987 Statement by Sir Satcam Boolell QC, Minister of External Affairs and Emigration, at the 42nd Session of the United Nations General Assembly (9 October)

I should like to remind this Assembly in this connection that the Chagos Archipelago, which belonged to Mauritius, was excised from our territory before we obtained independence, in clear violation of the principles of the United Nations. Its inhabitants were coerced into permanent exile to clear the way for a military base in Diego Garcia. The key strategic role now assumed by Diego Garcia has brought the nuclear peril right into the heart of the Indian Ocean region. The loss of Chagos has also meant the denial to the Mauritian people of access to the significant ocean resources around the archipelago. We renew our demand for the rightful restitution of the Chagos Archipelago to the national heritage of Mauritius. We are grateful to the States members of the Organization of African Unity (OAU) and of the Movement of Non-Aligned Countries, as well as to other friendly countries, for their strong and consistent support of our just claim.

1988 Statement by Sir Anerood Jugnauth, Prime Minister, at the 43rd Session of the United Nations General Assembly (12 October)

In clear violation of the principles of the United Nations the island of Diego Garcia, along with the Chagos Archipelago, was detached from Mauritius by Britain prior to our independence in 1968. The island of Diego Garcia was ceded by Britain to the United States of America, which transformed it into a military base. The inhabitants of the island were summarily relocated to Mauritius. The key strategic role now assumed by Diego Garcia has brought the nuclear peril right into the heart of the Indian Ocean. We are determined never to give up our claim over Diego Garcia. With the support of other Indian Ocean States, we shall continue to mobilize international opinion for the restitution of the island to Mauritius. We are thankful to the States members of the Organization of African Unity and the Non-Aligned Movement, as well as other friendly countries, for their continued support of our just claim.

1989 Statement by Sir Satcam Boolell QC, Deputy Prime Minister and Minister of External Affairs and Emigration, at the 44th Session of the United Nations General Assembly (27 September)

As the Assembly is aware, the Government and people of Mauritius have not accepted the fact that an important part and parcel of their territory has been excised by the former colonial Power in contravention of United Nations General Assembly resolutions 1514 (XV) and 2066 (XX). The dismemberment of Mauritian territory constitutes an unacceptable affront to our sovereignty. Mauritius cannot and will not remain silent until Diego Garcia and the Chagos Archipelago, as well as the Tromelin Islands, are returned to us. Our claim is just and legitimate. We have the total support of the Organization of African Unity and the Movement of Non-Aligned Countries.

We appeal to the international community and to all peace-loving countries to assist us in the restoration of our territories. Our islands should not serve as a nuclear base and should not constitute a threat to our own security and to that of all the littoral and hinterland States of the region.

1990 Statement by Hon. Jean-Claude de L'Estrac, Minister of External Affairs, at the 45th Session of the United Nations General Assembly (9 October)

While we are addressing the issue of the Indian Ocean, we wish to reiterate our just and rightful claim to the Chagos Archipelago, including Diego Garcia, and express our deep appreciation of the whole-hearted support of the members of the Non-Aligned Movement and the Organization of African Unity, as well as that of other friendly countries.

1991 Statement by Hon. Paul Bérenger, Minister of External Affairs, at the 46th Session of the United Nations General Assembly (10 October)

The issue of sovereignty brings me to the fact that Mauritius is itself still struggling to regain its sovereignty over the Chagos Archipelago, a cause which I believe should be supported by the Assembly in its entirety, considering the stand taken by the world community in the recent Gulf Crisis on, precisely, an issue of sovereignty. With the advent of the new era to which I have already referred, it should be possible for the past colonial Power to come to terms with the present situation and acknowledge the sovereignty of Mauritius over the Chagos Archipelago. It is also the fervent wish of my Government that nothing should be done by any party concerned to aggravate this issue any further, especially as concerns the extension of territorial waters.

1992 Statement by Hon. Paul Bérenger, Minister of External Affairs, at the 47th Session of the United Nations General Assembly (1 October)

Another issue that is of great importance to us in Mauritius is the need to respect the territorial integrity of nations. I should here like to place once more on record the appreciation of my country to all countries that have consistently expressed their support of our sovereignty over the Chagos Archipelago, including Diego Garcia. We should like to like to inform the Assembly that we have resumed exchanges with the United Kingdom on this issue.

1993 Statement by Dr the Hon. A.S. Kasenally, Minister of External Affairs, at the 48th Session of the United Nations General Assembly (30 September)

In our Indian Ocean region, on an issue of direct concern to us, I am happy to say that meaningful dialogue on the Chagos Archipelago is taking place with the United Kingdom authorities.

1994 Statement by Sir Anerood Jugnauth, Prime Minister, at the 49th Session of the United Nations General Assembly (5 October)

It is also my distinct pleasure to associate myself with all those who have extended a hearty welcome to non-racial democratic South Africa within the fold of the Assembly. The end of apartheid in South Africa also underscores the end of colonialism on the African continent. However, there still remain a few areas where the process is not complete, but I firmly believe that it will not be long before we can boast of a totally free world. In this regard, I should like to say that with respect to the question of the return of the Chagos Archipelago to the sovereignty of Mauritius, we have continued to pursue a positive dialogue with the United Kingdom and that some progress has been registered.

1996 Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 51st Session of the United Nations General Assembly (10 October)

After this overview of the world situation, allow me to speak of a matter of national interest to us. One of the fundamental principles to which we all subscribe is that of respect for the sovereignty of Member States. Interference in the internal affairs of States and disregard for their national sovereignty has often been a source of tension and conflict. Now that the cold war is behind us and we move towards ever greater economic, commercial and cultural integration, we should be able to find amicable answers to questions of sovereignty. Mauritius has sovereignty disputes regarding the Chagos Archipelago and Tromelin Island with two countries with which we have historically close and friendly ties. These differences were referred to as friendly disputes by Sir Seewoosagur Ramgoolam, architect of our independence and father of our nation. We hope to resolve these differences through quiet diplomacy and dialogue.

1997 Statement by Hon. R. Purryag, Deputy Prime Minister, Minister of Foreign Affairs and International Trade, at the 52nd Session of the United Nations General Assembly (30 September)

This Assembly is by now well aware of the just and legitimate claim of Mauritius for the restoration of its territorial integrity through the return of the Chagos Archipelago, including Diego Garcia, to its national heritage. This Assembly should also note that this issue also hides a tragic human dimension. Before Mauritius acceded to its independence, all of the inhabitants of the Chagos were coerced to leave the land of their birth where they had lived for several generations. The plight of these inhabitants must now be comprehensively addressed.

Likewise, we are still awaiting the return of the island of Tromelin to Mauritius. As we pursue our efforts to recover these territories, we call upon the former colonial powers to expedite this process through dialogue in the spirit of the friendship that characterises our relationships. My government looks forward to an early resolution of these disputes.

Annex 100

1998 Statement by Dr the Hon. Navinchandra Ramgoolam, Prime Minister, at the 53rd Session of the United Nations General Assembly (23 September)

Finally, as on past occasions, we would like to bring up once more before this Assembly our lasting claim on the sovereignty of two territories which were taken from our patrimony: the island of Tromelin and the Chagos Archipelago. We reiterate our call to the former colonial Powers to enter into constructive bilateral dialogue with my Government for the early restoration of those territories to the sovereignty of Mauritius.

Regarding the Chagos Archipelago, this Assembly should also be reminded that some 1,500 inhabitants – the so-called "Illois" – were coerced to leave their homeland to clear the way for a military base. Most of the families, who had lived for generations on these islands, were moved to the main island of Mauritius, victims of the then prevailing cold war. Today, after more than 30 years, they still experience tremendous difficulties adapting to their present conditions. Many yearn to be resettled on these islands. As we are about to commemorate the fiftieth anniversary of this century's seminal document on human rights, we consider that we owe it to these Illois to fully re-establish their rights, including the right of return.

1999 Statement by Hon. R. Purryag, Deputy Prime Minister, Minister of Foreign Affairs and International Trade, at the 54th Session of the United Nations General Assembly (30 September)

For the majority of small States, the United Nations continues to be the main bulwark against infringements on their sovereignty and territorial integrity. We have consistently drawn the attention of the Assembly to the issue of the Chagos Archipelago, which was detached from Mauritius by the former colonial Power prior to our independence in 1968, and also to the plight of over 2000 people who were forced to leave the land of their birth, where they had lived for generations, for resettlement in Mauritius. This was done in total disregard of the United Nations declaration embodied in resolution 1514 (XV), of 14 December 1960 and resolution 2066 (XX), of 16 December 1965, which prohibit the dismemberment of colonial Territories prior to independence.

Mauritius has repeatedly asked for the return of the Chagos Archipelago, including Diego Garcia, on which a United States military base has been built, and thereby the restoration of its territorial integrity. The over 2,000 displaced Ilois people have been facing tremendous difficulties in adapting in mainland Mauritius, in spite of all the efforts that Mauritius has made to assist them in this process.

So far the issue has been discussed within the framework of our friendly relations with the United Kingdom, with a view to arriving at an acceptable solution. Unfortunately, there has not been significant progress. The United Kingdom has been maintaining that the Chagos Archipelago will be returned to Mauritius only

when it is no longer required for defence purposes by the West. While we continue the dialogue for an early resolution of the issue on a bilateral basis, we urge the United Kingdom in the meantime to allow the displaced inhabitants to return to the Chagos Archipelago. At the dawn of the new millennium, when we so strongly uphold universal recognition of and respect for fundamental human rights, the inhabitants of Chagos should not continue to be denied the right to return to the Chagos Archipelago.

2000 Statement by Hon. A.K. Gayan, Minister of Foreign Affairs and Regional Cooperation, at the 55th Session of the United Nations General Assembly (22 September)

I wish to say a few words now about the Chagos Archipelago and the island of Tromelin. Respect for sovereignty and territorial integrity is, under the United Nations system, an acquired and inalienable right of every State, however big or small. We are conscious that the United Nations favours the completion of the process of decolonization.

For a number of years now, we have continuously brought before the General Assembly the question of the Chagos Archipelago, which has always formed part of the State of Mauritius. This Assembly will recall that the Chagos Archipelago, including the island of Diego Garcia, was detached by the colonial Power just before our independence, in violation of General Assembly resolutions 1514 (XV) of December 1960 – the Declaration on the Granting of Independence to Colonial Countries and Peoples – and 2066 (XX) of 16 December 1965, which prohibits the dismemberment of colonial territories prior to the accession of independence. We have all along sought to resolve this issue bilaterally with the United Kingdom through dialogue, but there has been no tangible progress so far. The issue has now reached a critical stage and we are extremely anxious to have meaningful negotiations with the United Kingdom with a view to resolving this matter within the shortest possible time. We also reiterate our demand that, pending a resolution of this issue, the former residents of the Chagos Archipelago and their families, who were forcibly evicted and sent to Mauritius by the colonial Power, be allowed to return to their homeland.

We launch a fresh appeal to the former colonial Power, the United Kingdom, to come forward and engage in serious and purposeful discussions with us towards the early settlement of the Chagos Archipelago question. We wish to stress that Mauritius will never abandon its intention to reunite its territory and to assert its sovereignty over the Chagos Archipelago.

2001 Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 56th Session of the United Nations General Assembly (11 November)

We continue to claim our sovereignty over the Chagos Archipelago which was excised by the United Kingdom from the then Colony of Mauritius in violation of

international law and UN General Assembly Resolution 1514. We are convinced that the time for the United Kingdom to engage in talks for the early retrocession of the Archipelago to Mauritian sovereignty is long overdue inasmuch as problems left over from colonial days cannot remain unresolved.

We are also concerned by the plight of all those Mauritians, commonly known as the Ilois, who were forcibly and in outright violation of their fundamental rights, removed from the islands forming the Archipelago by the then colonial power. We support their legitimate claim for all appropriate remedies.

2002 Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 57th Session of the United Nations General Assembly (13 September)

Mauritius reaffirms its legitimate sovereignty over the Chagos Archipelago, including the island of Diego Garcia, which was detached from the territory of Mauritius by the United Kingdom prior to our independence. We renew our call to the former colonial Power, the United Kingdom, to accelerate discussions with us for an early settlement of this issue.

The persons of Mauritian origin who were displaced from the Chagos Archipelago continue to claim redress for the serious human rights violations that they endured. We support their efforts to seek redress.

2003 Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 58th Session of the United Nations General Assembly (24 September)

Before I conclude, however, Mr President, I renew my appeal to the United Kingdom to take all measures to complete the process of decolonization of Mauritius. For years, Mauritius has consistently reaffirmed its sovereignty over the Chagos Archipelago, including Diego Garcia, here and in all international fora. I sincerely regret that this issue has not been resolved. I therefore reiterate our appeal to the United Kingdom, as a country known for its fair play and for championing human rights, and to our friends in the US to engage in a serious dialogue with Mauritius over the issue of the Chagos Archipelago so that an early solution to this issue may be found.

The removal of the Chagossians under false pretences resulted in gross violations of human rights. Hopefully this aspect of the matter will be resolved through the British Courts shortly.

2004 Statement by Hon. Jaya Krishna Cuttaree, Minister of Foreign Affairs, International Trade and Regional Cooperation, at the 59th Session of the United Nations General Assembly (28 September)

As this august Assembly is aware, Mauritius has always favoured a bilateral approach in our resolve to restore our exercise of sovereignty over the Chagos

Archipelago which, prior to independence from the United Kingdom, was unlawfully detached from our territory, in violation of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV), and Assembly resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII). Such bilateral approaches have unfortunately not yielded any result so far and certain recent regrettable unilateral actions by the United Kingdom have not been helpful.

Mr. President,

While we shall continue to favour a settlement of this matter through dialogue, we shall use all avenues open to us in order to exercise our full sovereign rights over the Chagos Archipelago. The Assembly should also note that this issue has a tragic human dimension. Before Mauritius acceded to its independence, all of the inhabitants of the Chagos were forced to leave the land of their birth, where they had lived for several generations. The plight of those inhabitants must now be comprehensively addressed.

2005 Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 60th Session of the United Nations General Assembly (19 September)

Allow me to reiterate before this Assembly our legitimate sovereignty claim over the Chagos Archipelago, including the Island of Diego Garcia which was detached by the United Kingdom from the territory of Mauritius prior to our independence in violation of United Nations General Assembly Resolution 1514 of 1960 and Resolution 2066 of 1965. The people of the Chagos Archipelago, who were evicted from the islands, are still struggling for their right to return to their birth place. We reiterate our call to the United Kingdom to pursue discussions with us for an early settlement of this issue.

2006 Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 61st Session of the United Nations General Assembly (22 September)

My delegation wishes to draw the attention of this Assembly that, thirty-eight years after its independence, Mauritius has still not been able to exercise its sovereignty over the Chagos Archipelago, including Diego Garcia. The Archipelago was excised from the territory of Mauritius by the former colonial power to be subsequently used for military purposes behind our back, in total disregard of United Nations General Assembly Resolutions 1514 and 2066. This exercise also involved the shameful displacement of the inhabitants of the Chagos from their homeland, denying them of their fundamental human rights.

International law must prevail, as must respect for the sovereignty of all countries. We therefore call once again on the United Kingdom to pursue constructive dialogue in earnest with my Government with a view to enabling Mauritius to exercise its sovereignty over the Chagos Archipelago.

We view positively the visit jointly organised by the Governments of Mauritius and of the United Kingdom, in April this year, to enable the former inhabitants of the Chagos to visit the Archipelago for the first time since their displacement to pay respects at their relatives' graves on the Archipelago.

2007 Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 62nd Session of the United Nations General Assembly (28 September)

In 1965 when the Constitutional Conference for the granting of independence to Mauritius was convened, the Chagos Archipelago, amongst many other islands, formed an integral part of the territory of Mauritius and should have remained as such in accordance with the Charter of the United Nations and General Assembly resolutions 1514 of 1960 and 2066 of 1965. Resolution 1514 (1960) states inter alia:

"Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

The excision of the Chagos Archipelago by the colonial power at the time of our independence constitutes a dismemberment of our territory in total disregard of resolutions 1514 of 1960 and 2066 of 1965. Furthermore, it is also a violation of the Charter of the United Nations itself.

We therefore, once again, reiterate our request to the United Kingdom to engage in bilateral dialogue with us as soon as possible with a view to enabling us exercise our sovereignty over the Chagos Archipelago.

Equally, on the question of our sovereignty over Tromelin, we note the progress registered at the recent Mauritius-French joint Commission.

The United Kingdom and France, two permanent members of the United Nations Security Council, are two major and important economic and trade and development partners of Mauritius. We fully appreciate their continued support in the development of our country. We have been striving to reach an amicable agreement on these issues but we cannot – and will not – compromise on our territorial integrity and our sovereignty over those islands.

2008 Statement by H.E. Mr. S. Soborun, Permanent Representative of Mauritius to the UN, at the 63rd Session of the United Nations General Assembly (29 September)

The principles and objectives enshrined in the Charter of the United Nations should continue to guide us in our actions. I would like to bring up once again before the august Assembly our legitimate sovereignty claim regarding the Chagos Archipelago, including Diego Garcia. This archipelago was excised from the territory of Mauritius, by the United Kingdom, prior to our independence in disregard of UN General Assembly resolutions 1514 (XV) of 1960 and 2066 (XX)

of 1965. We have always favoured a settlement of the issue through constructive bilateral dialogue. In that regard, I wish to inform the Assembly that high-level talks are underway.

Government is very sensitive to the aspirations of citizens of Mauritius to return to the islands of their birth in the Chagos Archipelago. I wish to recall here that they were forcibly removed from the Archipelago prior to its excision from Mauritius. Likewise, we urge France to pursue dialogue with Mauritius on the issue of Tromelin. It is our firm conviction that such bilateral dialogue will further consolidate our historical and friendly relations with both the United Kingdom and France.

2009 Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 64th Session of the United Nations General Assembly (25 September)

I take this opportunity to reaffirm the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, which was detached by the United Kingdom from the territory of Mauritius prior to our independence. The dismemberment of the territory of Mauritius was in total disregard of UN General Assembly Resolutions 1514 of 14 December 1960 and 2066 of 16 December 1965.

As President Obama said two days ago from this very rostrum, we must demonstrate that international law is not an empty promise.

We must all abide by it.

We have consistently urged the United Kingdom to engage in a meaningful dialogue with Mauritius for the early return of the Chagos Archipelago. We are pleased to inform the Assembly that two rounds of talks have been held with the United Kingdom this year.

We look forward to these discussions coming to fruition and hope that Mauritius will be able to exercise its sovereignty over the Chagos Archipelago, including Diego Garcia, in the near future.

2010 Statement by Dr. the Hon. Arvin Boolell, Minister of Foreign Affairs, Regional Integration and International Trade, at the 65th Session of the United Nations General Assembly (28 September)

We have in no uncertain terms drawn the attention of this august body every year to the fact that Mauritius has sovereignty over the Chagos Archipelago, including Diego Garcia. The Chagos Archipelago was illegally excised by the United Kingdom from the territory of Mauritius prior to our independence. This dismemberment was done in blatant violation of the UN General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965.

We have raised the issue of the sovereignty of Mauritius over the Chagos Archipelago with successive British Governments and initially pursued the matter as a friendly dispute. In view of the lack of progress, we suggested that the issue be addressed in bilateral talks. Although the process of bilateral talks was initiated in January 2009, the issue of our sovereignty over the Chagos Archipelago has yet to be addressed.

We are deeply concerned that the British Government decided on 1 April 2010 to unilaterally declare a marine protected area around the Chagos Archipelago allegedly to protect the marine environment. The unilateral establishment of this marine protected area infringes the sovereignty of Mauritius over the Chagos Archipelago and constitutes a serious impediment to the eventual resettlement in the Archipelago of its former inhabitants and other Mauritians as any economic activity in the protected zone would be precluded. The Government of Mauritius has decided **not to** recognize the existence of the marine protected area.

The illegal excision of the Chagos Archipelago from the territory of Mauritius has indeed a tragic human dimension. All the inhabitants of the Archipelago at that time were forced by the British authorities to leave their homes in the Archipelago abruptly in total disregard of their human rights. Most of them were moved to the main island of Mauritius. The Government of Mauritius is sensitive to and fully supportive of the plight of the displaced inhabitants of the Chagos Archipelago and to their desire to resettle in their birthplace in the Chagos Archipelago.

Mauritius greatly appreciates the unflinching and unanimous support it has consistently received from the African Union and the Non-Aligned Movement for assertion of its sovereignty over the Chagos Archipelago. The last AU Summit held in Kampala last July and the last NAM Summit held in July 2008 in Sharm-el-Sheik reaffirmed that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius. They also called upon the United Kingdom to expeditiously put an end to its **unlawful occupation** of the Chagos Archipelago with a view to enabling Mauritius to effectively exercise its sovereignty over the Archipelago.

We urge the United Kingdom once again to take the necessary steps for the **unconditional** return of the Chagos Archipelago, including Diego Garcia, to Mauritius without further delay.

2011 Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 66th Session of the United Nations General Assembly (24 September)

Allow me, Mr. President, to give as an example, the difficulties which my own country has experienced in resolving a dispute relating to decolonization with the former colonial power, the United Kingdom.

The Chagos Archipelago which is part of Mauritian territory, was excised from Mauritius prior to independence, in disregard of United Nations Resolutions 1514 and 2066 and the principles of international law, and declared as the so-called British Indian Ocean Territory. The United Kingdom has failed to engage in any meaningful discussions, with us on this matter.

When the Government of Mauritius consequently announced, in 2004, that it would refer the dispute to the International Court of Justice, the United Kingdom immediately amended its declaration, under Article 36 of the ICJ Statute, to oust the jurisdiction of the Court with respect to certain disputes with a member or former member of the Commonwealth.

This illustrates the kind of difficulties which a State may have in settling a claim under international law. The States involved in the dispute may refuse to negotiate in good faith and seek to ensure that no international tribunal can determine the law applicable to the dispute.

We call on the United Nations to keep under review the whole issue of settlement of disputes, including by judicial means, and to set standards of conduct for all States with respect to negotiation, conciliation, mediation or other forms of non-judicial and peaceful settlement of disputes or alternatively submission of the dispute to adjudication.

….

Mr President,

The continued unlawful occupation of the Chagos Archipelago by the United Kingdom is a matter of concern for the region. Mauritius welcomes the support of the African Union and of the Non-Aligned Movement for the territorial integrity of our country. The purported declaration of a Marine Protected Area around the Chagos Archipelago by the United Kingdom in breach of the United Nations Convention on the Law of the Sea is another cause for concern. This is why in December 2010 Mauritius commenced arbitration proceedings against the UK under the 1982 Convention on the Law of the Sea.

2012 Statement by Dr. the Hon. Arvin Boolell, GOSK, Minister of Foreign Affairs, Regional Integration and International Trade, at the 67th Session of the United Nations General Assembly (1 October)

Mr. President,

Mauritius very much welcomes the high level meeting on Rule of Law. Development and greater economic prosperity go hand in hand with enhanced

rule of law at both national and international levels. There will be no meaningful Rule of law at international level until and unless all nations and specially the small ones can have avenues for resolving their disputes with other States.

The United Kingdom excised part of Mauritian territory prior to independence and has refused to enter into talks in good faith over this dispute and has ensured that the dispute cannot be determined by the International Court of Justice.

Thus, the decolonization of Africa has not been completed.

At a time when the United Nations debates Rule of law at both national and international levels we urge the international community to work on machinery that enables States, whatever their size or economic power, to have judicial or other peaceful means of resolving disputes.

Rule of law at international level cannot only be normative. There must also be adequate enforcement mechanisms without which there is no meaningful rule of law.

2013 Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 68th Session of the United Nations General Assembly (28 September)

Mr President,

Mauritius reiterates its firm conviction that Rule of Law should prevail in the resolution of disputes, in accordance with the UN Charter.

We believe that the international community has an obligation to ensure that, in line with the principles of the Rule of Law, nations should submit their disputes to conciliation, mediation, adjudication or other peaceful means, both non-judicial and judicial.

The dismemberment of part of our territory, the Chagos Archipelago - prior to independence - by the then colonial power, the United Kingdom, in clear breach of international law, leaves the process of decolonisation not only of Mauritius but of Africa, incomplete.

Yet, the United Kingdom has shown no inclination to engage in any process that would lead to a settlement of this shameful part of its colonial past.

I am confident that the UK and the US would want to be on the right side of history.

States which look to the law and to the rules of the comity of nations for the resolution of disputes should not be frustrated by the lack of avenues under international law for settlement of these disputes.

2014 Statement by H.E. Dr. Milan J.N. Meetarbhan, Permanent Representative of Mauritius to the UN, at the 69th Session of the United Nations General Assembly (30 September)

Mr President,

In the mid 60's, when a wave of decolonisation was sweeping across the world the United Kingdom purported to create a new colony, the so-called BIOT, by carving out part of the territory of Mauritius.

Thus, part of Mauritian territory remains under colonial rule.

As long as part of Mauritian territory remains under colonial rule, decolonisation of Africa will still remain incomplete.

The dismemberment by the United Kingdom of part of the territory of Mauritius prior to independence was and continues to be a blatant breach of international law and total disregard of United Nations resolutions.

Speaking before this Assembly last week President Obama said, there is one vision of the world in which might makes right, but that "America stands for something different. We believe that right makes might – that bigger nations should not be able to bully smaller ones…"

This is why, last year at this very forum, Mauritius urged the United States to be on the right side of history and not to condone illegal acts by maintaining its presence on Diego Garcia under an unlawful arrangement with the UK which does not have a valid title to the island and instead to ensure that in the future, such presence is on the right side of the law.

Both the United States and the United Kingdom should recognise the sovereignty of Mauritius over the Chagos and engage, in good faith, in meaningful discussions with Mauritius over arrangements to be made in this regard.

Following the statements we have heard over the last year in connection with sovereignty and territorial integrity, there should not be a set of standards for one part of the world and a different one for another part of the world. Those who show no respect for fundamental principles across the board lose all moral authority to preach to the rest of the world.

Annex 100

2015 Statement by the Rt. Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC, Prime Minister, at the 70th Session of the United Nations General Assembly (2 October)

Mr President,

Mauritius has always firmly supported the resolution of disputes by peaceful means as inscribed in the Charter of the United Nations.

We believe that, in accordance with resolutions of this Assembly, it is high time to complete the process of decolonisation in Africa.

Mr President,

It is also high time to resolve the situation that prevents Mauritius from effectively exercising its sovereignty over the Chagos Archipelago and the Island of Tromelin that form an integral part of the territory of Mauritius.

The Chagos Archipelago was illegally excised by the United Kingdom from the territory of Mauritius prior to its accession to independence, in breach of international law and resolutions of this Assembly.

In the wake of this illegal excision, the Mauritians who were residing at the time in the Chagos Archipelago were forcibly evicted by the British authorities from the Archipelago in total disregard of human rights. Most of them were moved to the main island of Mauritius.

The Government of Mauritius is fully sensitive to their plight and to their legitimate aspiration, as Mauritian citizens, to resettle in the Archipelago.

Mr President,

Mauritius welcomes the Award of the Arbitral Tribunal delivered on 18 March 2015 against the United Kingdom under the United Nations Convention on the Law of the Sea.

We welcome the Tribunal's decision that the 'marine protected area' purportedly declared by the United Kingdom around the Chagos Archipelago was established in violation of international law.

We also welcome the Tribunal's unanimous recognition that Mauritius has an interest in significant decisions bearing upon the uses of the Archipelago pending its return to the effective control of Mauritius.

This arbitral proceeding was the first occasion on which any international judge or arbitrator has considered the facts and history lying behind Mauritius' entitlement to sovereignty over the Chagos Archipelago.

Mauritius appreciates the fact that two arbitrators have confirmed the opinion that the United Kingdom is not the 'coastal State' in relation to the Chagos Archipelago. This view has not been contradicted by any other judge or arbitrator.

This, no doubt, confirms our stand that the Chagos Archipelago is, and has always been, an integral part of the territory of Mauritius.

Mr President,

The Tribunal underscores United Kingdom's legally binding obligations to Mauritius. These establish, beyond doubt that in international law Mauritius has real, firm and binding rights over the Chagos Archipelago and that the United Kingdom must respect those rights.

The Tribunal recognised that Mauritius has a legal interest in the Chagos Archipelago such that decisions affecting its future use cannot be taken without the involvement of Mauritius.

Mr President,

Despite this clear ruling of the Tribunal, we regret that the United Kingdom appears to be adopting a different approach to the rights of Mauritius. It has recently launched a so-called consultation exercise on purported resettlement of Mauritians of Chagossian origin in the Chagos Archipelago under conditions amounting, again, to a gross violation of their most basic human rights.

Mauritius rejects unreservedly this purported consultation exercise.

We wish to assure the international community that once Mauritius is able to effectively exercise its sovereignty over the Chagos Archipelago, our brothers and sisters of Chagossian origin who resettle in the Archipelago will be able to live in dignity and enjoy their basic human rights as they currently do in Mauritius.

Mr President, considering the Award of the Tribunal, we urge the United States of America which is currently using Diego Garcia for defence purposes to engage in discussions with Mauritius regarding the long term interest of Mauritius in respect of Chagos Archipelago. The more so, after the affirmation by the President of the United States of America when he so convincingly stated in his speech to this

Assembly on Monday: I quote – *"We cannot stand by when the sovereignty and territorial integrity of a nation is flagrantly violated"*. Unquote.

Mr President,

The Government of Mauritius is resolutely committed to pursue all efforts in accordance with international law for the effective exercise by Mauritius of its sovereignty over the Chagos Archipelago, including the possibility of further recourse to judicial or arbitral bodies.

And we urge this Assembly and the international community at large to support Mauritius in its legitimate endeavours.

In this regard, this Assembly has a direct institutional interest in the resolution of this matter.

The Assembly, of course, has historically played a central role in addressing decolonisation, through the exercise of its powers and functions especially in relation to Chapters XI through XIII of the UN Charter.

Under its Resolution 1514(XV) of 14 December 1960 on the granting of independence to colonial countries and peoples, this Assembly declared that any attempt aimed at the disruption of the territorial integrity of such a country is incompatible with the purposes and principles of the UN Charter.

In Resolution 2066 (XX) of 16 December 1965, a resolution dealing specifically with Mauritius, the Assembly drew attention to the duty of the administering power not to dismember the territory and not to violate the territorial integrity of the then colony.

Therefore, this Assembly has the responsibility in helping to complete the historic process of decolonisation which it was so successful in instigating and overseeing in the second half of the last century.

This is why, Mr. President, we are convinced that this Assembly should now establish a mechanism to allow and monitor the full implementation of the UNGA resolutions.

Mr President,

I take this opportunity to express the deep appreciation of Mauritius for the unflinching support it has consistently received from members of the African Union, the Non-Aligned Movement and the Group of 77 and China, and other friendly countries for its sovereignty over the Chagos Archipelago.

2016 Statement by the Rt. Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC, Prime Minister, at the 71st Session of the United Nations General Assembly (23 September)

Mr. President,

The firm belief of Mauritius in the UN Charter and the legitimacy of a fair and just multilateral system is unshakable.

Every nation has a right to peace, justice, rule of law and democracy and every human being to the basic human rights. This is the basis on which the Mauritius Constitution is built. These are also the principles enshrined in the UN Charter.

The full realisation of these principles will not be possible unless decolonisation is completed.

Mr. President,

Forty eight years ago, my country became a free and sovereign nation, an independent country in the eyes of the world. Yet even today, it is unable to exercise its sovereignty over parts of its territory, namely the Chagos Archipelago and Tromelin.

Prior to granting Mauritius its independence on 12 March 1968, the United Kingdom illegally excised on 8 November 1965 the Chagos Archipelago from the territory of Mauritius to purportedly create the so-called 'British Indian Ocean Territory'.

This excision was carried out in violation of international law and United Nations General Assembly Resolutions 1514 of 14 December 1960, 2066 of 16 December 1965, 2232 of 20 December 1966 and 2357 of 19 December 1967.

Mr. President,

UN General Assembly Resolution 1514 stipulates that ***"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"***. It clearly prohibits the dismemberment of any colonial territory prior to independence.

In addition to excising this integral part of our territory, the Mauritians living in the Chagos Archipelago were forcibly evicted from their home and moved to the main island of Mauritius in total disregard of their human rights.

The Government of Mauritius is fully sensitive to their plight and their rightful aspiration to resettle in the Chagos Archipelago as per their legitimate right as a citizen of Mauritius. We are determined to resettle those who were forcibly evicted from the Archipelago upon its return to the effective control of Mauritius in full respect of all their rights and dignity.

Mr. President,

My delegation comprises the spokesperson of Mauritians of Chagossian origin. He is the symbol of a whole community whose human rights have been baffled. His presence also testifies that the issue of sovereignty and the right of return of Mauritian Chagossians to their native lands cannot be dissociated.

Mr. President,

Mauritius has consistently protested against the illegal excision of the Chagos Archipelago and has unequivocally maintained that the Chagos Archipelago, including Diego Garcia, forms an integral part of its territory, under both Mauritian law and international law.

Mauritius has also constantly pressed for the completion of its decolonisation process.

Mr. President,

For decades, Mauritius has called on the former colonial power to engage with us in order to find a fair and just solution, but our efforts have remained in vain so far.

Despite the blatant violation of UN Resolution 1514, the United Kingdom maintains that its continued presence in the Chagos Archipelago is lawful. Yet the United Kingdom also tacitly admits the impropriety of its action in dismembering the territory of Mauritius, as evidenced by the undertaking which it has given on various occasions that the Chagos Archipelago will be returned to Mauritius when no longer required for defence purposes.

This undertaking has been held to be legally binding by the Arbitral Tribunal established in the case brought by Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea to challenge the legality of the 'marine protected area' purportedly established by the United Kingdom around the Chagos Archipelago.

However, the United Kingdom has so far not honoured its undertaking as the criteria on which it relies to contend that the Chagos Archipelago is still required for defence purposes keep changing.

Mr. President,

The Arbitral Tribunal ruled that the creation of the purported 'marine protected area' around the Chagos Archipelago by the United Kingdom was in violation of international law.

Two of the arbitrators found 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", in violation of the right to self-determination and that the United Kingdom is not the 'coastal State' in relation to the Chagos Archipelago. This finding has not been contradicted by the other members of the Arbitral Tribunal.

Mr. President,

The General Assembly has a direct institutional interest in this matter given the historic and central role it has played in the process of decolonisation throughout the world. The General Assembly has a continued responsibility to complete the process of decolonisation, including that of Mauritius.

This is why at the request of the Government of Mauritius, the General Assembly has included in the agenda of its 71st Session 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".

Mr. President,

An Advisory Opinion would assist the General Assembly in its work on decolonisation in general and the decolonisation of Mauritius in particular, pursuant to the requirements of the UN Charter and international law.

Mr. President,

I would like to impress on the fact that the decision to have recourse to this action has not been taken in an adversarial mindset. This is not the first time that the Advisory Opinion of the International Court of Justice is being sought on such a subject. In our view, this is a legitimate recourse and it abides by the provisions of the UN Charter and past practice of the United Nations.

Mr. President,

We have noted that the United Kingdom has now expressed the wish to engage in dialogue with Mauritius in order to sort out the matter by June 2017.

Mauritius has always believed in true dialogue. We are acting in good faith and we expect same from our interlocutors.

Mr. President,

We believe that this Assembly has the duty to assist in the completion of the decolonisation process.

Mauritius shares the view that an Advisory Opinion of the International Court of Justice in respect of the Chagos Archipelago will undoubtedly assist the General Assembly in the discharge of this responsibility.

I wish to heartily thank Member States of the African Union, the ACP, the Non-Aligned Group and the Group of 77 countries plus China, amongst others that have openly expressed their support to my country.

I know that when it comes to justice, human dignity and territorial integrity, this Assembly will live up to its mission.

Mr. President, we concur with the UK position of a rule based international system. However, we have to be coherent, not only in what we say but also in what we do.

…

Monsieur le Président,

L'intégrité territoriale est un principe de droit international. Les Nations Unies la reconnaissent ainsi et il est de notre devoir de la faire respecter.

Mr. President,

In concluding, I would like to call on the whole Membership of the United Nations to stand by the right to justice, to show that a better and safer world is only possible if this is compatible with Rule of law and to show commitment to the principles of the Charter.

Thank you for your kind attention.

2017 Statement by Hon. Pravind Kumar Jugnauth, Prime Minister, at the 72nd Session of the United Nations General Assembly (21 September)

Mr. President,

Adherence to international law, safeguard of fundamental human rights and respect for the territorial integrity of countries underpin relations between countries.

In relation to Mauritius, all these principles were flouted when an integral part of its territory, namely the Chagos Archipelago, was excised prior to our independence, in violation of international law, including obligations reflected in UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, and all the inhabitants of the Chagos Archipelago were forcibly evicted.

Our decolonization still remains to be completed, five decades after the adoption of the Declaration on the granting of independence to colonial countries and peoples.

Mr. President,

A crucial role of the International Court of Justice is to provide guidance, through its advisory opinions, to the organs and agencies of our Organization for the fulfilment of their responsibilities.

It is in this spirit that Member States of the Group of African States tabled last June a resolution seeking an Advisory Opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

We are very pleased that the resolution was adopted, and indeed by such a resounding majority. That vote demonstrated the great importance that the Member States from across the globe - not just Africa, but also Europe, Asia and the Americas - attach to the need to complete the process of decolonization, as well as the concern they have for the injustices caused to the evicted inhabitants of the Chagos Archipelago. As a matter of fact, this overwhelming vote has renewed their hope that they might finally return to their place of birth.

The UN membership has indeed made it clear that it wishes to see the decolonization process of Mauritius completed, and to that end has turned to the International Court of Justice for guidance. We are hopeful that the Court's Advisory opinion will not only guide the important work of the General Assembly but will also allow Mauritius to move forward, including with an appropriate program in favour of the inhabitants who had been displaced from that part of the Mauritian territory. Many of you had an opportunity, last June, to see an

exhibition on the tragedy surrounding that eviction and to interact with those who were forced to leave in such inhumane conditions.

Mr. President,

We thank the Member States for their support and look forward to their continued support in the completion of our decolonization.

In this regard, we express the hope that as many Member States as possible will contribute to the proceedings which the Court has invited them to participate in.

Mr. President,

Let me take this opportunity to reaffirm that Mauritius does not have any intention of seeking the disruption of the security arrangements currently in place in Diego Garcia, the biggest island of the Chagos Archipelago.

Let me reiterate what successive Mauritian governments have clearly stated: “Mauritius is willing to enter into a long-term renewable lease with the United States to allow these security arrangements to remain in place". In this regard, completing the process of decolonization will enhance security by providing legality and certainty.

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Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon. G. Ollivry* (9 Apr. 1974)

dans la loi pour aller se cacher derrière un *writ of certiorari*, un writ qu'on n'est même pas sûr d'obtenir, qui est très difficile à obtenir. C'est le juriste qui devrait faire attention au droit administratif.

Mr. Y. Mohamed : How many times have I seen him condemning past administrators at the Municipality without giving them a chance to defend themselves ?

M. Ollivry : Il ne s'agit pas de condamner les agissements des Municipalités. Il s'agit d'une question de principe. Nous vous donnons le droit de faire appel et vous en tant que juriste, vous dites : « Allez lire Basu ».

M. Duval : En tant que juriste, je déclare que les deux partis ont tort.

L'amendement que propose le premier député de Rodrigues (M. Ollivry) pourrait sauver ce projet de loi. C'est pourquoi le troisième député de Quartier Militaire et Moka (M. Y. Mohamed) devrait au contraire être pour le projet de loi, pour l'amendement et le premier député de Rodrigues (M. Ollivry) contre. Quant à moi, je resterai sur mes positions.

Sir Harold Walter : Sir, there are three points which have been completely overlooked by the last speaker. The first one is the right of appeal. The right of appeal is inherent to it. At any moment if anybody feels that there has been an omission or a commission which makes an inroad in the provision of the law, he can go to Court by way of writ. What is the difficulty in this ? I cannot see the difficulty.

The second thing which no one has dared mention : we are trying to repair a big mistake of the last administration of the Municipality of Port Louis. They forgot to pass the law and collect the rates for 1972/1973. We have done it now.

The third thing : how are those Commissions going to get the loans from Government ? You have to mortgage everything or go on your knees to the bank to ask for overdrafts.

Mr. Ollivry : Sir, is the hon. Minister speaking on the amendment which is to give a right of appeal to the Municipality which has been suspended ?

Sir Harold Walter : You are right on a point of order because the other one is a point of disorder which...

Clause 2 *ordered to stand part of the Bill.*

Clause 3 (*Appointment of commissions*).

Motion made and question proposed « that the clause stand part of the Bill ».

Mr. Ollivry : Sir, I move the amendment as circulated.

Question put on the amendment of the hon. First Member for Rodrigues (Mr. Ollivry).

The Chairman : The Noes have it.

Mr. Ollivry : I move for a division, Sir.

The Chairman : I have put the question on the amendment which has been circulated to hon. Members and I have said that the Noes have it. Will those who support my decision rise in their places.

(Members rose in their places)

Thank you. Now will those who challenge my decision rise in their places.

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EXTRACT

(Members rose in their places)

Thank you. The Noes have it.

Amendment defeated.

Clause 3 ordered to stand part of the Bill.

Clauses 4 and 5 ordered to stand part of the Bill.

Clause 6 (Rates and taxes).

Motion made and question proposed : « that the clause stand part of the Bill ».

Mr. Ah Chuen : Sir, I move according to the amendment which has been circulated.

Amendment agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7 (Charges of administration).

Motion made and question proposed : « that the clause stand part of the Bill. »

Mr. Duval : This morning, the reply of the Minister to a Question which reads thus :

«Whether he will say if the Chairman and Members of the Administrative Commissions of the Municipalities of Port Louis, Beau Bassin-Rose Hill, Quatre Bornes, Curepipe and Vacoas-Phœnix are remunerated. If so, will he give details thereof.»

was : «No». I want again to ask the Minister, specially as regards the Municipality of Vacoas-Phœnix, whether he still maintains that the Chairman is not being remunerated.

Mr. Ah Chuen: Not for the time being. The former President of the Municipality of Vacoas-Phœnix declined.

Clause 7 ordered to stand part of the Bill.

Clauses 8 and 9 ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

On the Assembly resuming with Mr. Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

On motion made and seconded the Local Government (Special Provisions) Bill (No. VI of 1974) was read the third time and passed.

MOTION

SPEECH FROM THE THRONE — ADDRESS IN REPLY

Order read for resuming adjourned debate on the following motion of the hon. Deputy Chairman of Committees (Mr. S. Bhayat) :—

«That an Address be presented to His Excellency the Governor-General in the following terms :—

«We, the Members of the Mauritius Legislative Assembly here assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to us on the occasion of the Opening of the Eighth Session of the Third Legislative Assembly '.»

Question again proposed.

M. G. Ollivry (First Member for Rodrigues) : M. le président, les premiers mots de ce discours du trône en matière de politique étrangère couvrent de ridicule ce Gouvernement qui agit comme la

grenouille de la fable qui voulait se faire aussi grosse que le bœuf :

« In pursuance of its policy of detente and peaceful co-existence... » « Its » policy of détente ! Ainsi donc le Gouvernement se croit être devenu le gouvernement des Etats Unis ou de la Russie Soviétique ! C'est le gouvernement de Maurice qui parle de *sa* politique de détente, comme si l'île Maurice était engagée dans la guerre froide ! A moins, M. le président, que le Premier ministre savait qu'il allait alimenter la guerre froide en vendant Diégo Garcia pour rien et pour des raisons électorales, à moins que le Premier ministre sachant celà, veut maintenant faire une politique de détente puisqu'il a lui-même vendu Diégo Garcia pour en faire une base, alors que la majorité de la population du pays s'est opposée. La politique de détente du Gouvernement ! Il aurait fallu y avoir songé en 1965 quand on a, pour des raisons de stratégie et de tactique électorales, donné Diégo Garcia pour Rs. 40m., alors que la population s'y opposait. Aujourd'hui le Gouvernement, voyant que Diégo Garcia est utilisé comme une base, peut-être nucléaire, ne fait que des protestations très faibles ou pas de protestations tout simplement; parceque le Gouvernement sait que c'est le Premier ministre lui-même qui a été complice de la vente de Diégo Garcia. Il a donc crée, dans l'océan indien, un foyer de guerre froide. Et aujourd'hui il veut parler de détente, de *sa* politique de détente ! Depuis quand est-il devenu le Président des Etats Unis ou le Premier ministre de la Russie Soviétique ? Mais à ce sujet il faut rappeler que si l'océan indien est transformé en une zone de confrontation entre les superpuissances, la responsabilité, la plus grande part de cette responsabilité, revient au Premier ministre et à son Gouvernement travailliste.

Sir Harold Walter : Revient à vous !

M. Ollivry : Revient à moi ? Comment ?

Sir Harold Walter : Pour avoir opposé l'indépendance !

M. Ollivry : Quel aveu ! Nous apprenons maintenant du ministre de la santé que, parceque le Parti Mauricien s'était à l'époque opposé à l'indépendance, le Parti Travailliste, avec le ministre de la santé comme membre, a vendu, a donné une partie du territoire mauricien ! Voilà de quoi ils sont coupables ! Vendre le territoire mauricien tout simplement pour gagner des élections, pour gagner l'indépendance ! Mais quand on a affaire à ce genre de Gouvernement, à ce genre de mentalité, vraiment, M. le président, il faudrait que cela soit su aux Nations Unies où le ministre de la santé se rend de temps en temps : que, pour de basses raisons électorales, vous avez vendu l'île Maurice !

Sir Harold Walter : Ce n'était ni à vous, ni à moi : c'était à l'Angleterre. Elle avait le droit d'extirper !

M. Ollivry : Si c'était à l'Angleterre et que l'Angleterre avait le droit d'extirper comme vous dites, il ne fallait pas être complice de M. Greenwood ! Il fallait dire aux Anglais : « Extirpez ! » Non seulement vous n'avez pas fait cela, vous avez pris fric des Anglais...

(*Interruption*)

Mr. Speaker: I must tell Hon. Member that it is not a shouting match which is taking place.

M. Ollivry : Je vous remercie, M. le président. Je reprends mon discours et mon calme pour répondre.

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Ainsi nous apprenons du ministre de la santé que c'était aux Anglais et qu'ils avaient le droit de prendre une partie du territoire; mais alors, pourquoi avoir été complice des Anglais en leur disant : « Prenez » alors qu'il y avait une protestation au Conseil des Ministres à Maurice, alors qu'il y avait des protestations dans la population à Maurice ? Pourquoi avoir accepté l'argent des Britanniques ? Tout simplement parceque le Premier ministre et le Parti Travailliste d'alors savaient que la situation était telle dans le pays qu'il fallait à tout prix céder au chantage, faire plaisir à M. Greenwood ! Voilà la vérité !

Sir Harold Walter : Vous jouissez de l'indépendance, hein ? Et vous aviez voulu l'intégration de l'Ile Maurice avec la France !

M. Ollivry : L'indépendance est un fait et personne ne songerait à le contester mais seulement quand on compare, M. le président, la situation qui prévalait sur le plan des institutions avant l'indépendance, et ce que ces gens là ont fait de l'indépendance, on peut se demander si on n'avait pas un peu raison d'avoir peur et de craindre la dictature qu'ils allaient imposer dans ce pays.

Sir Harold Walter : Et de dire que votre temps de service comme ministre n'a servi à rien !

M. Ollivry : Oui, vous direz ce que vous voudrez! Mais vous n'avez qu'à venir, vous n'avez qu'à faire les élections ! Venez poser contre nous, quand vous voulez, là où vous voulez !

Sir Harold Walter : A time will come !

M. Ollivry : Non seulement le Gouvernement...

(Interruptions)

Mr. Speaker : If this sort of thing continues my patience will wear very thin.

M. Ollivry : Non seulement du Gouvernement, du propre aveu du ministre, pour gagner l'indépendance, pour faciliter la tâche du Parti Travailliste, a permis à une partie du territoire de s'en aller et a créé un foyer de la guerre froide dans l'océan indien, non seulement celà, il l'a fait avec la plus grande indécence sans protéger les intérêts de ceux qui s'y trouvaient : les malheureux Ilois. Le Premier ministre lui-même a dit que cette excision de Diégo Garcia du territoire mauricien a été faite sans aucun document pour tenir compte de la réalité, de la nationalité de ces malheureux, de leur sort, de leur reclassement; et ces gens là sont venus, vers les années 1968, essayer de végéter dans les faubourgs de Port Louis. Et rien n'a été fait par le Gouvernement mauricien pour eux. Sans doute le Gouvernement britannique, sous la pression de certains — et qui n'étaient pas membres du Gouvernement d'alors — sous la pression de certains du Parti Mauricien avant la coalition, et de nous-mêmes et des autres après la coalition, a accordé une certaine aide. Et qu'est devenue cette aide ? Qu'a-t-on fait pour ces malheureux ? Est-ce-qu'ils ont été reclassés ? Absolument rien n'a été fait pour ces malheureux qui n'ont absolument rien obtenu de la sécurité sociale et de l'assistance publique. Il n'y a aucun document concernant leur reclassement, aucun document concernant leur nationalité; on leur permet de végéter dans les faubourgs de Port Louis, et c'est tout. Pourquoi ? On peut se poser la question. Un Gouvernement qui agit ainsi avec la plus grande désinvolture en permettant la création d'un foyer de tension dans notre océan indien et en permettant à ce que des mauriciens, des Ilois — mais qui ne votent pas nécessairement travailliste — soient traités de la façon dont ils

ont été traités, ce Gouvernement est indigne de rester un jour de plus au pouvoir ! Mais on peut se demander pourquoi ils sont ainsi traités. Ils sont ainsi traités, M. le président, parcequ'ils ne comptent pas ! Parceque pour ceux qui sont au pouvoir, ils ne comptent pas. Ils sont des Ilois. Les Ilois ne comptent pas ! Les Rodriguais ne comptent pas ! Et peut-être même beaucoup de Mauriciens ne comptent pas puisque on a entendu le Premier ministre dire qu'il ne savait pas au juste ce que c'était que le mauricianisme, et le ministre du plan qui dit : « *Qui sa bébête qui appelle Mauricien là ?* » Et voilà ! Le Premier ministre qui aurait du inspirer confiance à la nation mauricienne, qui aurait dû être le promoteur de la nation mauricienne, que le troisième député de Vieux Grand Port et Rose Belle (M. Bissoondoyal) a appelé le père de la nation, celui-là vient vous dire qu'il ne croit pas dans le mauricianisme ! Et son ministre du plan : « *Qui ça bébête qui appelle Mauricien là ?* » C'est sans doute parceque les Ilois, les Rodriguais et beaucoup d'autres sont considérés par le Gouvernement comme des «*bébêtes*», qu'ils ne comptent pas pour le Gouvernement actuel, qu'ils n'ont absolument aucune espèce d'importance, qu'ils ne comptent pas dans le petit jeu électoral pour des élections qu'ils ne veulent pas faire. C'est pour cela qu'ils ne comptent pas dans le petit jeu électoral de ce Gouvernement, dans le jeu politique de ce Gouvernement. Ainsi donc, le Gouvernement a crée un foyer de tension et vous avez maintenant à rendre compte aux Nations Unies et à vos amis du Tiers Monde, vous qui parlez si souvent sur les tréteaux de l'Organisation de l'Unité Africaine ! Comment rendrez-vous compte à ces gens là de ce que vous avez fait ? Si l'océan Indien n'est pas une zone de paix, que Madame Gandhi aille demander des comptes au Premier ministre ! Que Madame Gandhi qui s'émeut de ce problème là et, à juste titre, aille demander des comptes au Premier ministre ! Et quant à nous, nous disons que la politique étrangère de l'île Maurice doit tenir compte du fait que nous sommes un petit pays avec une économie vulnérable et que nous avons à tenir compte en politique étrangère de la nécessité de bonnes relations avec tous, sans doute, mais de nos intérêts d'abord et de notre sécurité intérieure. Voilà les considérations qui doivent présider à l'élaboration de notre politique étrangère, — de bonnes relations avec d'autres pays, nos intérêts, notre développement économique et notre sécurité intérieure. Et il n'y a rien dans ce discours du Trône en matière de politique étrangère pour pouvoir inspirer confiance à qui que ce soit, ni aux Mauriciens, ni à ceux qui à l'étranger ont suivi l'évolution de ce parti travailliste, les actes de trahison vis à vis du peuple, de la nation mauricienne dont nous avons eu la confirmation aujourd'hui du ministre de la santé qui nous a dit que c'est parceque on était opposé à l'indépendance qu'ils ont été obligés d'accepter Rs. 40m. et de devenir complices de l'excision d'une partie du territoire mauricien.

M. le président, je voudrais avant de poursuivre mon exposé parler de Rodrigues. Est-ce parceque certains considèrent que les Mauriciens sont des bébêtes que les Rodriguais n'ont eu droit à absolument aucun traitement depuis toujours ? On aurait pu penser qu'avec la représentation parlementaire de Rodrigues au Parlement, avec les nombreuses interventions des députés de Rodrigues et d'autres députés pour Rodrigues, que ce Gouvernement allait enfin s'occuper de Rodrigues. Six ans, presque sept ans ont passé et qu'a-t-on fait pour Rodrigues ? Sans doute des missions s'y rendent de temps en temps. Il faut bien y aller, il faut bien aller faire un tour et voir comment c'est

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Rodrigues. C'est assez intéressant. On sort de Londres, d'Europe et on sort même de Maurice, on en a souvent entendu parler, on voudrait voir comment c'est et on y va, on va faire un tour à Rodrigues, on revient, les rapports sont déposés et il n'y a aucune suite, aucun *follow-up*. Les années passent, le problème de l'eau est resté sans solution, aucune recherche n'a été faite pour trouver les sources d'eau potable à Rodrigues et les ressources de Rodrigues en eau. Rien. Un filtre avait été donné par l'aide britannique à un certain moment pour filtrer l'eau d'une certaine partie de Rodrigues. Ce filtre a été donné à Plaisance au lieu d'être acheminé sur Rodrigues parceque les avions avaient besoin d'eau potable et jusqu'aujourd'hui rien n'a été fait pour donner à Rodrigues de l'eau filtrée. C'est ainsi que la mortalité infantile est très grande à Rodrigues et ce n'est que si l'enfant dépasse l'âge de quatre ou cinq ans qu'il a une chance de survivre. Mais la mortalité infantile est très grande grâce à la gastro-entérite, grâce à de nombreuses maladies qui proviennent de l'eau polluée. On l'a dit, on l'a repété à plusieurs reprises, le Gouvernement n'a rien fait, le Gouvernement ne fera rien parceque le Gouvernement ne compte pas Rodrigues dans son petit jeu électoral.

Mr. Ringadoo : That is not true.

M. Ollivry : Je sais que le ministre des finances est animé de bonnes intentions vis à vis de Rodrigues mais la route de l'enfer est pavée de bonnes intentions.

Sir Harold Walter : Government also.

M. Ollivry : Quant à lui, il est animé de bonnes intentions vis à vis de Rodrigues mais ainsi que je l'ai dit la route de l'enfer est pavée de bonnes intentions.

Le coût de la vie est très élevé, beaucoup plus élevé qu'à Maurice. Cela a été reconnu par ceux qui y sont allés. Cela a été reconnu par le commissaire Sedgwick. Qu'a-t-on fait ? Les fonctionnaires rodriguais se sont battus pour avoir un COLA suivant le barême établi par Sedgwick. Ils n'ont obtenu absolument rien sauf un 25% du COLA mauricien qui quand on l'analyse de près équivaut à prouver qu'en fait la situation est restée intacte. Je vais vous l'expliquer. La *disturbance allowance* qui est donnée aux fonctionnaires mauriciens comprend environ 15% de COLA. Lorsque vous donnez aux fonctionnaires rodriguais 25% du COLA mauricien, vous ne rétablissez pas la situation. Ce qu'il faut faire c'est donner aux Rodriguais et aux Mauriciens qui se trouvent à Rodrigues un COLA différent basé sur la hausse du coût de la vie et ne pas faire de différence en ce qui concerne le coût de la vie entre les Rodriguais et les Mauriciens à Rodrigues, qui y travaillent. Sans doute il faudra réaménager la *disturbance allowance* qui doit être différente du coût de la vie mais en ce qui concerne le coût de la vie, les Rodriguais et les Mauriciens devraient avoir un COLA qui est supérieur à celui qui est donné à Maurice pour tenir compte de la hausse du coût de la vie qui affecte les Rodriguais et les Mauriciens qui se trouvent à Rodrigues de la même façon.

En vérité, en ce qui concerne Rodrigues il y a un manque d'équipement, il y a un manque de cadres et dès qu'on a un cadre valable qui a un esprit missionnaire et qui veut aider les Rodriguais on le fait partir. Nous avons eu l'exemple de Monsieur Brown qui était en charge de l'agriculture et qui à un moment a voulu mettre de l'ordre dans les services de l'agriculture. Il y a eu un magistrat qui par la suite a disparu dans les circonstances que l'on sait et qui a fait toutes sortes de rapports

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Mauritius Legislative Assembly, Committee of Supply, *Consideration of the Appropriation (1974-75) Bill (No. XIX of 1974)* (26 June 1974)

EXTRACT

Mr. Ringadoo *rose* and *seconded.*

Question put and agreed to.

Bill read a second *time and committed.*

COMMITTEE STAGE

(*The Deputy Speaker in the Chair*)

The Road Traffic (Amendment) Bill (No. XXXV of 1974) *was considered and agreed to.*

On the Assembly resuming with the Deputy Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

On motion made and seconded, the Road Traffic (Amendment) Bill (No. XXXV of 1974) *was read the* third *time and passed.*

COMMITTEE OF SUPPLY

(*The Deputy Speaker in the Chair*)

Consideration of the Appropriation (1974-75) *Bill (No. XIX of* 1974) *was resumed.*

Vote 13-1. *Ministry of External Affairs, Tourism and Emigration was called.*

Mr. Ringadoo : Sir, there is an amendment which has been circulated, and I move accordingly.

M. Ollivry : M. le président, je parle à l'item du ministre des affaires étrangères, du tourisme et de l'émigration pour déplorer, une fois encore, que le Gouvernement mauricien n'ait jamais défini quelle était la politique étrangère du pays, et pour déplorer aussi que les affaires étrangères soient un secret pour le Parlement — ce domaine est entouré de mystère ! Ainsi, les tractations qui se passent entre le Gouvernement du Royaune Uni...

The Prime Minister : I am very sorry, I don't want to be difficult but I rise on a point of order. This is the general policy. We have discussed external affairs on the debates on the Speech from the Throne, on the second reading of the Appropriation Bill. Everything was discussed and everything was explained beyond limit. That is one. But if the hon. Member were to say under what item he wishes to speak, what is the specific matter he has in mind, I shall be helpful to him. It must be a specific thing; it cannot be a general debate. It must be a specific matter on which we will try and help our Friends. It is no good trying to come with general things which are vague and chaotic in their approach. I have risen on a point of order. The hon. Member says that external affairs are not known. It has been known in the newspapers, in the House and everywhere. I am rising on a point of order and I am explaining why there should be a restraint to a specified aspect of the subject, so that I may be able to be specific and reply to the point of the hon. First Member for Rodrigues.

M. Ollivry : M. le président, je propose que les salaires du ministre des affaires étrangères soient réduits de Rs. 25 ou de Rs. 100. Moi, j'aurais voulu l'enlever. Il n'existe même pas. Le Premier ministre est déjà payé pour cela. Je propose, M. le président...

The Prime Minister : I am always helpful. My Friend can talk on item 1. For the time being it exists. It has not been deleted, has it ? He can speak

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on it, but I would pray and hope at the same time that he will be specific so that I can reply to it.

M. Ollivry : Ainsi, M. le président, des agences de presse étrangères rapportent qu'il y a un accord secret entre le Gouvernement mauricien et le Gouvernement soviétique. Cela est possible. Il est possible que le Gouvernement estime nécessaire d'arriver à un tel accord entre le Gouvernement mauricien et le Gouvernement soviétique. Les agences de presse étrangères rapportent, comme émanant de l'île Maurice, qu'il y a un accord secret entre le Gouvernement mauricien et le Gouvernement soviétique.

The Prime Minister : I can tell my Friend there is no such thing. All agreements that this Government has entered into have been laid on the Table of this Assembly.

(3.10 p.m.)

M. Lesage : M. le président, pour élargir mon champ de tir je vais choisir l'item que vient de choisir celui qui m'a précédé, en y ajoutant 13-1.10, 13-1.16 et 13-1.20. Je crois que cela nous donne une idée de la dimension de notre politique étrangère. Nous sommes membres des Nations Unies, de l'O.U.A., de l'OCAM, et je crois que, ne serait-ce que sous l'item Nations Unies, il est permis de parler sur tous les aspects de cette politique étrangère ou de l'absence de politique étrangère. Je voudrais aviser la Chambre en passant, comme l'a souligné mon Collègue le premier député de Rodrigues (M. Ollivry), que nous avons l'intention de demander la suppression de l'item 13-1.1(1) puisqu'il y a cumul de fonctions. Car ce n'est que suite à la décision du Gouvernement, qu'on pourra voir — puisqu'il est entendu que la re-négotiation est une formule diplomatique très en vogue — s'il y aura possibilité de re-négociation de la Coalition.

Le premier député de Rodrigues a évoqué cette question d'accord russe. Il est évident qu'aujourd'hui l'océan indien entre à nouveau dans l'histoire — il ne s'agit donc pas d'être myope — et cela depuis que la Grande Bretagne a décidé de décrocher à l'est de Suez. Il est tout-à-fait normal qu'un océan de 17 millions de milles carrés fasse l'objet de convoitise de la part des différentes puissances étrangères. En effet, il ne s'agit que de considérer la dimension des puissances qui vont s'affronter pour être en mesure de réaliser les sérieuses inquiétudes pour la paix, qui naissent. Tout d'abord, sans sortir du cadre, nous croyons que c'est une question très pertinente que de se demander à quels mobiles profonds la construction et la mise en service d'une super-flotte soviétique correspondent. Il est un fait troublant, et je résume en substance la déclaration du ministre des affaires étrangères de Tunisie, M. Mohamed Masmoudi, qui, à l'époque de la pénétration soviétique en Méditerranée parlait de myopie européenne. Il s'agit de préciser qu'après avoir franchi les Dardanelles, les Russes ont érodé les prétentions de la sixième flotte à convertir la Méditerranée en *mare nostrum*.

Mais ils se sont aperçus dans le même souffle que pour pouvoir contrôler la Méditérrannée, se souvenant sans doute de l'époque de la thalassocratie britannique de Gibraltar à Suez, qu'il fallait avoir un lévier logistique dans l'océan indien.

Il ne faut certes pas faire la politique

Nous ne voudrions pas remonter au déluge, mais qu'il nous soit permis de rappeler, ne serait-ce que le discours qui a été prononcé à l'ONU par notre Premier ministre contre l'Ouganda. On aimerait savoir puisqu'il a eu l'occasion d'aller au sommet de Mogadiscio, s'il a réglé son compte au président Amine.

L'heure est arrivée pour nous de dénoncer ces gens et c'est le seul forum où nous puissions le faire sans acrimonie même si on hausse le ton par fois. Il est bon en effet de rappeler certaines choses. Nous n'avons rien à nous reprocher là-dessus.

Maintenant nous voudrions demander au Premier ministre comment il justifie notre contribution au SARTOC. *Membership fee to South African Regional Tourism Council.* Est-il conséquent avec lui-même ? Par ailleurs, lorsque le Premier ministre va à l'étranger, il fait aussi des déclarations mielleuses. Je me rappelle que cela se passait un peu après l'indépendance. Pendant une visite à l'étranger il avait déclaré que pour les Sud Africains, l'île Maurice était le paradis. Ces derniers y venaient pour regarder la télévision. Il doit se souvenir de tout cela. Et il n'avait peut être pas tort. Aussi nous conseillons une diplomatie prudente, pour ne pas mettre en danger l'approvisionnement de toute une population qui compte 850,000 âmes aujourd'hui, plus même. Nous avions déjà prédit il y a quelque temps que notre pays allait devenir un trottoir pour les querelles idéologiques. Nous aimerions que le Premier ministre fasse une déclaration supplémentaire à celle déjà faite par le ministre des finances en décembre où en septembre 1973 sur cette question qui suscite tant d'inquiétude, je veux parler de l'aéroport du nord.

Mr. Virah Sawmy : Sir, I choose item 13-1.10 — Contribution to United Nations Organisation. I understand that, if my information is correct of course, that some twenty years ago, a resolution was passed in the United Nations which prevented any colonial country to deprive a colony on the verge of independence of any part of its territory. In other words no country could, prior to independence, remove from Mauritius any part of it. If this is true, is not the passing over of Diego to the famous British Indian Ocean Territory in contravention with this resolution and if it is so, does the Minister of External Affairs intend to take the case to the International Court of the Hague and if not I would like to know why.

Secondly, I would like to speak on item 13-1.16 and here I would like to know what contribution this Government gives to the liberation movement of Africa. The Prime Minister, in many speeches we know, has expressed his solidarity for all oppressed people of the world, but I would like to know whether when he makes these statements, he is not only paying lip service to the liberation movement, because we may make beautiful speeches expressing our solidarity when in fact what the freedom fighters in Africa need is help, medicine, guns, etc. I would like to know how much this Government gives to the liberation movement in Africa. The time when people would just listen to good speeches is over. We must know what is done in practice, what concrete help is being offered to our black brothers in Africa. There were quite a lot of accusations of racialism here. But one Minister once accused me of stupidity, because I expressed my solidarity for the black people of Africa. So I think the Prime Minister should look around him before he accuses

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other people of racialism because there are racialists in his Government.

My third point. Sir, I would like to speak on item 13-1.33 (1) General Manager, Mauritius Government Tourist Office. There is an alarming situation which exists in this country. I am not going to make a detailed speech on tourism to show its good side and its bad side, but there is one ascpet which worries me a bit. There was a nice beach in Trou-aux-Biches, now the public can no longer go there. Pointe aux Cannonniers was a nice place, now there is Club Mediterranée. We hear of hotels in Belle Mare, hotels all over the place. I would like to hear from the Prime Minister what is the policy of Government concerning the protection of Mauritians and the protection of the rights of Mauritians to go to the beaches whenever they want and to prevent hotels from depriving Mauritians from this inherited privilege. And while I am on this topic, I would like also to draw the attention of Government on another point. There are places in Mauritius where owners of campements have the habit of putting barbed wires to prevent people from walking along the beach. Hotel keepers may adopt this practice so that we Mauritians are prevented from enjoying things which are ours.

A last point which I would like to make is on the item concerning membership to South African Regional Tourism Council. Now there has been quite a lot of statements against South Africa and I agree that we should take a very firm stand against South Africa, but there is a contradiction here. We say that we must fight for total political and economic independence and we encourage tourism and the majority of tourists come from South Africa, so that the tourist economy is dependent on South Africa and we are at the same time member of the South African Regional Tourism Council. The country of Kamuzu Hastings Banda too is a member of this Association. I think the Prime Minister knows that not only the white despots are the enemies of the black people, but there are also some black stooges of the white despots, and if we want to be honest with ourselves, I think this country should withdraw from SARTOC which is a South African controlled organisation. We cannot go on paying again lip service to the liberation of our black brothers in South Africa and at the same cooperating economically. We cannot do something valid on the political level if we are collaborating with South Africa on the economic level.

Thank you, Sir.

(3.45 p.m.)

The Prime Minister : First of all, Sir, with regard to the ceiding of Diego by this Government, I will say actually it is not what my hon. Friends opposite are saying. I will refer them to the Colonial Boundaries Act of 1895 which confers on Her Majesty the Queen, then Queen Victoria, the power to alter the boundaries of colonies by order in Council, or letters patent, with the proviso that the consent of the self governing Colony, shall be required for the alteration of the boundaries thereof.

It is by this that Seychelles and Mauritius were separated. It is by this that Diego was separated from Mauritius. By an Order in Council in 1965, dated the 8th November, Her Majesty the Queen ordered that the British Indian Ocean Territory be constituted consisting of certain islands hitherto included in the

dependencies of Mauritius and of other territories.

The Government of Mauritius was nevertheless informed, after we had discussed in England, that this had taken place, and we gave our consent to it. It was done like this, but the day it is not required it will revert to Mauritius. But, Mauritius has reserved its mineral rights, fishing rights and landing rights, and certain other things that go to complete, in other words, some of the sovereignty which obtained before on that island. That is the position. Even if we did not want to detach it, I think, from the legal point of view, Great Britain was entitled to make arrangements as she thought fit and proper. This, in principle, was agreed even by the P.M.S.D. who was in the Opposition at the time ; and we had consultations, and this was done in the interest of the Commonwealth, not of Mauritius only. This is all I can say about Diego.

With regard to the liberation movement, it is not lip service. We are contributing, in every way possible, to the liberation movement. Sometimes, there are papers which come here, to make good the amount that we pay.

With regard to tourism and beaches, Government, as far as possible, tries to strike a balance between our own requirements and the use to which we should put some of our beaches so that we can derive not only revenue, but also facilities which give a lot of employment to our own people, and at the same time earn foreign exchange for Mauritius. It is possible that sometimes we may not have discerned properly. That is another matter, but every request is examined very carefully, not by my Ministry. To begin with, it is examined elsewhere, and it comes before everybody, and Government decides to follow this or that policy.

With regard to people trying to put fences in front of their bungalows at the seaside, if this is reported to the Government, we might look into it. I do not think people can do it. I say, on the spur of the moment, it should not be done.

With regard to SARTOC, we don't mix up politics with tourism in international organisation of this nature. We have not mixed up tourism with politics, and SARTOC is a tourism organisation. It is not mainly composed of South Africa or its representatives. It is not an organisation to include South Africa as such, as I can know, and we form part of it. But, I would like to point out to my Friend that it is not working as he thinks it is working. It is not giving satisfaction to the members themselves. They very rarely do. And as to tourism, we have no grievance against South African concerns. The South Africans who come to Mauritius are well behaved. There have been no incidents with them, and they accept the policies and the rules of conduct in our country. This is a free country : people come, they leave, they take what they want, what they require, and they go. I don't think there has been any complaint against South Africans as such. What we complain of is apartheid and the abuse of the black races which a minority of white Africa is trying to impose. That is what we are aginst ! We are against the enslavement of the black man. This is not something that is new. My hon. Friend just now spoke about my insincere views. I moved even before we were independent a resolution in this country to sympathise with the black Africans who were shot at Sharpeville !

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And it was passed by this Legislature, even before independence. This is something that we cannot mix up. South African people themselves do not like many of the things their Government does. But, we cannot mix up the South African tourists or the South African people with the policy of the South African Government.

(*Interruption*)

Well, I don't know. My friend may think so. I don't know who supports and who does not support. South Africans are good tourists. They are well behaved gentlemen and ladies, and I take my hat off to them. They have always behaved well in Mauritius, and I don't think Mauritius has anything against them.

Commerce is international. I don't think it is based on colour or creed or anything of the sort. So, this is the stand on which this Government acts and we are contributing to the liberation movement in many forms, in education as well as by funds and we are satisfied that our Colleagues in O.A.U. are doing their utmost also to do the same thing. And there are no bones about all this.

But, as I said, as regards the Indian Ocean I have given part of it, but there is the other part and we are already trying to see what the Indian Ocean can produce for Mauritius itself. There is a great wealth down the bottom of the sea, wherever our territories are, and I have signed an agreement to the effect that Mauritius has 53,000 square miles of territory beyond the others, to which we have acquired rights, and in which we have the right to explore and exploit the resources that are available. So, we have tried to protect the rights of Mauritius wherever we have been able to do it. But, if my hon. Colleagues on the other side say that we should oppose the great powers in the Indian Ocean, I would say that even great powers cannot oppose each other. They try to talk, they try to cajole one another, they talk at international forums to be able to come to some arrangement. Just now, they are talking in an impasse, but all the same they talk. I personally think, all the sea should be free to every nation. We, in our own life-time, have seen two world wars. The first world war was for the freedom of people and the freedom of nations. The second war also involved the same theme. So, I do not know why we should not say Russia should not come this way, or the United States or any other nation should not come this way. I would like to know how can Russia traverse from one side of the world to the other without going through the Indian Ocean ? Or, how can America go from this side to the other ? Or how England or Holland or Iran can go from this side to the other unless they go through the Indian Ocean ? I think, this is not a pragmatic approach to the problems with which we are faced ; and peace and war — although small or big nations may have their say up to a point, — this is decided by big powers, and this is the grievance of smaller nations who seem to be now and again acting as pawns to big powers. We can say in the United Nations what we feel, we certainly say at the O.A.U. what we think, we can say it at O.C.A.M., we can say it at non-aligned meetings, at other international meetings, the W.H.O. the F.A.O. the UNESCO — all these are forums where we can vent the views of a country for peace and happiness, but still war is taking place. There is war in North and South Vietnam.

fait ? Quand espère-t-on terminer ces travaux ?

M. le président, à l'item de Rodrigues je vois *housing for civil servants*. Il est certain que ce Gouvernement se doit de construire des résidences pour les fonctionnaires à Rodrigues mais la plupart des fonctionnaires habitent dans la région de Port Mathurin. Il n'y a vraiment pas beaucoup d'espace. Est-ce-que la solution ne serait pas, au lieu de construire un très grand nombre de petites maisons avec une cour, etc., comme cela se fait d'habitude, est-ce-que ce ne serait pas mieux de construire un ou deux immeubles avec un grand nombre d'appartements où les fonctionnaires pourraient occuper ces appartements ? Ce serait une meilleure utilisation des terrains.

Dans Port Mathurin presque toutes les maisons sont des maisons de fonctionnaires. Est-ce que dans le cadre du *planning* et de l'urbanisme on ne devrait pas songer à créer des blocs d'appartements pour les fonctionnaires à Rodrigues et qui feraient une meilleure utilisation de l'espace ?

Je vois qu'on prévoit une somme à l'*item* 31.4.70. pour l'aéroport. On aurait dû plûtot parler du *air strip* que du *airport*. On a annoncé qu'un avion de vingt places irait à Rodrigues. Est-ce-que l'aéroport actuel peut recevoir cet avion ? Quelles sont les améliorations qu'il faudra faire ? Combien de temps faudra-t-il attendre pour que cet avion puisse y aller ? Est-ce-que cette somme suffirait pour l'agrandissement éventuel de l'aéroport de Rodrigues ?

(6.35 p.m.)

M. Lesage : M. le président, je choisis l'*item* 31.7.7 *New Airport* (*phase* 1). Je vois que la somme globale pour ce projet est de Rs 41 millions alors que les crédits qu'on nous demande de voter cette année-ci ne sont que de l'ordre de Rs 2,26 millions. Il est toutes sortes de bruits qui circulent à ce sujet. Nous dirons même qu'il y a un mystère qui entoure la construction de ce nouvel aéroport. En effet, à chaque fois qu'un membre de cette Chambre essaye d'avoir de plus amples détails, le gouvernement répond évasivement. On a l'impression que le projet a été modifié radicalement.

(*Interruption*)

En effet les avions font beaucoup de bruit !

Nous aimerions avoir quelques renseignements complémentaires sur cet aéroport. Nous voulons bien entendu parler de l'aéroport du Nord. Est-ce que de nouveaux développements se seraient produits suite à la déclaration faite par le ministre des finances en novembre ou en décembre 1973 ? C'est en tout cas notre sentiment intérieur.

Le ministre doit dire s'il y a de nouvelles conditions qui y ont été attachées. Nous avions du reste prédit — on dira que nous avons une bouche de *cabri* — que nous finirions par payer notre aéroport. Nous avons vu les répercussions suite au réajustement des taux. On dit toujours que l'économie socialiste ne connaît pas l'inflation. Cela est possible. Mais ce qui est également vrai c'est qu'elle est injecteuse d'inflation chez les autres. Si on prend une liste des prix ,— c'est le conseil que je donne au ministre du commerce et de l'industrie — des marchandises importées de la Chine continentale on verra dans quelle proportion certains produits venant du pays

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donateur ont augmenté en l'espace de deux ans. On a commencé à ressentir les effets presque immédiatement, après la signature de l'accord. Il est certaines gens qui savent bien faire les choses.

J'arrive maintenant à l'item 15.3. — Quatre Bornes, qui avait été tenu hors du circuit de développement car le gouvernement n'y permettait pas l'implantation de nouvelles usines, jusqu'à tout récamment a pourtant ses lettres de noblesse dans l'industrialisation de Maurice. Je veux parler de la sacherie qui se trouve dans ma circonscription. Il y a eu un nouveau projet à partir de la sacherie. D'autres industries vont être mises sur pied grâce à des investissements étrangers. Aussi, pressentant cet accord éventuel entre le Gouvernement et des entrepreneurs libres, nous avions par voie d'interpellations demandé au ministre du commerce et de l'industrie d'alors si les droits des travailleurs seraient sauvegardés. Et avions même fait ressortir que ce serait une occasion unique pour lancer la participation, pas seulement entre les investisseurs et le gouvernement, mais également la possibilité d'une participation des travailleurs aux responsabilités, aux décisions et au capital de l'entreprise. C'était l'occasion rêvée.

On nous a répondu que les intérêts des travailleurs ne seraient pas lésés. Or, nos renseignements sont que tel n'est pas le cas. Il y a eu tout un chambardement dans les structures sans que les travailleurs ne soient consultés. Une fois encore le Gouvernement n'a pas permis aux travailleurs de s'exprimer sur une question qui va effecter leur avenir.

Mr. Ringadoo : Sir, the hon. First Member for Rodrigues (Mr. Ollivry) raised the question of the amount provided for the resettlement of the *Ilois*. I would like to inform the House that Government intends to have two housing estates, one at Pointe aux Sables and another at Roche Bois and that the *Ilois* will be given all the facilities for pig breeding and mixed farming. The amount of Rs 725,000 we are providing would be for the relief of the *Ilois*.

He raised also the question of housing for civil servants in Rodrigues and suggested that we may perhaps build on a large scale in order to provide a lot of housing facilities for civil servants. As pointed out by the Minister of Economic Planning, Rodrigues will need a lot of infra-structure work before we can have houses which will not be just on the ground floor. I think there is a problem of water and roads will have to be looked into and certain works completed before we can embark on what he has suggested.

He has also raised the question of the air strip. I think the air strip is now being redone. I think it will be tarred and we are sending equipment in order to do extensive work to the air strip in order that the strip may be able to receive a plane larger than the one which is being used at present and that would increase the number of people who can travel to and from Rodrigues.

The hon. First Member for Belle Rose and Quatre Bornes (Mr. Lesage) raised again the question of the new airport. In my reply I informed the House that there were some technical problems which were discussed by technicians on both sides and that was why there has been some delay on account of the nature of the ground and facilities to be provided and the size of the air strip.

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Memorandum by the Secretary of State for Foreign and Commonwealth Affairs on the "British Indian Ocean Territory: The Ex-Seychelles Islands", OPD(75)9, FCO 40/674 (27 Feb. 1975)

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27 February 1975

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

BRITISH INDIAN OCEAN TERRITORY: THE EX-SEYCHELLES ISLANDS

Memorandum by the Secretary of State for Foreign and Commonwealth Affairs

1. BIOT was set up in 1965 for the defence purposes of the United Kingdom and United States Governments. It consists of the ex-Mauritius Chagos group (including Diego Garcia) and, about 1,500 miles away, the three ex-Seychelles islands of Aldabra, Farquhar and Desroches. This paper concerns the last three only. Although joint defence-use surveys were carried out between 1965 and 1968, the islands remain empty except for a Royal Society scientific station on Aldabra and temporary coconut plantations on Farquhar and Desroches. There are now no plans for specific defence uses either by Her Majesty's Government or, as far as we know, by the United States Government.

Money

2. We paid for the islands by building the Seychelles airport out of the £10 million BIOT fund (half of which was secretly provided by the Americans). They now cost us about £50,000 a year net. There is no prospect of an economic return. The sea-bed might be valuable; but Mr Greenwood promised Mauritius at their indspendence conference that they would have the benefit of any mineral or oil discoveries in or near Chagos. We should probably have to make a similar promise to Seychelles.

Seychelles Considerations

3. A Seychelles Constitutional Conference will be held from 14-27 March. This is likely to result in independence in 1976. The BIOT islands will be an issue. The present leaders of the Seychelles parties agreed to the arrangement in 1965; but the opposition Seychelles Peoples United Party have since consistently demanded their return, partly out of conviction, and partly to gain support from the Liberation Committee of the OAU. The governing Seychelles Democratic Party are less concerned, but do not want to be outflanked. If the SPUP do not get what they want from the Conference, they may use BIOT as a pretext for a walk-out.

A Policy for Her Majesty's Government

4. It is important to secure denial to the Russians of bases in the whole area, including islands still controlled by Seychelles. But it might be possible to secure this by agreement with the Seychelles Government. Otherwise we do not at present have any direct interest in Aldabra, Farquhar and Desroches. Politically they are an embarrassment

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to us in the United Nations and the Organisation for African Unity. Provided that we can get American agreement without undue difficulty, and subject to a guarantee of denial to third countries, the best solution for us might be to return the islands to Seychelles as a major concession in the independence negotiations. An intermediate solution might be some form of lease to Seychelles under which we retained some of the rights we have at present. But although this would preserve our right, at least in theory, to resume the islands if we needed them, it would meanwhile leave us with responsibility without power.

The Attitude of the Americans

5. Our 1966 agreement with the Americans set aside BIOT "to meet the possible defence needs of the two Governments for an indefinitely long period" (initially 50 years). Their first reaction to any proposal for return is almost certain to be adverse. The Indian Ocean is of particular sensitivity to them. They are not happy about our Defence Review reductions there, and could resent what they would regard as a further weakening of HMG's interest in the area. They may argue that, having jointly paid for the islands, we should retain them for contingency use. They will also be worried about any implications for our title to Diego Garcia, including the possibility that Congress might not vote the funds for expansion there if our security of tenure appeared doubtful. To ask them to make up their minds before Congressional action on Diego Garcia is completed in the spring could be counter-productive. On the other hand, we can put it to them that the retention of such unused and undefended islands can have political and military dangers. Moreover, they are going to have to bargain with an independent Seychelles for the retention of their satellite tracking station in Seychelles. United States agreement to the return of the BIOT islands would be a valuable card in these negotiations.

Conclusions

6. I invite my colleagues to agree that:

(a) Provided United States agreement can be secured without serious repercussions in United States/United Kingdom relations and that we can be assured they will be denied to a hostile power, it would be in our interest to return the islands to Seychelles, outright or possibly by lease, as a major concession at an appropriate moment, subject to suitable arrangements for the Royal Society on Aldabra.

(b) We should explore the problem with the Americans at official level now, stressing the relevance to their negotiations on the Tracking Station, in which we would do our best to assist.

(c) If, as is likely, the Americans need more time, we should tell them that we will say no more at the Constitutional Conference than that, because of our agreement with the United States Government, we must consult them about any proposal for return, and will do so.

(d) Thereafter we should, with the Americans, examine the question further and in depth. Our final decision should only be taken jointly with the Americans and we should make this clear to them in our discussions.

7. Unless I hear to the contrary by mid-day on 4 March, I shall assume my colleagues' agreement with these conclusions.

L.J.C.

Foreign and Commonwealth Office

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United Kingdom, *"British Indian Ocean Territory: The Ex-Seychelles Islands"*, FCO 40/686 (22 July 1975)

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Extract from OD (75) 6th Meeting, held 23 July 1975 SECRET

3. BRITISH INDIAN OCEAN TERRITORY: THE EX-SEYCHELLES ISLANDS

The Committee considered a memorandum by the Foreign and Commonwealth Secretary (OPD(75) 23).

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THE FOREIGN AND COMMONWEALTH SECRETARY said that when the Seychelles Constitutional Conference resumed in January 1976 the Seychelles leaders were certain to raise the future of the three ex-Seychelles islands, Aldabra, Farquhar and Desroches, which now formed part of the British Indian Ocean Territory. A decision was needed on what our policy on the islands should be. There were two courses open, apart from leasing the islands back to Seychelles, which he did not recommend: either to return the islands in exchange for certain undertakings by the Seychelles, about continued free American use of the satellite tracking station, denial of the islands to hostile powers, and British and American access to them; or to retain the islands while making certain undertakings ourselves about returning the islands when no longer needed, reserving oil, mineral and fishing rights to the Seychelles, and various forms of assistance. His strong preference was for the first course. Returning the islands would help the negotiations on independence, whereas their retention could be exploited to our disadvantage by the Opposition party in the Seychelles and would be a potential continuing embarrassment. However the preference of the United States might well be that we should retain the islands. Although he proposed to show the return of the islands as our preferred option in the papers to be discussed at the next Anglo/United States Consultations on the Indian Ocean, he would report back to the Committee if the Americans did not agree.

In discussion it was argued that the consent of the United States Government to the return of the islands was improbable. They were already greatly concerned by the threat of Soviet penetration in the Indian Ocean. They might also fear that, if the islands were returned to the Seychelles, Mauritius might be encouraged to press for the Chagos Archipelago to be handed back to her and that our hold on Diego Garcia would be made less secure. Furthermore it was by no means certain that the Seychelles would press strongly during the independence negotiations for the return of the islands. Too much emphasis therefore

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should not be placed on the options at a. and b. in paragraph 7 of OPD(75) 23 during discussion with the Americans. On the other hand it was pointed out that our interests would be best served if the Seychelles could be persuaded to adopt a posture of non-alignment. Return of the islands, with suitable assurances given by the Seychelles, would be consistent with that objective; and our extensive programme of aid to the Seychelles might be a useful lever in helping us to obtain the assurances we needed. If the islands were retained, we would expect the costs of any consequential commitments undertaken by us to be met by the United States.

THE PRIME MINISTER, summing up the discussion, said that the Committee agreed that in the paper to be given to the Americans as a basis for further discussion at official level the options should be expressed in the order of preference shown in paragraph 7 of OPD(75) 23. The Foreign and Commonwealth Secretary should report further when we had the United States' reaction, so that the Committee could decide finally what line to follow during the resumed Constitutional Conference.

The Committee -

Took note, with approval, of the Prime Minister's summing up of their discussion and invited the Foreign and Commonwealth Secretary to proceed accordingly.

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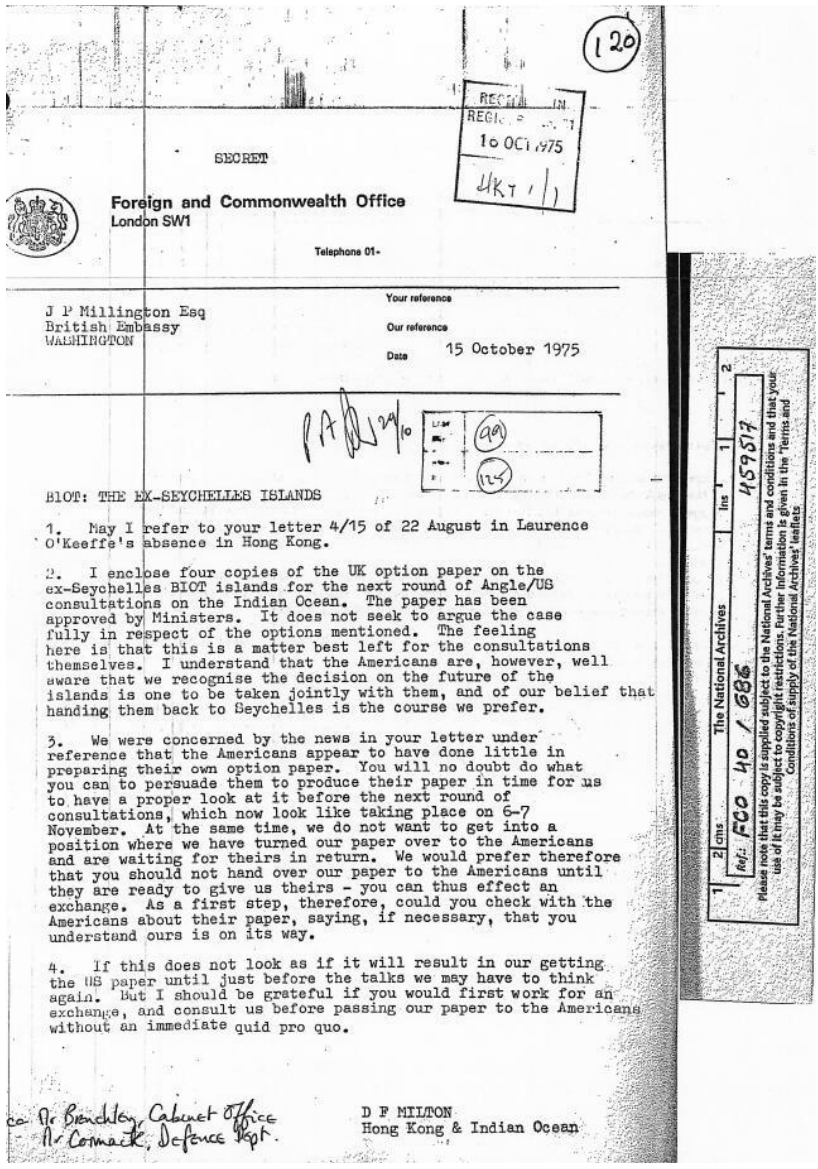
U.K. Foreign and Commonwealth Office, *"BIOT: The Ex-Seychelles Islands"*, FCO 40/686 (15 Oct. 1975)



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London SW1

Telephone 01-

J P Millington Esq
British Embassy
WASHINGTON

Your reference
Our reference
Date 15 October 1975

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BIOT: THE EX-SEYCHELLES ISLANDS

1. May I refer to your letter 4/15 of 22 August in Laurence O'Keeffe's absence in Hong Kong.

2. I enclose four copies of the UK option paper on the ex-Seychelles BIOT islands for the next round of Angle/US consultations on the Indian Ocean. The paper has been approved by Ministers. It does not seek to argue the case fully in respect of the options mentioned. The feeling here is that this is a matter best left for the consultations themselves. I understand that the Americans are, however, well aware that we recognise the decision on the future of the islands is one to be taken jointly with them, and of our belief that handing them back to Seychelles is the course we prefer.

3. We were concerned by the news in your letter under reference that the Americans appear to have done little in preparing their own option paper. You will no doubt do what you can to persuade them to produce their paper in time for us to have a proper look at it before the next round of consultations, which now look like taking place on 6-7 November. At the same time, we do not want to get into a position where we have turned our paper over to the Americans and are waiting for theirs in return. We would prefer therefore that you should not hand over our paper to the Americans until they are ready to give us theirs - you can thus effect an exchange. As a first step, therefore, could you check with the Americans about their paper, saying, if necessary, that you understand ours is on its way.

4. If this does not look as if it will result in our getting the US paper until just before the talks we may have to think again. But I should be grateful if you would first work for an exchange, and consult us before passing our paper to the Americans without an immediate quid pro quo.

cc Mr Brenchley, Cabinet Office
Mr Comark, Defence Dept.

D F MILTON
Hong Kong & Indian Ocean

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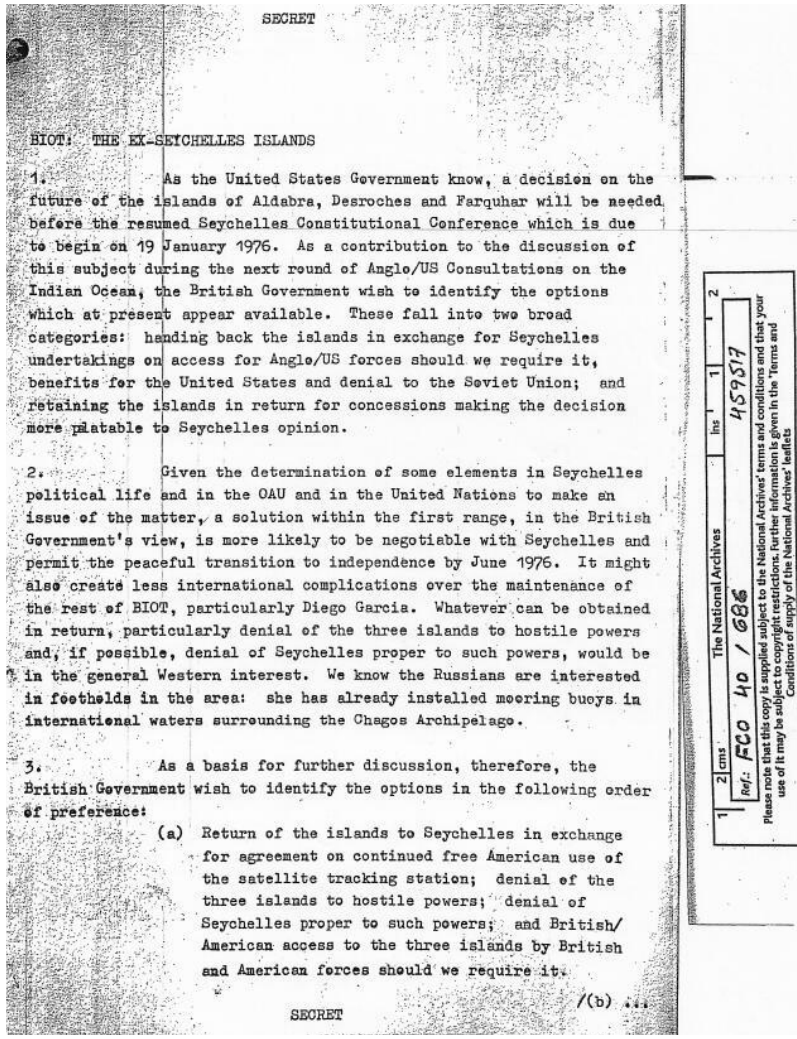
Annex 105



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BIOT: THE EX-SEYCHELLES ISLANDS

1. As the United States Government know, a decision on the future of the islands of Aldabra, Desroches and Farquhar will be needed before the resumed Seychelles Constitutional Conference which is due to begin on 19 January 1976. As a contribution to the discussion of this subject during the next round of Anglo/US Consultations on the Indian Ocean, the British Government wish to identify the options which at present appear available. These fall into two broad categories: handing back the islands in exchange for Seychelles undertakings on access for Anglo/US forces should we require it, benefits for the United States and denial to the Soviet Union; and retaining the islands in return for concessions making the decision more palatable to Seychelles opinion.

2. Given the determination of some elements in Seychelles political life and in the OAU and in the United Nations to make an issue of the matter, a solution within the first range, in the British Government's view, is more likely to be negotiable with Seychelles and permit the peaceful transition to independence by June 1976. It might also create less international complications over the maintenance of the rest of BIOT, particularly Diego Garcia. Whatever can be obtained in return, particularly denial of the three islands to hostile powers and, if possible, denial of Seychelles proper to such powers, would be in the general Western interest. We know the Russians are interested in footholds in the area: she has already installed mooring buoys in international waters surrounding the Chagos Archipelago.

3. As a basis for further discussion, therefore, the British Government wish to identify the options in the following order of preference:

(a) Return of the islands to Seychelles in exchange for agreement on continued free American use of the satellite tracking station; denial of the three islands to hostile powers; denial of Seychelles proper to such powers; and British/American access to the three islands by British and American forces should we require it.

/(b) ...

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(b) Return of the islands in exchange for most of the above concessions.

(c) Retention of the islands in exchange for:

(i) undertakings similar to those given to Mauritius (i.e. right of reversion if and when the islands are no longer required for defence reasons, reservation of benefits of mineral exploration);

(ii) generous payment for continued use of the satellite tracking station.

(d) Leasing the islands back to Seychelles.

4. It may be that payment for the satellite tracking station (see (c)(ii) above) might be desirable even if options (a) and (b) above are successfully negotiated simply in order to provide greater security for the fscility. A major objection to (d) above is that the British Government would be retaining sovereignty without power.

5. The British Government is committed to an extensive programme of aid to Seychelles which might be a useful lever in helping to obtain the assurances necessary under options (a) and (b) above.

Hong Kong & Indian Ocean Department
Foreign and Commonwealth Office

15 October 1975

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Annex 106

U.K. House of Commons, *Written Answers: Foreign and Commonwealth Affairs - Indian Ocean*, FCO 31/3836 (21 Oct. 1975)

Dr. Gilbert: The review was begun in 1972 and was the first since the Trunk Roads Act 1946. My right hon. Friend has decided, after completing his consultations with the local authority asosciations this summer, that it is not appropriate to seek legislative time for the major reshaping of the network indicated by the review at a time when local authorities have many other calls on their resources. We do, however, propose to trunk a small number of local authority roads, some still to be built, that properly form part of the national network, and to remove trunk road status from a number of trunk roads whose fuction has been taken over by other roads. The roads which I am proposing to trunk after further consultation with the local authorities concerned are:

M69/A46. Leicester Ring Road (partly new route).
A46/A15. Proposed relief road for Lincoln.
A52. Nottingham to Grantham.
A140. Coddenham (B1078) to Norwich.
A47/A12. Great Yarmouth.
A15. Lincoln to M180.
New Route. Gateshead bypass extension.
Scotswood Bridge to A69 and from A69 to A696.
A249. M2 to A2 at Bobbing and to Sheerness.
A21. M25 near Sevenoaks to Hastings.
New Route. Manchester Outer Ring Road, Eastern Section Bredbury-Denton-Middleton to M62.
M602. Salford Docks spur.
A1034. Market Weighton to Cayes.
A354. Dorchester-Weymouth to docks.
A393/A39. Spur to Falmouth.
A585. Spur to Fleetwood.
New Route. Darlington A1(M) eastwards to A66.
New Route. Immingham spur.
New Route. Hull, extension of A63 to docks.
A604. Colchester eastern bypass to Harwich.
A15. M180 to A63.

Local Government Expenditure

Mr. Shersby asked the Secretary of State for the Environment whether he has studied the return of rates published by the Chartered Institute of Public Finance and Accountancy; and what further steps he intends to take to reduce local authority expenditure and the burden on taxpayers in the municipal year 1976-77.

Mr. John Silkin: Yes. I am discussing local authority expenditure and rates with the local authority associations in the course of the rate support grant negotiations.

37 H 47

Council House Heating (Launceston)

Mr. Pardoe asked the Secretary of State for the Environment why his Department has instructed the North Cornwall District Council to install electric ceiling heating in 164 new council houses at Ridgegrove, Launceston; and what evidence he has that this type of heating is the most efficient in terms of cost to the council and the tenants and in terms of the use of energy.

Mr. Armstrong: No such instructions have been given. The decision on the most appropriate form of heating at Ridgegrove, Launceston, as in council housing generally, rests with the local authority.

London

Mr. Jay asked the Secretary of State for the Environment whether he will make a statement about the recommendations of the Layfield Report on the Greater London Development Plan.

Mr. Crosland: I have done so today. Copies have been placed in the Library of the House, and sent to Government Departments, the Greater London Council and London boroughs. They will be available at Her Majesty's Stationery Office from tomorrow.

Parking Fines

Sir George Young asked the Secretary of State for the Environment what has been the effect of the increase in parking fines introduced in September.

Dr. Summerskill: I have been asked to reply.

I assume the hon. Member is referring to the increase in the fixed penalty to £6 on 1st September, when owner liability was also introduced for parking offences dealt with under the fixed penalty system. It is too early to assess the effect of these measures.

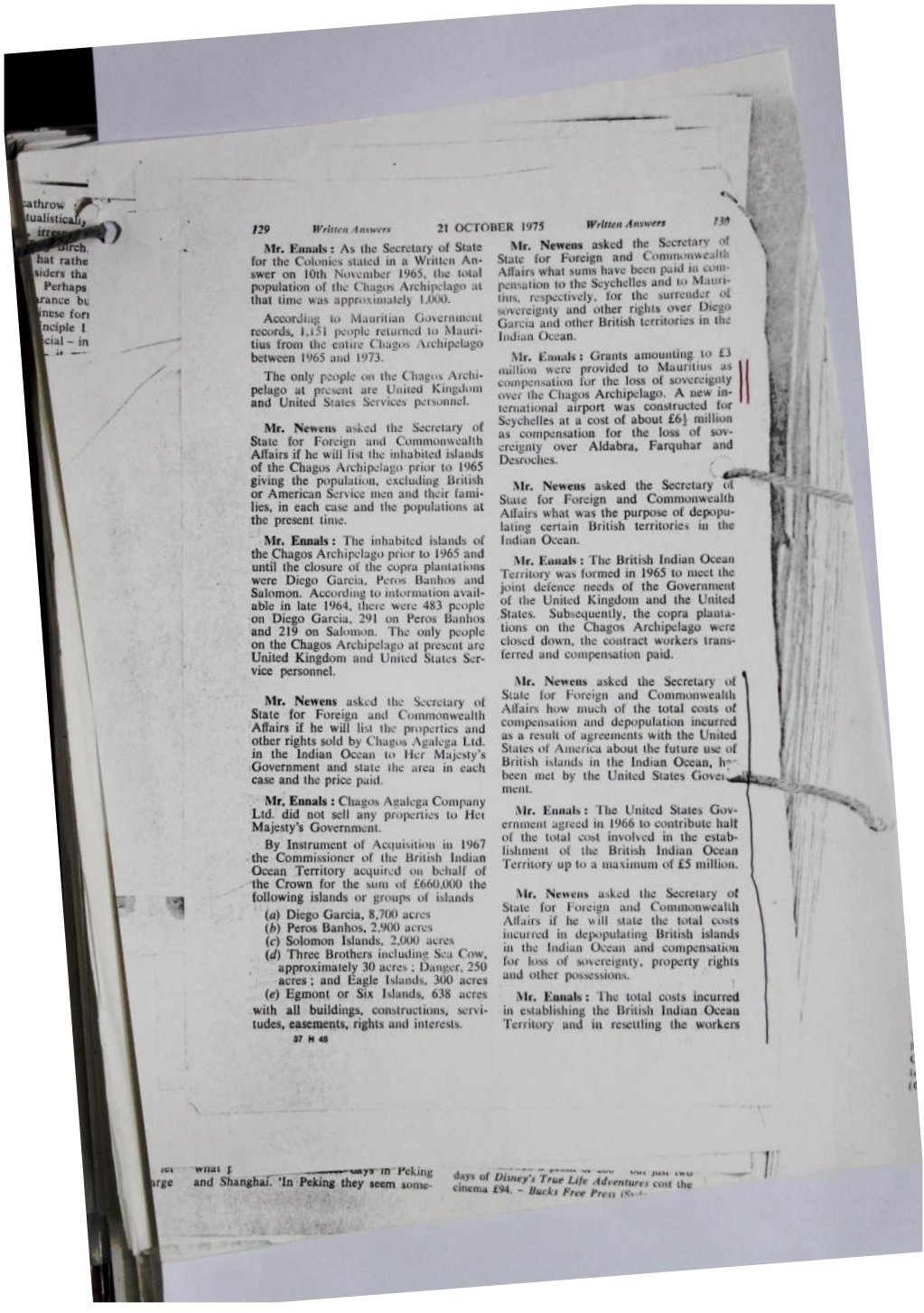
FOREIGN AND COMMONWEALTH AFFAIRS

Indian Ocean

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs what is the total number of people previously resident in the Chagos Archipelago who have been evacuated since 1965; and how many now remain.

Government whether we will provide expert advice as to the best way to utilise the generous donation of £650,000 which we made for the purpose of resettlement of the Diego Garcians and other islanders.

Annex 106



129 *Written Answers* 21 OCTOBER 1975 *Written Answers* 130

Mr. Ennals: As the Secretary of State for the Colonies stated in a Written Answer on 10th November 1965, the total population of the Chagos Archipelago at that time was approximately 1,000.

According to Mauritian Government records, 1,151 people returned to Mauritius from the entire Chagos Archipelago between 1965 and 1973.

The only people on the Chagos Archipelago at present are United Kingdom and United States Services personnel.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs if he will list the inhabited islands of the Chagos Archipelago prior to 1965 giving the population, excluding British or American Service men and their families, in each case and the populations at the present time.

Mr. Ennals: The inhabited islands of the Chagos Archipelago prior to 1965 and until the closure of the copra plantations were Diego Garcia, Peros Banhos and Salomon. According to information available in late 1964, there were 483 people on Diego Garcia, 291 on Peros Banhos and 219 on Salomon. The only people on the Chagos Archipelago at present are United Kingdom and United States Service personnel.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs if he will list the properties and other rights sold by Chagos Agalega Ltd. in the Indian Ocean to Her Majesty's Government and state the area in each case and the price paid.

Mr. Ennals: Chagos Agalega Company Ltd. did not sell any properties to Her Majesty's Government.

By Instrument of Acquisition in 1967 the Commissioner of the British Indian Ocean Territory acquired on behalf of the Crown for the sum of £660,000 the following islands or groups of islands

(*a*) Diego Garcia, 8,700 acres
(*b*) Peros Banhos, 2,900 acres
(*c*) Solomon Islands, 2,000 acres
(*d*) Three Brothers including Sea Cow, approximately 30 acres; Danger, 250 acres; and Eagle Islands, 300 acres
(*e*) Egmont or Six Islands, 638 acres

with all buildings, constructions, servitudes, easements, rights and interests.

37 H 48

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs what sums have been paid in compensation to the Seychelles and to Mauritius, respectively, for the surrender of sovereignty and other rights over Diego Garcia and other British territories in the Indian Ocean.

Mr. Ennals: Grants amounting to £3 million were provided to Mauritius as compensation for the loss of sovereignty over the Chagos Archipelago. A new international airport was constructed for Seychelles at a cost of about £6½ million as compensation for the loss of sovereignty over Aldabra, Farquhar and Desroches.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs what was the purpose of depopulating certain British territories in the Indian Ocean.

Mr. Ennals: The British Indian Ocean Territory was formed in 1965 to meet the joint defence needs of the Government of the United Kingdom and the United States. Subsequently, the copra plantations on the Chagos Archipelago were closed down, the contract workers transferred and compensation paid.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs how much of the total costs of compensation and depopulation incurred as a result of agreements with the United States of America about the future use of British islands in the Indian Ocean, has been met by the United States Government.

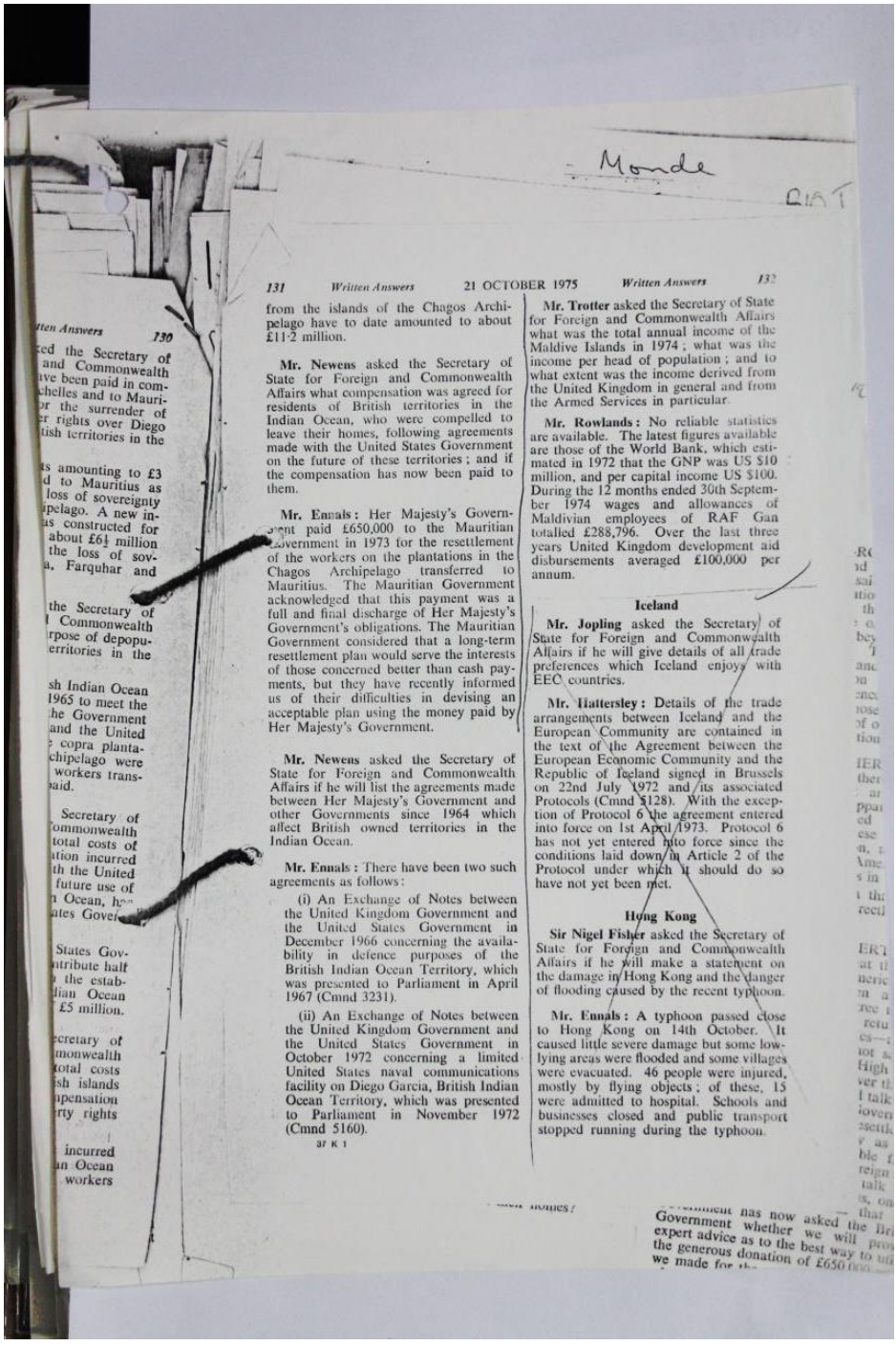
Mr. Ennals: The United States Government agreed in 1966 to contribute half of the total cost involved in the establishment of the British Indian Ocean Territory up to a maximum of £5 million.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs if he will state the total costs incurred in depopulating British islands in the Indian Ocean and compensation for loss of sovereignty, property rights and other possessions.

Mr. Ennals: The total costs incurred in establishing the British Indian Ocean Territory and in resettling the workers

...days in Peking and Shanghai. 'In Peking they seem some-

...days of *Disney's True Life Adventures* cost the cinema £94. – *Bucks Free Press* (S...



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from the islands of the Chagos Archipelago have to date amounted to about £11·2 million.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs what compensation was agreed for residents of British territories in the Indian Ocean, who were compelled to leave their homes, following agreements made with the United States Government on the future of these territories; and if the compensation has now been paid to them.

Mr. Ennals: Her Majesty's Government paid £650,000 to the Mauritian Government in 1973 for the resettlement of the workers on the plantations in the Chagos Archipelago transferred to Mauritius. The Mauritian Government acknowledged that this payment was a full and final discharge of Her Majesty's Government's obligations. The Mauritian Government considered that a long-term resettlement plan would serve the interests of those concerned better than cash payments, but they have recently informed us of their difficulties in devising an acceptable plan using the money paid by Her Majesty's Government.

Mr. Newens asked the Secretary of State for Foreign and Commonwealth Affairs if he will list the agreements made between Her Majesty's Government and other Governments since 1964 which affect British owned territories in the Indian Ocean.

Mr. Ennals: There have been two such agreements as follows:

(i) An Exchange of Notes between the United Kingdom Government and the United States Government in December 1966 concerning the availability in defence purposes of the British Indian Ocean Territory, which was presented to Parliament in April 1967 (Cmnd 3231).

(ii) An Exchange of Notes between the United Kingdom Government and the United States Government in October 1972 concerning a limited United States naval communications facility on Diego Garcia, British Indian Ocean Territory, which was presented to Parliament in November 1972 (Cmnd 5160).

37 K 1

Mr. Trotter asked the Secretary of State for Foreign and Commonwealth Affairs what was the total annual income of the Maldive Islands in 1974; what was the income per head of population; and to what extent was the income derived from the United Kingdom in general and from the Armed Services in particular.

Mr. Rowlands: No reliable statistics are available. The latest figures available are those of the World Bank, which estimated in 1972 that the GNP was US $10 million, and per capital income US $100. During the 12 months ended 30th September 1974 wages and allowances of Maldivian employees of RAF Gan totalled £288,796. Over the last three years United Kingdom development aid disbursements averaged £100,000 per annum.

Iceland

Mr. Jopling asked the Secretary of State for Foreign and Commonwealth Affairs if he will give details of all trade preferences which Iceland enjoys with EEC countries.

Mr. Hattersley: Details of the trade arrangements between Iceland and the European Community are contained in the text of the Agreement between the European Economic Community and the Republic of Iceland signed in Brussels on 22nd July 1972 and its associated Protocols (Cmnd 5128). With the exception of Protocol 6 the agreement entered into force on 1st April 1973. Protocol 6 has not yet entered into force since the conditions laid down in Article 2 of the Protocol under which it should do so have not yet been met.

Hong Kong

Sir Nigel Fisher asked the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on the damage in Hong Kong and the danger of flooding caused by the recent typhoon.

Mr. Ennals: A typhoon passed close to Hong Kong on 14th October. It caused little severe damage but some low-lying areas were flooded and some villages were evacuated. 46 people were injured, mostly by flying objects; of these, 15 were admitted to hospital. Schools and businesses closed and public transport stopped running during the typhoon.

Annex 107

United Kingdom, *Anglo/US Consultations on the Indian Ocean: November 1975 - Agenda Item III, Brief No. 4: Future of Aldabra, Farquar and Desroches*, FCO 40/687 (Nov. 1975)

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[redacted]/US CONSULTATIONS ON THE INDIAN OCEAN: NOVEMBER 1975

Copied to HKT 13/1

AGENDA ITEM III

BRIEF NO 4: Future of Aldabra, Farquar and Desroches

1. UK Ministers have considered this issue since we last met and our options paper, which you will have seen, sets out our agreed order of preferences.

Case for returning the islands

2. As we see it, the arguments in favour of the return of the islands, which is our first preference, are as follows (some of these arguments will be familiar to you from our discussions in May):-

(a) It would virtually assure the peaceful and orderly transition of Seychelles to independence by next June, a matter to which our Ministers attach much importance. Whatever Mancham may say privately on the issue, he cannot afford to risk being outflanked in public by René and the chances are that the two of them will present a united front in pressing for "territorial integrity" at the resumed Constitutional Conference in January. In that event, a refusal to return the islands would give rise to a very awkward situation and a real risk that René, at least, might use it as a pretext to walk out of the Conference.

(b) It would remove what would otherwise be a constant source of embarrassment in our relations with an independent Seychelles.

(c) It might actually be counter-productive to keep the islands against the expressed wishes of the Seychelles government who might threaten to offer facilities to a hostile power in the Seychelles proper as a means of bringing pressure to bear on us.

(d) It would be difficult to defend the retention of the islands on the off chance that we might need to use them for defence purposes at some stage. The fact that the islands are populated means that there will be no possibility of using them in the near future. After the outcry over the workers removed from the Chagos Archipelago, it would be extremely difficult politically to do the same thing in the ex-Seychelles islands.

(e) It might be presented as a reassurance to Mauritius that, if and when there was no further defence use for the Chagos

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Annex 107

Archipelago, it too would be handed back.

(f) It might avert the danger of Seychelles and Mauritius making common cause on the BIOT generally in the OAU (whose summit meeting in July 1976 will be held in Mauritius) and in the UN, which have already voiced support for the return of the islands. (President Amin called for the return of the ex-Seychelles islands when he spoke in the plenary debate at the current session of the UN General Assembly and the question may come up again during the Fourth Committee's debate on small dependent territories).

3. The return of the islands might be traded for worthwhile concessions. An undertaking by an independent Seychelles to deny the islands, and even Seychelles proper, to hostile powers would not be a foolproof arrangement but it could afford more hope of denial of Seychelles to the Russians than if there were no such arrangement. Defined access to the islands, if required, by American and British forces would also be a useful concession. As for the tracking station, we think, as stated in our options paper, it might be desirable to pay for it in order to provide greater security for the facility and also to avoid giving Seychelles a pretext for a grievance which could be exploited in other ways. But we see that as a matter for you to negotiate direct with the Seychelles Government.

Case against returning the islands

4. We fully recognise that there are important arguments in favour of retention of the islands. These seems to us to be as follows:-

(a) The islands already serve a passive defence purpose since they are denied to hostile powers.

(b) The amputation of parts of the BIOT might encourage Mauritius, supported by the OAU and the Afro-Asian majority in the UN, to press for the return of the Chagos Archipelago. So far, while the Mauritius Government has objected publicly from time to time to the expansion of the facilities on Diego Garcia, their private reaction has been remarkably subdued. Ramgoolam had every opportunity to raise the question of the defence facilities on Diego Garcia and the return of the Chagos Archipelago during his visit to London in September. He said nothing on either matter. However, our High Commissioner

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[redacted]n Port Louis has recently advised that if the ex-Seychelles islands were returned and the Mauritian opposition parties mounted a strong campaign for the return of the Chagos Archipelago, Ramgoolam would be in a very awkward position. If there were to be an election in 1976 and if he were to conclude that not to press for the return of the Chagos Archipelago would lose him the election, he would undoubtedly do so. It seems certain, however, that there will be trouble anyway from Mauritius and the OAU generally whether we retain the islands or return them. With the OAU summit meeting taking place in Port Louis in 1976, it seems inevitable that Mauritius will be in the fore front in pressing Indian Ocean issues.

(c) By retaining the islands while keeping open the possibility of returning them at some later date, we have a useful instrument for restraining Seychelles from offering facilities on Seychelles proper to a hostile power.

(d) Although we might have to make concessions for retaining the islands - right of reversion if and when the islands are no longer required for defence purposes and reservation of the behefit of mineral exploration - these would not be onerous. The future of the tracking situation is, as we have said, a separate matter.

(e) It is arguable that there is a continuing obligation on Seychelles to respect the agreement setting up the BIOT and they received generous compensation for loss of sovereignty. The trouble is that it is all too easy to win sympathy for the claim that we took advantage of the "colonial" status of Seychelles in the 1960's.

Other possible solutions

5. We do not regard leasing the islands back to Seychelles as a starter. We would end up retaining sovereignty without power and it would be a constant source of friction.

6. Another possibility, which has recently been put forward by the SPUP Minister for Education, Sinon, is that we should return sovereignty over the islands to Seychelles which would then lease them or make them available to us thereafter. We have not fully considered the possibility but we are not sure that it is a starter. It would depend on the terms on which the islands would be leased back to us, though some sort of lease, even if we never used the islands, might at least ensure denial to others.

/7. Subject

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7. Subject to the further views which have been sought from the Governor of Seychelles, we now very much doubt whether Manoham would be prepared to accept our retaining the islands in return for such concessions as mineral, oil, fishing and tourist rights, assistance or defence matters and generous payment for the tracking station. Unless we agree to return the islands it seems, as stated in paragraph 2(a) that there is likely to be a breakdown at the reformed Constitutional Conference and severe damage to our relations with Seychelles.

Conclusion

8. As stated at the beginning, our preference remains that of returning the islands in exchange for all or most of the concessions set out in para. 3(a) of our options paper. We hope you will be able to agree that this is now the right course to follow.

9. On timing, we should be in a position to say what we are going to do by the time of the resumed Constitutional Conference. Ideally, there would be advantage in disposing of the issue in advance of the Conference. That would avoid the risk of subsequent allegations that independence was made conditional upon a decision on the future of the islands. If that decision is to be in favour of returning the islands, there would be presentational advantages in our being seen to do this in response to the expressed wishes of Seychelles and, in particular, of Mancham himself. This is a point which we could look into once a decision has been taken.

10. A copy of the UK options paper is attached.

11. A copy of the US options paper together with some comments is also attached. The paper was received too late to be taken properly into account when preparing the above.

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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 IV

(Annexes 108–149)

1 March 2018

VOLUME IV

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Annex 110	United Kingdom, *"Heads of Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles Concerning the Return of Aldabra, Desroches and Farquhar to Seychelles to be Executed on Independence Day"*, FCO 40/732 (18 Mar. 1976)
Annex 111	Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon. M. A. Peeroo* (15 Mar. 1977)
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Annex 114	Eduardo Jiménez de Aréchaga, "International Law in the Past Third of a Century", *Recueil des Cours*, Vol. 159 (1978)
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Annex 117 Mauritius Legislative Assembly, *The Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980), Committee Stage* (26 June 1980)

Annex 118 Organization of African Unity, Assembly of Heads of State and Government, 17th Ordinary Session, *Resolution on Diego Garcia*, AHG/Res.99(XVII) (1-4 July 1980)

Annex 119 *Note* from M. Walawalkar of the African Section Research Department to Mr Hewitt, FCO 31/2759 (8 July 1980)

Annex 120 U.K. House of Commons, *Written Answers: Diego Garcia*, FCO 31/3836 (11 July 1980)

Annex 121 U.K. House of Lords, *Parliamentary Question for Oral Answer: Notes for Supplementaries*, FCO 31/2759 (23 July 1980)

Annex 122 *Letter* from M. C. Wood to Mr Hewitt, FCO 31/2759 (22 Sept. 1980)

Annex 123 Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980)

Annex 124 *Note* from M. Walawalkar of the African Research Department to Mr Campbell of the East African Department - Diego Garcia: Research on Mauritian Government's Claim to Sovereignty, FCO 31/3437 (8 Oct. 1982)

Annex 125 *Letter* from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3622 (11 Nov. 1982)

Annex 126 *Letter* from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (4 Mar. 1983)

Annex 127 *Letter* from M. Walawalkar of the African Section Research Department to P. Hunt of the East African Department on the Mauritian Agreement to Detachment of Chagos, FCO 31/3834 (9 Mar. 1983)

Annex 128 *Letter* from W. N. Wenban-Smith of the Foreign and Commonwealth Office to M. J. Williams, with draft, FCO 31/3835 (25 Mar. 1983)

Annex 129 Mauritius Legislative Assembly, *Report of the Select Committee on the Excision of the Chagos Archipelago*, No. 2 of 1983 (June 1983)

Annex 130 *Letter* from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (17 June 1983)

Annex 131 *Letter* from P. Hunt of the East African Department to J. N. Allan of the British High Commission in Port Louis, FCO 31/3834 (14 July 1983)

Annex 132 African Section Research Department, *Detachment of the Chagos Archipelago: Negotiations with the Mauritians (1965)* (15 July 1983)

Annex 133 *Letter* from D. A. Gore-Booth to W. N. Wenban-Smith of the East African Department, FCO 58/3286 (15 July 1983)

Annex 134 *Note* from A. Watts to Mr Campbell, FCO 31/3836 (received 23 Aug. 1983)

Annex 135 Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (13 Mar. 1986)

Annex 136 Richard Edis, *Peak of Limuria: The Story of Diego Garcia* (1993)

Annex 137 J. Addison & K. Hazareesingh, *A New History of Mauritius* (1993)

Annex 138 Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (1995)

Annex 139 *Note Verbale* from the High Commission of India in Port Louis to the Mauritius Ministry of Foreign Affairs, POR/162/1/97 (9 May 1997)

Annex 140	Organization of African Unity, Assembly of Heads of State and Government, 36th Ordinary Session, *Decision on Chagos Archipelago*, AHG/Dec.159(XXXVI) (10-12 July 2000)
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Annex 143	Catriona Drew, "The East Timor Story: International Law on Trial", *Eur. J. Int'l L.*, Vol. 12 (2001)
Annex 144	Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26(LXXIV) (5-8 July 2001)
Annex 145	David Raic, *Statehood and the Law of Self-Determination* (2002)
Annex 146	United Kingdom, *"British Indian Ocean Territory (Constitution) Order 2004"* (10 June 2004)
Annex 147	*Letter* from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004)
Annex 148	*Letter* from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004)
Annex 149	*Notes Verbales* from the Mauritius Ministry of Foreign Affairs to the General Secretariat of the Council of the European Union, Nos. 1197/28/8 & 1197/28 (21 July 2005 & 19 Apr. 2010)

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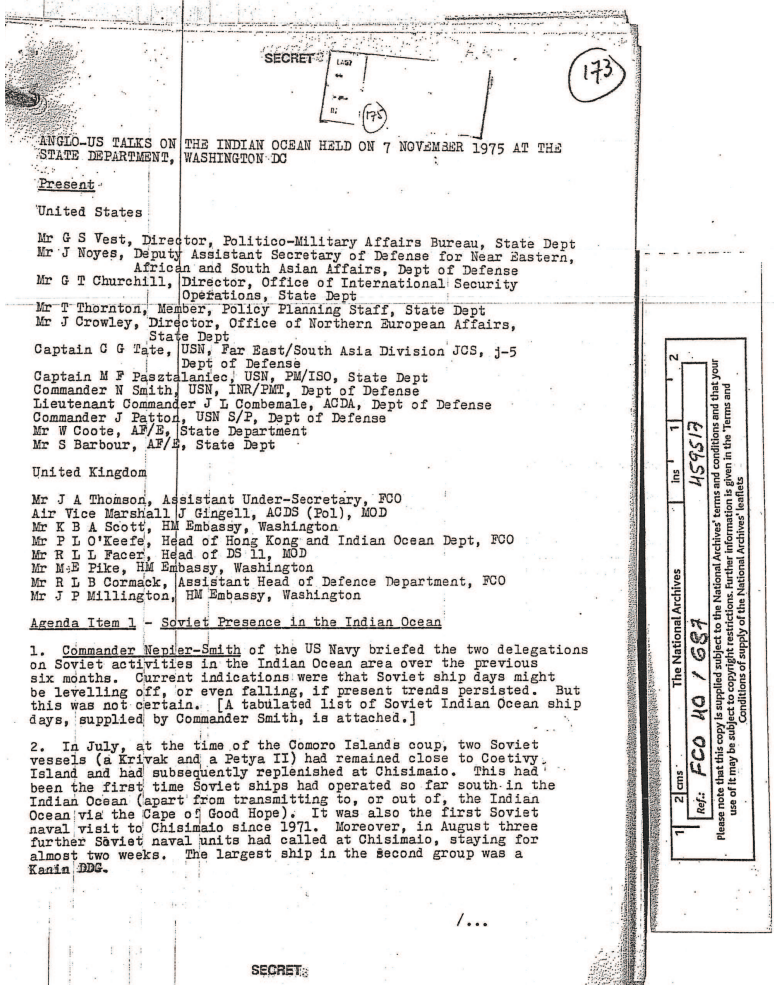
United Kingdom, *Minutes of Anglo-U.S. Talks on the Indian Ocean Held on 7 November 1975 at the State Department, Washington DC*, FCO 40/687 (7 Nov. 1975)

EXTRACT



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ANGLO-US TALKS ON THE INDIAN OCEAN HELD ON 7 NOVEMBER 1975 AT THE STATE DEPARTMENT, WASHINGTON DC

Present

United States

Mr G S Vest, Director, Politico-Military Affairs Bureau, State Dept
Mr J Noyes, Deputy Assistant Secretary of Defense for Near Eastern, African and South Asian Affairs, Dept of Defense
Mr G T Churchill, Director, Office of International Security Operations, State Dept
Mr T Thornton, Member, Policy Planning Staff, State Dept
Mr J Crowley, Director, Office of Northern European Affairs, State Dept
Captain C G Tate, USN, Far East/South Asia Division JCS, j-5 Dept of Defense
Captain M F Pasztalaniec, USN, PM/ISO, State Dept
Commander N Smith, USN, INR/PMT, Dept of Defense
Lieutenant Commander J L Combemale, ACDA, Dept of Defense
Commander J Patton, USN S/P, Dept of Defense
Mr W Coote, AF/E, State Department
Mr S Barbour, AF/E, State Dept

United Kingdom

Mr J A Thomson, Assistant Under-Secretary, FCO
Air Vice Marshall J Gingell, ACDS (Pol), MOD
Mr K B A Scott, HM Embassy, Washington
Mr P L O'Keefe, Head of Hong Kong and Indian Ocean Dept, FCO
Mr R L L Facer, Head of DS 11, MOD
Mr M E Pike, HM Embassy, Washington
Mr R L B Cormack, Assistant Head of Defence Department, FCO
Mr J P Millington, HM Embassy, Washington

Agenda Item 1 - Soviet Presence in the Indian Ocean

1. Commander Napier-Smith of the US Navy briefed the two delegations on Soviet activities in the Indian Ocean area over the previous six months. Current indications were that Soviet ship days might be levelling off, or even falling, if present trends persisted. But this was not certain. [A tabulated list of Soviet Indian Ocean ship days, supplied by Commander Smith, is attached.]

2. In July, at the time of the Comoro Islands coup, two Soviet vessels (a Krivak and a Petya II) had remained close to Coetivy Island and had subsequently replenished at Chisimaio. This had been the first time Soviet ships had operated so far south in the Indian Ocean (apart from transmitting to, or out of, the Indian Ocean via the Cape of Good Hope). It was also the first Soviet naval visit to Chisimaio since 1971. Moreover, in August three further Soviet naval units had called at Chisimaio, staying for almost two weeks. The largest ship in the second group was a Kanin DDG.

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extension of CSCE principles to other areas. The American side said that they had not noticed this expansion of Russian propaganda efforts, but took note of the recent Izvestia commentary on 3 October by Mr Kudriavsev. Mr Vest agreed that the British side could speak to the Australians, saying that they had raised the subject with the Americans. Mr Thomson mentioned that the Australian mission in New York had told us, on instructions from Canberra, that they wished to put it to us and the Americans that a less offhand attitude on our part would make the position of moderates in the Ad-Hoc Committee rather easier to sustain. The US side agreed that while neither the British nor the Americans need alter their attitude to the Committee, we might try to help the Australians in some way.

Agenda Item 5: Future of Aldabra, Farquhar, and Des Roches

48. Mr O'Keeffe said that each side had now had a chance to look at the option paper provided by the other. There were various options listed in the British paper, but several of them seemed now to be ruled out. One option was that we should keep the islands but make them available to the Seychelles tourist industry. But the American paper made it clear that this course would make the islands de facto unavailable for defence purposes. Mr O'Keeffe hoped that the American side could agree that it was not a worthwhile option tokeep the islands and lease them back to the Seychelles. The opposite possibility posed by Sinon, the Seychelles Minister of Education, of handing them back to the Seychelles and then leasing them, was also ruled out since in fact neither Britain nor the United States had any use for the islands. The options were therefore reduced to two:

a) we could either give them back to the Seychelles in return for maximum advantages for ourselves; or

b) we could keep the islands in return for concessions to the Seychelles.

The British preference was for Option (a). Handing back the islands to the Seychelles had a major advantage to the UK in removing one of the obstacles to Seychelles independence. But there was sufficient common ground in the UK and US positions to make this the more desirable Option in any case. Recent Parliamentary and Congressional pressures in the matter of the former contract workers pointed to the undesirability of giving hostages to fortune. We were agreed that there was no real defence need to keep the three islands. Certainly they had a passive defence value in that they were at present denied to any hostile power; but of far more value would be the denial of Seychelles proper if we could obtain this. In any case we should try to get as much as possible if we were jointly agreed that Option (a) was preferable. Unfortunately, the Seychelles Government had already been led to believe that the US Government was prepared to offer a rent for the tracking station and it now looked improbable that they would accept continuing free use of this

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facility. He understood, however, that there was some pressure for a reduction, or indeed abolition, of the duty free privileges connected with the tracking station and retention of these privileges might be something we could ask for as a quid pro quo for the return of the three islands.

50. He recognised that the crux of the argument against Option (a) was the likely Mauritian attitude. Giving back the islands might well give rise to pressures within Mauritius for the return of the Chagos Archipelago, particularly in 1976 when Mauritius was host to the annual conference of the OAU and when there was also the possibility of elections there. As against this, it seemed clear that the retention of Chagos was not an issue for Sir S Ramgoolam, the Mauritian Prime Minister: during his talks on 24 September with Mr Ennals, the Minister of State at the Foreign and Commonwealth Office, he had been given every chance to raise the Diego Garcia issue but had not done so. Moreover, at his press conference later the same day, he had said that the British had paid for sovereignty over the Chagos Archipelago and now could do what they liked with it. Mr O'Keeffe added that the British High Commissioner in Port Louis had advised that some agitation in Mauritius was probable over the next year but was containable. This seemed reasonable: essentially Mauritius had no leverage over Chagos whereas Seychelles did in the matter of the three islands, in that they were an obstacle in the present negotiations for independence.

51. Essentially, however, the question was whether returning the three islands to Seychelles improved our international posture over Diego Garcia or not. The British Government believed that handing back the three islands would be evidence of our commitment to return the BIOT islands when we had no further defence use for them. This had been publicly announced and any decision to retain the three islands when no evident defence need existed for them might legitimately cast doubts on the value of our commitments in this regard. Certainly, it was far better to meet pressures from Mauritius and elsewhere for the return of Chagos with the argument that we were proposing to hand back islands for which there was no defence purpose; and far better to deal with any Mauritian protests in isolation rather than to give Mauritius and Seychelles an opportunity to make common cause.

52. Mr Noyes on the American side said he found the arguments for Option (a) compelling. But did the British side not consider that there was a danger of "unravelling" the BIOT by handing the three ex-Seychelles islands back? If we did so, the BIOT would consist only of ex-Mauritian islands.

53. Mr O'Keeffe said that in his opinion we should play on the fact that we were giving up something for which we had already paid. Unfortunately as far as the satellite station was concerned, the pass had already been sold.

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54. The US side said that in talks with Mr Mancham he always talked in terms of the United States doing everything to make it possible for him to sell the idea of the tracking station in the Seychelles. We could use the giving back of the islands to cut down the rental Mancham would probably demand for the tracking station.

55. Mr Thomson said that the possibility of "unravelling" the territory would be crucial if it was likely. However, if domestic opinion in both Washington and London were satisfied on the question of Diego Garcia, there was little Mauritius could do physically to get back the islands. But the case of the Seychelles was different. We would be giving up something for which we had no use and we could probably get a good deal in exchange. This would tip the balance. Mr Churchill asked how the British side thought Option (a) might be presented to the Congress. Mr Thomson said that he saw little difficulty. If we were to give the islands back we could say that we no longer needed them for defence purposes, since we were getting certain defence advantages from the Seychelles. This would also be a defensible position for the Seychelles in the OAU, since it was already their policy that there should be no foreign bases on their territory.

56. The US side asked what we proposed to say about the rest of the Chagos Archipelago apart from Diego Garcia, if we were to hand back the Seychelles islands on the grounds that we had no defence use for them. Mr O'Keeffe said that we could retain the idea that they were a cordon sanitaire for Diego Garcia. Mr Thomson pointed out that once the offer to return the three islands to the Seychelles had been made it would be difficult to withdraw it even if what the Seychelles offered in return was not satisfactory. The US side said that there was one advantage in offering the islands back to the Seychelles. The US could not pay a high rental for the tracking station in the Seychelles:

a) because funds were limited and

b) because a high rental would form a precedent which would destroy negotiations being completed with other countries around the world.

57. Mr Thomson listed the various advantages which we would wish to get from the Seychelles in return for the three islands. They were:

a) denial of the three islands to any hostile power;

b) emergency access for US and UK forces to the three islands;

c) denial of the Seychelles proper to hostile forces;

d) duty-free privileges for the US tracking station;

e) a middle to low rental for the tracking station.

Mr O'Keeffe said the question of returning the three islands to the Seychelles should be raised by the Seychelles. We should not make

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the offer first. As for the attitude of Sir S Ramgoolam, the US Ambassador and the British High Commissioner at Port Louis and our own East African Department in London were agreed that he would acquiesce.

58. Mr O'Keeffe pointed out that there was a need to consider this question fairly quickly. He was going to the Seychelles on 8 December to discuss arrangements for the next constitutional conference. Mr Thomson said that it would be difficult for Ministers to defend a situation where they were forced to say there was no further British defence need to retain the islands if the Seychelles Constitutional Conference was breaking down because Britain would not return the islands. He asked if the US side thought we should inform Sir S Ramgoolam if we decided to return the islands. Mr Vest agreed that it was best that we should do so.

59. Mr Vest asked Mr O'Keeffe if the subject was likely to come up during his talks in the Seychelles on 8 December. Mr O'Keeffe said it undoubtedly would come up. It would be possible to put off the Seychellois. But it would be better to discuss the question in December than to allow it to be raised in the full glare of publicity during the Constitutional Conference. The Constitutional Conference was to take place on 19 January 1976. We would have to reach a decision on the three islands before then at the latest.

60. Mr Vest thanked the British side for this analysis of the problem and undertook to let the British side have a final American view on the question within three weeks.

Agenda Item 6: Tour d'Horizon (Singapore facilities, British Plans for Masirah and Gan, etc)

61. Mr Facer said that on the Singapore facilities, there was nothing to add to the British note of 22 October handed to the US Embassy in London. On Gan, there were no developments further to the Speaking Note which had been handed to the Americans by Mr Millington on 14 October. Progress was being made in Oman but the rebel forces were not yet broken. The rebels were still supported by the PDRY. On 17 October there had been an air strike against gun emplacements and other military targets at Hauf in the PDRY across the Oman border. According to Oman Government statements this had been in retaliation for heavy artillery fire in recent weeks. There was evidence that Sam-7 missiles were being used against the Sultan's air force for the first time in the Dhofar war. In addition, there had been a number of Iranian casualties, mainly due to the inexperience of Iranian officers serving with the Sultan's forces. On Masirah, Mr Facer said there was little to add. No conclusions had yet been reached about future plans. We would speak again with the US side when these were decided. In the meantime our public position on Masirah would not change.

62. The US side said that talks on Singapore facilities were still going on. So far, the position wassatisfactory. The Americans understood that the British side did not think that agreement on Nuclear Powered Warships (NPWS) should be indluded in the agreement

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on facilities. Mr Thomson explained that the British side thought that better arrangements could be obtained if separate agreements were negotiated. One issue was technical (the NPWs), the other political. If we included the NPWs in the facilities agreement, negotiations might drag out indefinitely. Mr Vest agreed that on reflection it was probably better to separate the two issues.

63. Mr Vest said that the Americans had no comments to offer on the situation on Gan as it had been explained to them. The question of US use of Masirah was still being considered and an answer would be forthcoming. Air Vice Marshall Gingell said that once Salalah had been closed, we would look at Masirah with a view to effecting economies. But there was no time scale for this scenario. As for Mauritius, withdrawal terms had been completed satisfactorily and British forces would be out by March 1976.

64. Mr Vest said that on P3 (maritime reconnaissance) flights, it was the US intention to spread the area of operation and to complete more training for US pilots. The Americans were at present looking for additional alternative places to land and for different possible flight patterns. This study was taking place at the moment. It was not the intention to increase the number of flights.

British Embassy
Washington
November 1975

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T. Franck & P. Hoffman, "The Right to Self-Determination in Very Small Places", *N.Y.U. J. Int'l L. & Pol.*, Vol. 8 (1976)

THE RIGHT OF SELF-DETERMINATION IN VERY SMALL PLACES

BY THOMAS M. FRANCK*
PAUL HOFFMAN**

I. INTRODUCTION

The days of Western colonial dominance have drawn to a close. In the space of a mere twenty years, a billion people have undergone the transition from subjects of a foreign imperium to citizens of independent states.

For the most part, this transition has been smooth enough, considering the extraordinary depth of the legal, ideological and psychological changes occurring in its wake. To be sure, there were exceptions. France and Portugal were too sentimentally tenacious in Algeria, Mozambique and Angola, seeking to hold on to what they regarded as "overseas provinces" tied by long histories of association to the metropole and settled by substantial European populations. They waged hopeless, protracted battles in those territories not only against national liberation forces, but also against an irresistible tide of historical inevitability. The Belgian Congo, now Zaire, became a shambles for the opposite reason. Once the colonial power realized it could not hold on forever it opted for immediate abandonment, and the speed of the transition caught the indigenous population tragically unprepared. In the cases of Vietnam and Indonesia, France and the Netherlands tried, by force of arms, to reassert their colonial control over countries that had seen the myth of Western invincibility destroyed by the Japanese and which, released from foreign occupation by the collapse of Japan, refused to don again the old colonial harness. Under similar circumstances, the United States had the prescience to grant independence to the newly-liberated

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Philippines rather than attempt to restore the *status quo ante*.[1] In virtually all other instances, the Western European colonial powers chose the path of peaceful decolonization.[2]

That the devolution of empire, with a few exceptions, has been a relatively painless experience is due to a number of factors. One is the post-war ascendance in Western Europe of Labor, Radical and Social Democratic movements ideologically committed to social equality and therefore to decolonization. While men like Attlee and Mendes-France did not govern their countries for particularly long periods, the steadfastness of their vision permanently transformed political attitudes in their respective countries, particularly on the colonial issue. Thus conservatives, like Harold Macmillan, Ian Macleod and Charles de Gaulle, carried forward what the radicals had begun. In this, they also responded to the growing economic burden of policing and pacifying regions and peoples caught up in the new wave of nationalism. A second contributing factor is the emergence of Western European unity as a serviceable substitute for the national dream of empire. Finally, there is the role of the United Nations.

The United Nations has significantly accelerated the momentum for peaceful decolonization and has done so both instrumentally and conceptually. Instrumentally, the organization has provided a forum in which the non-colonialist states—a large majority of the members even in 1945—could badger and encourage the imperial states to grant independence. The U.N. Charter created a trusteeship system and a Trusteeship Council which imposed on the powers administering trust territories an obligation to report annually and to permit periodic international inspection. Colonies and protectorates which did not fall under the trusteeship system were still covered by the Charter's article 73 obligations.

The conceptual force behind the U.N. role is rooted in much earlier European and Western hemispheric intellectual developments—in the vision of Simon Bolivar, the Monroe Doctrine,[3] J.S. Mill and J.-J. Rousseau. The "right of self-determination"

1. President Truman proclaimed independence for the Philippines, 60 Stat. 2695 (1946), pursuant to authority granted by Congress in the Philippines Independence Act, 48 Stat. 456 (1934).

2. Among other, lesser, exceptions are Goa and Guinea-Bissau. It can also be argued that Kenya was a partial exception and that Southern Rhodesia is another.

3. E. Weisband, *The Ideology of American Foreign Policy: A Paradigm of Lockian Liberalism* (1973).

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became central to President Wilson's scheme for resolving European boundary questions after the dismantling of the German and Austro-Hungarian empires.[4] But it was the U.N. Charter, a solemn international treaty of unprecedentedly wide adherence, which at last elevated the concept to a universal legal responsibility. Article 73 obliges those members "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . . ."[5]

In Resolution 1514,[6] the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations further refined the concept of self-determination, enumerating for non-self governing territorities which were not covered by trusteeship agreements a set of obligations very similar to those imposed by the trusteeship system. It stated that "all peoples have the right to self-determination;" that "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 that "[i]mmediate steps shall be taken . . . 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 color, in order to enable them to enjoy complete independence and freedom."[7]

These concepts were operationalized by the creation of a watchdog committee—the Special Committee[8]—which began to assume the same function towards non-self governing territories as was exercised by the Trusteeship Committee in respect of trust territories. In pursuit of the obligations set out in the Charter and Resolution 1514, the Special Committee has regularly investigated

4. For a discussion of the historic U.S. relation to self-determination see Pomerance, The United States and Self-Determination: Perspectives on the Wilsonian Conception, 70 Am. J. Int'l. L. 1 (1976).

5. U.N. Charter, art. 73(b).

6. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66-67, U.N. Doc. A/4684 (1960).

7. Id.

8. The Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, established by G.A. Res. 1654, 16 U.N. GAOR Supp. 17, at 65, U.N. Doc. A/5100 (1961). [hereinafter "Special Committee"]

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colonial territories and made reports to the General Assembly on compliance and non-compliance. The Assembly, in turn, has passed resolutions commending or demanding progress in individual colonies and, in the unusual circumstance of a threat to peace and security, has recommended action by the Security Council.[9]

Thus, due to various factors, the "right of self-determination" has played a key role in reshaping the post-war world. By 1976, the job was virtually completed—almost, but not quite. The unfinished business of Rhodesia and the Namibian ex-mandate was still on the decolonization agenda. Moreover, in the process of liberating Africa, the Caribbean and Asia, the momentum for decolonization had bypassed some of the smallest colonies, the flotsam and jetsam of empire. That these bits and pieces should be the last to be decolonized is due primarily to two factors. First, some small territories either do not want to be on their own or have not reached a stage of development sufficient to make the choice. Second, some small, weak territories are actively coveted by stronger, more powerful neighbors which assert claims based on geography, history and/or ethnic affinity.

It may be paradoxical that these small territories should generate particularly stubborn and knotty problems, even creating threats to the peace and security of the international system, at the very end of a largely peaceful transition from colonialism to self-government. Nevertheless, this is precisely the case. The disposition of tiny territories like Djibouti[10] and Belize has brought neighboring states to the brink of war, as has the conflict over the Spanish Sahara, a larger territory with an almost negligible population.

Some of these territories have assumed disproportionate importance in world affairs because of their strategic location—Djibouti and Gibraltar, for example, command important international straits. Some, like the Falkland (Malvinas) Islands, have importance because they may possess petroleum or other mineral resources. All of them have coastlines which will entitle them,

9. A recent example is G.A. Res. 3485, para. 6, U.N. Doc. GA/5438, at 262 (1975) (Press Release), in which the attention of the Security Council is drawn "to the critical situation" in Timor and which "recommends that it take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination . . . ."

10. "Djibouti" and "French Somaliland" are used interchangeably except where the context indicates a reference to the port city of Djibouti.

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under the emerging terms of the new Law of the Seas, to broad economic zones of up to 200 miles width. To the international lawyer, however, the real importance of these seemingly unimportant imperial shavings lies not merely in their capacity for generating passionate and dangerous international disputes, not in the territories' very considerable strategic and economic value, but in the legal precedents being established in the troubled process of their decolonization. Quite possibly this last chapter in self-determination will again prove that hard cases make bad law. As a result of the politics being played with these "special cases," the legal principles of self-determination carefully outlined in the Charter and U.N. resolutions have suddenly come under fierce attack—not from the colonial powers, but from neighboring states, themselves beneficiaries of self-determination, with designs on the mini-territories. For example, now—at the very end of the colonial era—it is being asserted that all colonial peoples *do not* necessarily have the right to self-determination; that the right does not apply, for example, to a transplanted "settler" population—even one that has been "settled" for hundreds of years. Nor, it is alleged, does the right apply to a colony which, before the colonial era, was part of a neighboring state. As shall be seen, the new assertions may have broad implications that extend well beyond questions of decolonization and go to the essence of the legitimacy both of states and of their boundaries.

II. The Spanish Sahara and Portuguese Timor as Precedent

A. *The Decolonization of the Spanish Sahara*

Although the Spanish—or Western—Sahara is a territory of 266,000 square kilometers (the size of Colorado), its indigenous population is a mere 75,000.[11] The Sahrawi population is comprised for the most part of persons of Moorish or Bedouin race who speak Hassania, a form of Arabic, and live an essentially rural, nomadic life. The majority of Sahrawis identify closely with a tribe, some of which are also found in the neighboring countries

11. Report of the United Nations Visiting Mission to Spanish Sahara, in the Report of the Special Committee, U.N. Doc. A/10023/Add.5, Annex, at 26-27 (1975) [hereinafter: "Visiting Mission"].

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of Mauritania, Morocco and Algeria.[12] What had hitherto seemed a valueless and inclement stretch of desert has more recently been actively coveted by these neighboring states, not least because of the discovery of vast phosphate deposits and the likely existence of other minerals, including oil and iron.[13]

Until 1974, the story of the decolonization of the Spanish Sahara was governed by the same norms as other decolonizations. Although both Morocco and Mauritania had indicated an interest based on historic claims, these were not strongly pressed. The U.N. General Assembly and Special Committee treated the colony as it would any other which the international community was nudging towards independence. Historic claims, after all, are nothing unusual in Africa, and in every other instance they had been rejected in favor of self-determination and the immutability of boundaries established by the colonial powers. Thus, Resolution 1514 had not only proclaimed that "all peoples have the right to self-determination" but also that "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."[14] The Organization of African Unity buttressed that position by asserting that territories must exercise their right to self-determination within established colonial boundaries.[15]

If a colony, in the process of independence, wished to alter its boundaries by joining a neighboring state or by splitting into several states, it could do so only by the free vote of its inhabitants —never in response to the pressures or claims of others.[16] Indeed, where in the process of becoming independent there was an open question as to whether the territorial integrity of the colony should be altered in favor of a union or secession, it had become virtually mandatory for the U.N. to be present during the elections or plebiscite in which that issue was to be determined. Thus, the U.N. supervised plebiscites that led to the merger of British

12. Id. at 28.

13. Le Monde, November 28, 1975, at cols. 1-3.

14. G.A. Res. 1514, para. 6, supra note 6.

15. O.A.U. Assembly Resolution AHG/Res. 17(I), 17-21 July 1964. See also the Charter of the Organization of African Unity, Article 3(3), which pledges "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."

16. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960).

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Togoland with newly-independent Ghana in 1956, the merger of the British-administered Northern Cameroons with Nigeria in 1959 and 1961, the Southern Cameroons joining the Cameroon Republic in 1961, the division into two states of the Belgian territory of Ruanda-Urundi in 1961, and the free association between Western Samoa and New Zealand in 1962.[17] The U.N. also participated in the April, 1965 election of a legislature whose mandate was to write a new constitution for the Cook Islands as a first step leading to free association with New Zealand.[18] In 1969 the U.N. participated in the "act of free choice" by which the former Netherlands territory of Western New Guinea (West Irian) opted to become part of Indonesia.[19] In 1974 the U.N.'s Special Committee sent observers to the referendum in the British colony of the Ellice Islands in which the voters decided to separate from the Gilbert Islands, with which they had been jointly administered, and to become the separate territory of Tuvalu.[20]

Given this history of U.N. resolutions and practice, together with the fact that it was an open question whether the Sahrawis preferred independence for the Spanish Sahara or union with one or both of their principal neighbors, it was to be expected that the United Nations would recommend that a plebiscite be held under its auspices. This is precisely the recommendation made

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17. Fifteen Years of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, 2 Decolonization, No. 6, at 19-22 (1975). [hereinafter "Fifteen Years"]

18. G.A. Res. 2005, 19 U.N. GAOR Supp. 15, at 7, U.N. Doc. A/5815 (1965).

19. 23 Yearbook of the United Nations 175-179 (1969); Report of the Secretary-General Regarding the Act of Self-Determination in West Irian, 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 2, U.N. Doc. No. A/7723 (1969).

United Nations participation in the "act of free choice" is West Irian is at best an ambiguous precedent. The U.N. involvement led to the ratification of Indonesian consultative procedures which did not provide for "one man-one vote" and were obviously designed to achieve the result obtained, with the Indonesians exercising "at all times a tight political control over the population." *Id.* at 20. The U.N. failed to refine further the international due process requirements for acts of self-determination when an amendment submitted by Ghana, which would have given the people of West Irian a further opportunity to express their will, was defeated by a vote of 60 (including the United States) to 15, with 39 abstentions. 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 40, U.N. Doc. A/L576 (1969). The vote appears at 24 U.N. GAOR 1813, at 16 (1969).

20. *Fifteen Years*, supra note 17, at 21; Report of the United Nations Visiting Mission to the Gilbert and Ellice Islands, U.N. Doc. A/9623/Add.5 (Part IV), Annex I (1974).

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consistently between 1964 and 1973 by the U.N. Special Committee and the General Assembly.[21] Almost every year, resolutions called on Spain to implement the Sahrawis' right to self-determination. Beginning in 1966, the General Assembly consistently asked Spain "[t]o create a favourable climate for the referendum to be conducted on an entirely free, democratic and impartial basis . . . " and to provide all the necessary facilities to a United Nations mission so that it could participate actively in the organization and holding of the referendum.[22]

Spain resisted these entreaties for a decade.[23] Then, in July, 1974, after informing Morocco, Mauritania and Algeria,[24] Spain proclaimed a new law giving the Sahara internal self-government[25] and, six weeks later, announced that a self-determination plebiscite would be held under U.N. auspices during the first half of 1975.[26] When the foreign ministers of Algeria, Morocco and Mauritania met in Nouakchott on May 10, 1974, and again in Agadir on July 24, they still "reaffirmed their adherence to the principle of self-determination for the Spanish

21. The Special Committee first considered Spanish Sahara in 1963 and passed its first resolution on the territory in 1964. 19 U.N. GAOR, Annexes, Annex No. 8 (Part I), at 290-291, U.N. Doc. A/5800/Rev. 1 (1964). The General Assembly resolutions are: G.A. Res. 2072, 20 U.N. GAOR Supp. 14, at 59-60, U.N. Doc. A/6014 (1965); G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 72-73, U.N. Doc. A/6316 (1966); G.A. Res. 2354, 22 U.N. GAOR Supp. 16, at 53-54, U.N. Doc. A/6716 (1967); G.A. Res. 2428, 23 U.N. GAOR Supp. 18, at 63-64, U.N. Doc. A/7218 (1968); G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969); G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970); G.A. Res. 2983, 27 U.N. GAOR Supp. 30, at 84-85, U.N. Doc. A/8730 (1972); G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973).

22. G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 73, U.N. Doc. A/6316 (1966). The last resolution to contain these requests was G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 111, U.N. Doc. A/9030 (1973).

23. The 1969 resolution, G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969) "[r]egrets that it has not yet been possible for the consultations to take place which the administering Power was to conduct in connexion with the holding of a referendum. . . ." See also G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970). By 1973, G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973) deplored "the fact that the Special Mission provided for in earlier resolutions . . . has not yet been able to visit the Territory in order to carry out the task entrusted to it."

24. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9655 at 2 (1974).

25. Id.

26. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9714 (1974).

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Sahara,"[27] but King Hassan II of Morocco, in a Youth Day speech on July 8th, began to sound a different note. With surprising vehemence he resurrected Morocco's claim to historic title and threatened to use the military, if necessary, to recover his "usurped" territories.[28]

The Moroccan and Mauritanian governments, faced with the popular Spanish decision to conduct a U.N.-supervised plebiscite in the Sahara, found themselves in an anomalous position. For the most part, they publicly continued to proclaim their support for self-determination, adding that a majority of Sahrawis clearly favored union with one or both neighbors. Privately, however, they knew that a popular vote could go against them and therefore decided to delay the plebiscite by taking the matter to the International Court of Justice. In December, 1974, a majority of the General Assembly, cleverly led by Morocco, inexplicably voted to solicit an advisory opinion of the Court asking whether, before its colonization by Spain, the Western Sahara had belonged to the Moroccan empire or the Mauritanian "entity."[29] The Resolution also called on Spain to postpone, pending the I.C.J.'s decision, the referendum that had been so ardently sought for nearly a decade.[30]

Ten months later the Court, after hearing extensive argument, found the questions posed relevant only in the context of the right of the Sahrawi population to self-determination, and then only as to "the forms and procedures by which that right is to be realized."[31] During the past fifty years, self-determination had become the rule.[32] The exercise of this right could, of course, result in a decision for something other than independence: free association or even integration with another state. But the choice between these legitimate forms of decolonization must always be the "result of the freely expressed wishes of the territory's peo-

27. Report of the Special Committee, U.N. Doc. A/9623 (Part II), at 23 (1974).

28. Letter from the Permanent Representative of Spain, supra note 24, at 2.

29. G.A. Res. 3292, 29 U.N. GAOR Supp. 31, at 103-04, U.N. Doc. A/9631 (1974).

30. Id.

31. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 36. [hereinafter: "Advisory Opinion"]

32. Id. at 32, citing The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) in [1971] I.C.J. 31.

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ples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage."[33]

The Court went on, almost incidentally, to find that the evidence before it indicated no ties of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity "as might effect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."[34] The current, freely expressed will of the population, not the vicissitudes of history, must determine their future status.

While the International Court was deliberating, a U.N. visiting mission, another by-product of Resolution 3292 (XXIX), went to the Western Sahara with the task of "securing firsthand information on the situation prevailing in the Territory, including information on political, economic, social, cultural and educational conditions, as well as on the wishes and aspirations of the people."[35] From extensive travel in the Sahara and in the neighboring countries, as well as from public and private meetings, "it became evident to the Mission that there was an overwhelming consensus among Sahrawis within the Territory in favour of independence and opposing integration with any neighbouring country."[36]

Faced simultaneously with the adverse decisions of the International Court and of the Visiting Mission, Morocco decided to use force to compel Spain to turn over the Sahara, although, from subsequent events, it seems clear that contingency preparations for the "Green March," as the Moroccan invasion came to be known, had been months in the making. The day after the I.C.J. opinion, Rabat announced a massive march of 350,000 "unarmed civilians" that would enter the Sahara "to gain recognition of its [Morocco's] right to national unity and territorial integrity."[37] When the U.N. Security Council failed to act decisively against

33. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960), cited by the I.C.J. with approval in Advisory Opinion, supra note 31, at 32-33.

34. Id. at 68.

35. Visiting Mission, supra note 11, at 4 (1975).

36. Id. at 48.

37. Letter from the Permanent Representative of Morocco to the United Nations to the President of the Security Council, Oct. 18, 1975, U.N. Doc. S/11852 (1975).

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this flagrant violation of the self-determination rule,[38] Spain, weakened by the prolonged dying of the incapacitated Generalissimo Franco, decided to accede to the claims of Morocco and Mauritania. On November 14, 1975, a joint Moroccan, Mauritanian and Spanish communiqué was issued in Madrid which reported that secret negotiations, carried on in a "spirit of the utmost friendship, understanding and respect for the principles of the Charter of the United Nations . . . have led to satisfactory results in keeping with the firm desire for understanding among the parties and their aim of contributing to the maintenance of international peace and security."[39]

The secret Madrid agreement in effect stipulates Spain's agreement to Moroccan and Mauritanian partitioning of the colony. In return, Spain is permitted to keep a 35% interest in Fosbucraa, the 700-million dollar Saharan phosphate company.[40] Spain agreed to establish an interim regime in which a Spanish governor, assisted by Moroccan and Mauritanian deputy governors, would function until February 28, 1976, at which time its responsibilities would terminate. Algeria, left out of the Madrid negotiations, declared that it would accord no validity to the agreement[41] and that it intended to arm POLISARIO, the pro-independence movement in the Sahara. By the end of February, 1976, 60,000 Sahrawis—three-quarters of the population—became refugees, primarily in Algeria, as the Moroccans moved to crush all resistance.[42]

At the U.N., the General Assembly had passed two totally ineffective—and, indeed, wholly conflicting—resolutions on December 10, 1975. The first of these, Resolution 3458A (XXX), reaffirmed "the inalienable right of the people of the Spanish Sahara to self-determination . . ." and called on the Secretary-General "to make the necessary arrangements for the supervision

38. The initial Security Council resolution, passed on October 22nd, appealed to the parties "to exercise restraint and moderation" so that the Secretary-General could arrange consultations. S.C. Res. 377 (1975). It was not until November 6th that the Council summoned the will to deplore the march and call for Morocco to withdraw. S.C. Res. 380 (1975).

39. Third Report by the Secretary-General in pursuance of Security Council Resolution 379 (1975) relating to the situation concerning Western Sahara, U.N. Doc. S/11880, Annex I, at 1 (1975).

40. Morocco and Mauritania have published an agreement under which the two countries will divide the proceeds from the Bu Craa mines. The Times [London], April 17, 1976, at 5, cols. 1-2.

41. Third Report by the Secretary-General, supra note 39, Annex IV, at 2-3.

42. Interview with Spanish diplomats and UN Secretariat personnel.

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of the act of self-determination." The second, Resolution 3458B (XXX), took note of "the tripartite agreement concluded at Madrid on 14 November 1975 by the Governments of Mauritania, Morocco and Spain," recognized the "interim administration" established by the three countries, and called on that administration to permit "free consultation" with the population.

The two resolutions combine a maximum of hypocrisy with a minimum of concern for giving practical effect to the bartered self-determination norm. The U.N., however, was not without those who saw the dangerous implications in the disregard of this fundamental principle. The President-elect of the Thirty-First General Assembly, Sri Lanka's Ambassador Shirley Amerasinghe, condemned Morocco's opportunism and the indifference with which it had been met, warning the Third World that its failure to unite in opposition to the Moroccan and Mauritanian usurpation of the Western Sahara had condoned a trend "to replace the old imperialism by another form of foreign control founded on territorial claims."[43] Ambassador Salim of Tanzania, the Chairman of the Special Committee, further pointed out that "cardinal principles were involved" and that the United Nations was thus establishing an evil precedent which "would have consequences not only in the Territory itself but also beyond its borders and even beyond the African continent."[44]

Perhaps the only saving grace in this sordid affair thus far is the refusal of Special Representative Rydbeck to put the U.N. imprimatur on the "act of free choice" by a "rump" Yema'a[45] which was hastily organized by the Moroccans at the end of February. Thus, at least formally, the international requirement that Sahrawi people exercise their right to self-determination remains effective.

B. The Seizure of Portuguese Timor

The crisis in the decolonization of Portuguese or East Timor closely resembles—and parallels in time—the Western Sahara scenario. For almost three decades after the founding of the

43. U.N. Doc. A/C.4/SR.2175, Fourth Committee, at 15, November 27, 1975.

44. U.N. Doc. A/C.4/SR.2174, Fourth Committee, at 22, November 24, 1975.

45. The Yema'a was created by Spain in May, 1967 as the highest representative body of local administration in the territory. For further information on the history and functions of the Yema'a, see Visiting Mission, supra note 11, at 29-39.

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United Kingdom, *"Heads of Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles Concerning the Return of Aldabra, Desroches and Farquhar to Seychelles to be Executed on Independence Day"*, FCO 40/732 (18 Mar. 1976)

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HEADS OF AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE ADMINISTRATION OF THE BRITISH INDIAN OCEAN TERRITORY AND THE GOVERNMENT OF SEYCHELLES CONCERNING THE RETURN OF ALDABRA, DESROCHES AND FARQUHAR TO SEYCHELLES TO BE EXECUTED ON INDEPENDENCE DAY

The Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles agree to the return to Seychelles on 29 June 1976 (Independence Day) of Aldabra, Desroches and Farquhar ("the islands") subject to the following conditions:-

1. The Government of Seychelles shall not permit the entry into or use of the territory, territorial waters or air space of Seychelles for any purpose by any of the armed forces of any State or the establishment by any State of rights or facilities of a military character Provided that any State immediately before the date of this agreement having rights of entry, use or establishment ("the current users") may continue to have rights of entry, use or establishment in accordance with any agreements or consultations between any such State and Seychelles and that the right of access to the islands shall continue for the current users in the event of emergency defence needs after agreement with Seychelles, which agreement shall not be unreasonably withheld.

2. The provisions of sub paragraph 1 shall not apply to courtesy visits by aircraft and by vessels of war in accordance with normal international law and practice.

3. Seychelles shall continue its policy of strict nature conservancy in the islands in accordance with its current legislation and in respect of Aldabra will do so in close consultation with

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the Royal Society of London for Improving Natural Knowledge having regard to the existing arrangements at present applying between the Administration of the British Indian Ocean Territory and the Society.

UNITED KINGDOM

E N Larmour

BRITISH INDIAN OCEAN TERRITORY

F R J Williams

SEYCHELLES

J R Mancham

F A René

18 March 1976

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Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon. M. A. Peeroo* (15 Mar. 1977)

EXTRACT

If not, will he take immediate steps to remedy the situation.

Mr. E. François : Sir, the " Calimaye " as well as the wall stands on the private property of Beau Champ Sugar Estate. Government authority was not necessary for the erection of the wall, because, under the law, an owner can enclose his property without asking for Government permission.

FOREIGNERS — GRANT OF MAURITIAN NATIONALITY

(No. B/74) Mr. B. A. Khodabux (First Member for Port Louis Maritime and Port Louis East) asked the Prime Minister whether he will give the names of all foreigners who, since March 1968, have been granted Mauritian nationality stating in each case the grounds on which naturalisation was granted.

The Prime Minister : Seven hundred and nineteen foreigners, who satisfied the provisions of the Mauritius Citizenship Act, 1968, have been granted Mauritian nationality since 1968. The list of names is being compiled and will be laid in the Library as soon as it is ready.

TRANQUEBAR — CHILDREN'S PLAYGROUND

(No. B/75) Mr. R. T. Servansingh (Third Member for Port Louis South and Port Louis Central) asked the Minister of Local Government whether he will use his good offices with the Administrative Commission of the Municipality of Port Louis to set up forthwith a children playground in the Tranquebar area.

Mr. Espitalier-Noel : Sir, the creation of a recreation complex in the Tranquebar area has already been envisaged and steps are being taken to acquire the necessary land.

VALLEE PITOT — WATER SUPPLY

(No. B/76) Mr. K. Bhayat (First Member for Port Louis South and Port Louis Central) asked the Minister of Power, Fuel & Energy whether, in view of the great inconvenience caused to the inhabitants of the Vallée Pitot area through a deplorable water supply, he will use his good offices with the Central Water Authority to provide an individual water prise to every householder of the locality.

Dr. Busawon : Sir, some inhabitants of Vallée Pitot area have constructed their houses up the hillsides and it is difficult to convey water to these individual households by gravity pressure. The C.W.A. is however making designs for water to be supplied generally to the area by means of pumps. In the meantime, water supply to the area is ensured by tankers.

SPEECH FROM THE THRONE — ADDRESS IN REPLY

Order read for resuming adjourned debate on the following motion of the hon. First Member for La Caverne and Phœnix (Mr. R. Purryag) :

> "That an Address be presented to His Excellency the Governor-General in the following terms :-
>
> 'We, the Members of the Mauritius Legislative Assembly here assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to us on the occasion of the Opening of the First Session of the Fourth Legislative Assembly'.

Question again proposed.

M. A. Peeroo (Third Member for La Caverne and Phœnix) : M. le président, on a eu l'honneur à la dernière

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séance de ce Parlement d'écouter attentivement les discours prononcés jusqu'ici. Alors qu'il est encourageant de constater que des critiques constructives ont été faites en vue d'améliorer le sort du peuple mauricien, il a été cependant décourageant, dirai-je, d'entendre certaines critiques injustifiées de la part de l'Opposition concernant l'état d'urgence, l'existence de la démocratie dans notre société, et surtout concernant le problème de Diégo Garcia.

Sir Satcam Boolell : On a point of order, Sir, last time the adjournment was proposed by the hon. First Member for Belle Rose and Quatre Bornes (Mr. Bérenger).

Mr. Speaker : I had overlooked that for which I apologize. But now that the Hon. the Third Member for La Caverne — Phœnix has started, I will call the Hon. the First Member for Belle Rose and Quatre Bornes immediately afterwards.

M. Peeroo : Je dirai même, M. le président, que les critiques du chef de l'Opposition ont frôlé la surenchère. Je relève de son discours certaines critiques injustifiées concernant, comme je viens de dire, l'état d'urgence, Diégo Garcia, et la démocratie si elle existe à Maurice ou non. Tout d'abord, je m'attaquerai a cette critique particulière du chef de l'Opposition concernant l'incompétence du Gouvernement. Nous devons analyser les faits, les réalisations du Gouvernement dans le passé, surtout l'accomplissement du plan 1971 à 1975 pour savoir si le Gouvernement n'a rien fait, si le Gouvernement est incompétent.

Mr. Speaker : We are not discussing whether the last Government was competent or not, we are discussing whether this Government is competent, so that we might forget all about the past.

M. Peeroo : M. le président, si j'ai fait mention du passé, c'est pour m'en servir comme base, pour revenir sur les questions qui se trouvent dans le discours du Trône. Nous savons que notre société évolue, et toute société qui est vivante, toute société qui évolue est une société qui connait des problèmes. L'île Maurice n'est pas une exception. Donc, nous devons nous attendre à ce que notre société connaisse des problèmes, et notre devoir ici est d'aider le Gouvernement, d'aider le pays à trouver des solutions à ces problèmes. Nous savons aussi qu'après l'indépendance notre pays a hérité d'un système que je qualifierai de colonial, un système qui doit être définitivement réformé afin que les aspirations légitimes du peuple soient satisfaites. Mais, quelle a été la politique du Gouvernement après l'indépendance ? Je dois dire ici que le Gouvernement a poursuivi une politique réaliste mais tout en tenant compte des réalités et des besoins de notre pays. Il n'y a pas lieu pour moi, M. le président, de parler des détails, mais je dirai que dans toutes ses entreprises le Gouvernement a réalisé des réussites. Si je viens de dire que nous avons des problèmes, nous sommes conscient dans le Gouvernement que ces problèmes sont difficiles, mais nous pouvons garantir au peuple de ce pays que le Gouvernement actuel est disposé à travailler avec courage et détermination pour trouver des solutions justes afin que nous puissions créer une société où chaque Mauricien aura une sécurité concernant l'emploi, le logement, l'éducation, et ainsi de suite.

M. le président, le chef de l'opposition a parlé de l'incompétence du Gouvernement. Cette critique, il me semble, est facile. Il est facile de critiquer, il est facile de dire que ce pays connaît des problèmes, mais jusqu'ici l'opposition

n'a pas donné des solutions à nos problèmes. Mais, M. le président, nous pouvons en prenant compte, je dirai, des évènements économiques dans le passé, voir si notre pays est dans la bonne direction. On sait très bien que les gens qui demeurent dans l'oisiveté critiquent toujours ceux qui vraiment travaillent et connaissent les difficultés dans l'action. Le Gouvernement s'efforce de résoudre les problèmes, mais par contre il y a des gens qui se tiennent sans rien faire et qui critiquent le Gouvernement. Le Gouvernement est disposé à accepter des critiques, comme mon ami, le Premier député de Phœnix et La Caverne a dit. Nous sommes ici au Gouvernement disposé à accepter les critiques, mais les critiques, je le répète, doivent être constructives et non pas destructives.

M. le président, je prendrai un peu de temps peut être pour parler de nos difficultés. Nous avons une population de 850,000 âmes, et une qui augmente par 17,000. En 1960, la population a connu une augmentation de 3%, mais par contre avec une politique réaliste et clairvoyante du Gouvernement, nous constatons qu'aujourd'hui le taux de naissance est de 2%, c'est-à-dire il y a une réduction sensible de naissances à Maurice, c'est-à-dire 1%, ou une réduction de 50% en ce qui concerne les naissances pendant une année. Donc, avec une population de 850,000 âmes, comme je viens de dire, M. le président, et une qui augmente par 17,000 par an, la tâche du Gouvernement n'est pas facile. Nous devons tenir compte des réalités. Je viens de dire que notre tâche ne serait pas si difficile, car nous savons au Gouvernement que le peuple est derrière nous et le peuple est disposé à coopérer afin de mettre fin à la politique de destruction lancée jusqu'ici par l'Opposition.

Le premier objectif de notre Gouvernement est de créer des emplois. On sait quelle était la situation sur le marché du travail avant 1975, mais nous pouvons dire aujourd'hui avec satisfaction que grâce aux efforts de ce même Gouvernment, qualifié d'incompétent par le chef de l'Opposition, 53,000 emplois ont été créés durant la période 1969 à 1975, alors que nous savons que durant les années 1960 seulement 20,000 emplois ont été créés. C'est-à-dire que durant la période de 1969 à 1975 on a créé environ 33,000 nouveaux emplois. Il ne faut pas oublier que dans d'autres secteurs de l'économie, comme l'industrie touristique, le Gouvernement est responsable du progrès accompli. Grâce à cette industrie, encouragée et développée par le Gouvernement, nous avons réalisé en termes de devises étrangères une somme de Rs. 135 m. en 1975, et nous savons aussi que le revenu national a augmenté de 10% alors qu'on s'attendait à 7% comme prévu par le Gouvernement dans le passé. D'autre part, M. le président, il nous faut tenir compte des ressources limitées de notre pays. Nous savons très bien que notre économie est purement agricole, c'est-à-dire que nous dépendons sur le sucre qui represente 90% de nos exportations mais avec de telles limitations économiques nous avons tout de même un travail à faire au niveau national parceque, chaque année, prenant en consideration l'augmentation de la population et aussi le pourcentage des jeunes à Maurice, et le fait que 40% de la population ont moins de 15 ans, le Gouvernement a un programme que je qualifierai de pilote afin que ces jeunes de moins de 15 ans dont le nombre s'élèvent à 40,000 trouveront de l'emploi, de logement. Comme les membres sont au courant ces jeunes-là reçoivent déjà une éducation gratuite. Mais le problème épineux auquel nous avons à faire face, c'est la création

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d'un nombre maximum d'emplois pour assurer une vie décente à nos jeunes de moins de 15 ans. Il est à noter, M. le président, que le secteur agricole est un domaine où on ne peut pas créer plus de 2% d'emplois. Dans ce secteur un peu plus d'un pour cent d'emplois est créé, par contre je constate avec satisfaction que le Gouvernement a choisi le secteur industriel pour investir afin de créer plus d'emplois et nous savons que dans ce secteur beaucoup d'emplois ont été crées. En 1974, le Gouvernement a aidé à la création de 30,000 emplois. Nous ne prenons pas compte du nombre d'emplois créés dans l'industrie sucrière, je dis seulement 30,000 dans les industries, dans les usines. 9,000 ont été crées dans la zone franche et 12,000 emplois ont été créés dans les petites industries, les petites usines et les "cottage industries." Avec toutes ces réalisations, M. le président, je vois fort drôle comment le chef de l'opposition a pu qualifier ce Gouvernement d'incompétent, comment se fait-il que le chef de l'opposition n'a pas pris en considération les réalisations du Gouvernement, un Gouvernement qui se lance toujours dans la bonne voie de créer d'autres emplois. C'est difficile de digérer cette critique à l'effet que ce Gouvernement est incompétent. S'il l'est, le temps dira, parceque les réalisations du Gouvernement nous permettent d'espérer qu'il en fera mieux dans l'avenir. Je saisirai cette occasion pour dire que notre Gouvernement ne va jamais abdiquer devant ses responsabilités envers le peuple et ses responsabilités envers la nation mauricienne, malgré l'obstruction systématique de l'opposition pour embarrasser le Gouvernement dans plusieurs secteurs. Nous sommes dans une position dificile. Nous reconnaissons que notre tâche n'est pas impossible, mais nous ferons notre mieux pour déjouer les manœuvres immorales de l'opposition. Notre but c'est de créer une société juste, une société socialiste, mais pas une société qui tolère les réactionnaires; et une société au visage humain.

M. Jugnauth : Soyez moins ridicule.

M. Peeroo : Je repondrai au commentaire du chef de l'opposition seulement par ceci " rira bien qui rira le dernier."

Maintenant passant à l'item de Diégo Garcia, M. le président, c'est un problème qui concerne tous les Mauriciens, je dirai même ce problème a un aspect assez triste et malheureux parceque là aussi on a dit que le Gouvernement n'a rien fait concernant la démilitarisation de l'ocean indien. Tout d'abord je dirai que notre ministre des affaires étrangères lors de la conférence des pays non alignés, a soulevé la question et a exercé des pressions diplomatiques, et aussi lors de la conférence de l'OUA à Maurice, le Gouvernement a tout fait pour soulever l'opinion mondiale sur ce problème. Mais on critique très souvent le Gouvernement. On a voulu faire comprendre à la population que le Gouvernement est responsable de la vente de Diégo. Mais il y a une explication. D'après un principe de droit international, mes collègues de la profession qui sont de l'autre côté sont au courant qu'un article a été publié dans *Modern Law Review* No. 30 ou 31, un article écrit par le professeur de Smith, qui a pour titre " *Constitutionalism in Mauritius* ". Dans cet article, M. le président, un point de droit international a été mentionné. La première question qu'on doit se poser est celle ci : quand la vente de Diégo a été faite, à cette époque là, est-ce que l'île Maurice était indépendante ? La réponse est clairement non. Ce Gouvernement qui vous

dites, est responsable de la vente de Diégo Garcia n'était pas le Gouvernement d'un état souverain. On ne peut pas donc blâmer ce Gouvernement. Mais je dois donner l'assurance à mes amis de l'opposition que des efforts sont déployés afin de voir que l'océan indien soit une zone de paix.

Je viens de mentionner l'intervention et l'action mauricienne lors des conférences de pays non-alignés et aussi l'action du Gouvernement mauricien lors de la conférence de l'organisation de l'unité africaine. Les efforts du Gouvernement dans ce sens continuent parceque il y a encore des pressions diplomatiques qui sont exercées auprès de certaines super-puissances.

M. le président, je passe maintenant à une certaine critique du chef de l'opposition qui a dit que dans ce pays, où l'état d'urgence existe, où semble-t-il il n'y a plus de démocratie. Tout d'abord je dois dire que tout mouvement organisé et enregistré conforme à la loi est libre de publier ce qu'il veut, et tout groupe d'individus, de travailleurs est libre de s'organiser en syndicat. Et ces gens qui disent qu'il n'y a pas de démocratie dans ce pays, savent très bien qu'ils sont libres d'organiser des meetings privés et des meetings publics et même des rassemblements, et je dirai même que cette liberté est tolérée jusqu'à tel point qu'ils sont libres de publier des critiques à l'égard de ceux qui permettent cette liberté. Je dois dire aussi, M. le président, que l'état d'urgance existe sur papier. En pratique les libertés fondamentales du peuple sont là, parcequ'elles ont été expliquées et traduites par des élections municipales à venir aussi bien que par les récentes élections générales. D'ailleurs s'il n'y avait pas de démocratie dans ce pays, comment donc expliquer la présence de cette opposition dans cette assemblée.

M. le président, il y a un problème que les consommateurs sans distinction de classe connaissent dans ce pays — on avait tout dernièrement parlé de l'augmentation concernant le prix du pain. Sur ce point je dirai en toute franchise et sincérité que je suis d'accord avec le premier député de Quatre Bornes (M. Bérenger) quand il a parlé sur le prix du pain. Personnellement je ne suis pas d'accord avec une augmentation de prix sur le pain parceque quand l'augmentation a été recommandée, (une augmentation de deux sous), la première question qu'on devrait se poser est la suivante: quels chiffres avait-on considérés pour recommander une telle augmentation ? Et nous savons très bien que parmi les membres du Gouvernement, il y a un qui fait tout son mieux pour prouver qu'on peut vendre le pain à dix sous et en même temps réaliser un profit. Je suis, M. le président, contre l'augmentation de prix sur le pain.

Concernant l'augmentation de prix sur le poisson frigorifié, il a passé de Rs. 2.40 à Rs. 2.90. Cette augmentation est injustifiée. D'autre part, il est nécessaire, étant donné les circonstances, que les prix soient contrôlés strictement. M. le président, hier j'ai été au marché de Rose Hill pour acheter deux livres de poisson. On m'avait demandé Rs. 6 la livre quand nous savons très bien que le prix de poisson est fixé par le Gouvernement à Rs. 4.50. Ce que le marchand m'avait dit: '*Nous pas rente dans zaffaire prix, nous vanne prix qui nous contente*'. Sur ce problème, j'ai formulé des critiques mais il y a aussi une solution. Je préconise, M. le président, l'amendement des lois dans ce domaine et il faut aussi donner plus de pouvoirs aux officiers

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du ministère des prix et créer une escouade pour contrôler les marchands qui exploitent le petit peuple. Et je suggererai également la création d'un comité populaire de surveillance pour surveiller à ce que les marchands, qu'ils soient grands ou petits, n'exploitent pas la population, ou les consommateurs. Quand j'ai parlé du comité populaire, M. le président, je n'ai pas voulu dire milice populaire. Ici au Gouvernement, si nous faisons des critiques, nous disons quels sont aussi les solutions parceque je repète, M. le président, nous critiquons pour construire non pas pour détruire. Quand j'ai parlé du comité populaire, M. le président, j'ai voulu dire, un comité composé de membres du public, des volontaires disposés à aider le ministre ou le ministère des pêcheries parceque surveiller à ce que l'exploitation est éliminée dans le pays n'imcombe pas seulement au Gouvernement ou au ministre mais aussi incombe à la population, parceque le ministre ou le Gouvernement ne sont pas seulement responsables de ce que la population subit mais il est le devoir de tout un chacun, de tout Mauricien de coopérer, de collaborer afin que l'exploitation d'où qu'elle vienne soit éliminée.

Il y a un autre problème, M. le Président, qui jusqu'ici a été ignoré et ce problème concerne la planification du pays. Quand nous allons vers Curepipe, passant par St. Jean, nous voyons avec regret aujourd'hui que nos meilleures terres sont vendues à des gens qui veulent construire des maisons. Par contre, il est connu de tous que ce pays est purement agricole, que nous ne pouvons pas sacrifier nos meilleures terres; si nous voulons encourager les gens à construire des maisons, il nous faut les encourager à le faire dans des zones où les terres ne sont pas fertiles, ne sont pas productives. Dans ces sites ou ces endroits là, il nous faut encourager la construction mais non pas à St. Jean ou dans d'autres coins de l'île Maurice qui doivent être réservés pour l'agriculture, parceque comme je viens de dire, notre pays est un pays agricole. L'agriculture, c'est l'épine dorsale de notre économie.

Ce que je préconise, M. le président, c'est la refonte des lois concernant la planification et de créer des zones industrielles, des zones réservées purement à l'agriculture et des zones résidentielles. Par exemple, M. le président, passant par la nouvelle route, on voit des petites collines qui sont vraiment improductives dans ce sens qu'on ne peut pas les cultiver. Quoi faire avec eux ? Ce que je suggère, c'est developper ces collines afin d'encourager les gens à aller construire des maisons là-dessus ou au pied de ces collines, afin de préserver nos meilleures terres.

Et concernant le transport, M. le président, je félicite le Gouvernement pour avoir pris la décision d'accorder des permis à tous ceux qui veulent rouler des autobus. Mais je dirai que cette mesure n'est pas une solution. Cette mesure, je vais la qualifier, comme étant un palliatif. Tôt ou tard, dans cinq ou dans dix ans le problème va apparaître de nouveau parceque quand ces gens qui dans l'avenir recevront des permis pour faire rouler des autobus arrivent à trouver qu'ils font des pertes, ces gens là vont se grouper en compagnie et ce sera la même situation que nous avons aujourd'hui. La solution, je la dirai avec franchise, c'est la nationalisation de l'industrie du transport. Mais je dois dire, M. le président, que la nationalisation ne vient pas de l'Opposition, d'abord parceque dans le programme gouvernemental du parti travailliste, dès 1945, nous avons parlé de nationalisation mais nous devons dire que

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U.K. House of Commons, *"Written Answers: British Indian Ocean Territory"* (23 June 1977)

British Indian Ocean Territory

HC Deb 23 June 1977 vol 933 cc549-50W

Sir Bernard Braine asked the Secretary of State for Foreign and Commonwealth Affairs, in the light of the forthcoming constitutional talks on the Gilbert Islands and the Banaban plea for the separation of Ocean Island, on what conditions the Seychelles Government agreed to the separation of the islands of Desroches, Farquhar and Aldabra from the colony of Seychelles in 1965 to form part of the British Indian Ocean Territory.

Mr. Luard The Seychelles Executive Council confirmed their agreement in October 1965 to the detachment of the islands of Aldabra, Desroches and Farquhar in return for Britain's agreement to construct an airfield on Mahé Island, Seychelles, to compensate the landowners and to resettle the inhabitants. The islands reverted to Seychelles on that country's independence in 1976.

Sir Bernard Braine asked the Secretary of State for Foreign and Commonwealth Affairs, in the light of the forthcoming constitutional talks on the Gilbert Islands and the Banaban plea for the separation of Ocean Island, on what conditions the Government of Mauritius agreed to the separation of the Chagos Archipelago from the Colony of Mauritius in 1965 to form part of the British Indian Ocean Territory.

Mr. Luard The Mauritius Council of Ministers agreed to the detachment of the Chagos Islands after discussions which concerned the negotiation of a defence agreement between Britain and Mauritius —since terminated by agreement— and the grant of £3 million additional to the cost of compensating the landowners and a grant to resettle the islands' inhabitants. Understanding was also reached on rights to mineral, oil and fish resources and there was agreement that, in certain circumstances and as far as was practicable, navigational, meteorological and emergency landing facilities on the islands were to remain available to the Mauritian Government. In the event of the islands no longer being required for defence purposes it was agreed that they should revert to Mauritian jurisdiction.

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Mauritius Legislative Assembly, *Diego Garcia - Anglo-American Treaty*, No. B/539 (8 Nov. 1977)

SALE OF CEMENT — CONTROL

(No. B/535) **Mr. S. K. Baligadoo** (Second Member for Port Louis North and Montagne Longue) asked the Minister for Prices & Consumer Protection whether he will exercise strict control on the sale of cement with a view to avoiding black marketing ; and whether he will make a statement thereon.

Mr. Virah Sawmy : Sir, an enquiry was conducted last week at the Mauritius Portland Cement Co. Ltd. and at the level of the main cement distributors in Port Louis, and checks were also made in different localities of the island concerning the sale of cement.

The enquiry indicates that the supply of cement currently distributed on the local market is sufficient to satisfy the demand for that commodity, without giving rise to any black marketing opportunities.

I would like to invite the hon. Member to refer to my Ministry the case of any member of the public who may be finding difficulties to obtain cement. I can assure the hon. Member that every assistance will be given to him and others in the same situation.

ASSISTANCE TO BUS INDUSTRY

(No. B/536) **Mr. A. Asgarally** (Fifth Member for Montagne Blanche and G.R.S.E.) asked the Minister of Works whether he will make a statement on the form of assistance, technical or otherwise, he has already given and which he proposes to give to the bus industry.

Mr. Bussier : As from June 1976, no Customs duty is levied on bus chassis, as well as on complete buses, provided the buses are licensed by the Road Traffic Licensing Authority.

Certain buses which were running on uneconomical routes received subsidies during the period February 1976 to June 1977.

Further, duty paid on diesel oil imported by bus companies during period July 1976, to June 1977, was refunded to them. Recently, to enable certain bus companies to meet payment of wage increases, it has been decided to refund to them the duty paid by them on diesel oil imported since 1st July 1977.

Further forms of assistance to bus companies will be considered as and when the need arises.

INCREASE IN BUS FARES

(No. B/537) **Mr. A. Asgarally** (Fifth Member for Montagne Blanche and G.R.S.E.) asked the Minister of Works whether he will give the assurance to the House that there will be no increase in bus fares until the recommendations of the Lavoipierre Commission have been published, studied and debated in the Legislative Assembly.

Mr. Bussier : Sir, Government has no intention to approve any increase in bus fares until the report of the Lavoipierre Commission has been studied.

COMPENSATION TO POLICEMEN WORKING EXTRA TIME

(No. B/538) **Dr. J. B. David** (Second Member for Belle Rose and Quatre Bornes) asked the Prime Minister whether he will say if Policemen working extra time, in Parliament or in any official function, are duly compensated.

The Minister of Finance : Sir, this matter has been investigated by the Chesworth Committee which has made recommendations for implementation with effect from the 1st July, 1977.

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DIEGO GARCIA — ANGLO-AMERICAN TREATY

(No. B/539) **Dr. J. B. David** (Second Member for Belle Rose and Quatre Bornes) asked the Prime Minister whether he will say if

(a) Government proposes to question the Anglo-American treaty over Diego Garcia ; and

(b) there are any immediate or far reaching possibilities for Mauritius to get Diego Garcia back.

The Minister of Finance : Sir, taking all factors into consideration, the way of trying to recuperate Diego Garcia is by patient diplomacy at bilateral and international levels, and no opportunity is lost by the Government towards this end.

COMMERCIAL RELATIONS WITH SOUTH AFRICA

(No. B/540) **Dr. J. B. David** (Second Member for Belle Rose and Quatre Bornes) asked the Minister of External Affairs, Tourism & Emigration whether he will say if Government proposes to sever all commercial ties with the Republic of South Africa.

Sir Harold Walter : Such action to be effective, pressure should be exerted by the international community as a whole and, to this end, Government has diligently and consistently been calling for global trade sanctions against South Africa both at the UN and at the OAU.

RESEARCH CENTRE — HISTORY, ART AND CULTURE OF MAURITIUS AND OF THE INDIAN OCEAN

(No. B/541) **Dr. J. B. David** (Second Member for Belle Rose and Quatre Bornes) asked the Minister of Education & Cultural Affairs whether he will say if he proposes to create a Research Centre to study the History, Art and Culture of Mauritius and of the Indian Ocean.

Mr. Jagatsingh : Sir, this project will be studied in the light of the report of a UNESCO Consultant who is arriving shortly to advise on its elaboration.

APPLICATION BY POLITICAL PARTY TO USSR EMBASSY FOR FINANCIAL OR OTHER ASSISTANCE

(No. B/542) **Mr. C. Guimbeau** (First Member for Rodrigues) asked the Prime Minister whether he will make a statement on the action he proposes to take following the publication in *Le Cernéen* of the 21st October, 1977 of a letter addressed by a political party to the USSR Embassy applying for financial or other assistance.

The Minister of Finance : I refer the hon. Member to my reply to P.Q. B/230. In this particular case I am sure the public will draw their own conclusions.

AGENCE FRANCE PRESSE — PUBLICATION OF INFORMATION ABOUT MAURITIUS

(No. B/543) **Mr. C. Guimbeau** (First Member for Rodrigues) asked the Prime Minister & Minister of Information & Broadcasting whether he will give the name and status of the official correspondent of Agence France Presse in Mauritius and state what measures he has taken with the " Agence " to prohibit the publication of erroneous information concerning Mauritius.

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Eduardo Jiménez de Aréchaga, "International Law in the Past Third of a Century", *Recueil des Cours*, Vol. 159 (1978)

ACADÉMIE DE DROIT INTERNATIONAL
FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW

1978

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Tome 159 de la collection

1979
SIJTHOFF & NOORDHOFF
Alphen aan den Rijn – The Netherlands

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INTERNATIONAL LAW IN THE PAST THIRD OF A CENTURY

by

EDUARDO JIMÉNEZ DE ARÉCHAGA

President,

International Court of Justice

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of self-determination and provides that the principle applies both to peoples of non-self-governing and trust territories and also to peoples within independent and sovereign States : that this right is one that must survive the historical function it performed in the dismantlement of colonialism.

The Outcome of Self-Determination and the Essence of the Right of Peoples

At first sight Resolution 1514 (XV) gives the impression that the natural outcome of self-determination—the necessary result of the exercise of this right—is the "complete independence" of the people concerned. The word "independence" is repeated four times in the seven paragraphs of the Resolution.

It was soon realized, however, that "complete independence" is not to be considered as constituting the only way of implementing the principle. There are examples of non-self-governing territories whose peoples did not wish to assume the full responsibility of independent statehood and preferred to maintain an association or integration with another country. The principle of self-determination is fully safeguarded when such an outcome is the result of the free choice of the people concerned. A resolution also adopted in 1960 by the General Assembly, Resolution 1541 (XV), indicated that the principle of self-determination could take one of the following forms :

(a) emergence as a sovereign independent State ;
(b) free association with an independent State ; or
(c) integration with an independent State.

This resolution further provides that "free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes . . ." (Principle VII *a*). And integration :

> "should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

It is obvious that if these requirements are complied with, the free association or the integration with an independent State also become

manifestations of independence, in the sense that the peoples concerned "freely determine their political status" (para. 2 of Resolution 1514).

Resolution 2625 codifies the various ways of implementing the right of self-determination but in view of the broadening of the scope of the right beyond colonial issues it had to cover other possibilities as well, in more general terms. The fourth paragraph of this Chapter reads :

> "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

The expression "any other political status freely determined by a people" is wide enough to encompass solutions which would facilitate the settlement of certain contemporary self-determination conflicts requiring a solution other than independence or association, such as, for instance, autonomous or federal constitutional arrangements.

It is in the light of these successive General Assembly resolutions that Resolution 1514 must be interpreted. In the *Western Sahara Advisory Opinion* the Court found that its provisions "in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned [192]". The Court added, after quoting Principles VII and IX of Resolution 1541 : "certain of its provisions give effect to the essential features of the right of self-determination as established in Resolution 1514 (XV) [193]". The Court also found that Resolution 2625 (XXV) "reiterates the same need to take account of the wishes of the people concerned [194]".

Consequently, a consultation of the will of the peoples concerned was found to be the essential feature of self-determination. The Court added :

> "The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute as 'people' entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances [195]."

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The first type of exception would exist for instance in the cases of Gibraltar or the Malvinas (Falkland) Islands where the General Assembly has requested the States concerned to negotiate on the question of sovereignty and transfer of the territory and has refused to accept the effects of a referendum or a consultation of the present inhabitants of those territories.

The second type of exception, the special circumstances making a consultation unnecessary, existed in the cases of Goa or of Ifni. These circumstances combine an unchallenged or accepted territorial claim by a former sovereign which ceased to be so as a consequence of colonialism, and the homogeneity of the population of an enclave with that of the former sovereign surrounding it. In those cases the direct retrocession of the territory was considered by the General Assembly as the means of ensuring at the same time the self-determination of the people and the immediate end of a colonial situation. India said in the case of Goa that it would be senseless to ask the Indians in Goa if they wished to remain Indians. This position resembled that of the Allies in 1919 when they held that asking for a plebiscite in Alsace-Lorraine would be "insultingly illegitimate [196]".

Self-Determination and Historic Title to Territory

In the *Western Sahara* case Morocco and Mauritania contended that on the subject of decolonization there are two basic principles: that of self-determination through a consultation of the will of the people, indicated in paragraph 2 of Resolution 1514, and the principle of national unity and territorial integrity of countries, laid down in paragraph 6 of Resolution 1514 and confirmed by Paragraph 7 of Resolution 2625.

According to this argument decolonization may come about through the automatic retrocession or reintegration of a province to the mother country from which that province was artificially detached by a colonial dismemberment. In support of this argument several instances were indicated—such as those of Gibraltar, Ifni and the Malvinas (Falkland) Islands—in which the General Assembly had been induced to give priority to territorial integrity.

For its part Algeria contended that the principle of self-determination and the fundamental rule of decolonization is that the population of a territory should be consulted as to its future political status and should not be dealt with as mere chattels [197].

This question was not the subject of the request for an opinion, but

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Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by the Prime Minister of Mauritius* (11 Apr. 1979)

EXTRACT

However, after the Commission has reported, nothing prevents any hon. Member to put down a question to inquire about the Government's intentions about laying the report on the Table of the Assembly.

MOTION

Speech from the Throne — Address in Reply

Order read for resuming the adjourned debate on the following motion of the hon. First Member for Curepipe and Midlands (Mr. P. Simonet) :

> "That an Address be presented to His Excellency the Acting Governor-General in the following terms :
>
> 'We, the Members of the Mauritius Legislative Assembly here assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to us on the occasion of the Opening of the Third Session of the Fourth Legislative Assembly.' "

Question again proposed.

M. P. Bérenger (First Member for Belle Rose and Quatre Bornes) : M. le président, on me dira peut-être qu'il est de la nature même des discours du Trône de ne pas coller à la réalité de la situation dans laquelle se trouve l'île Maurice. Cela ne m'empêchera néanmoins pas de dire pour commencer, M. le président, que le discours du Trône prononcé le 27 mars dernier par le Gouverneur-Général n'a véritablement rien à voir, ni avec la situation dans laquelle se trouve actuellement notre pays, ni avec les solutions qui, du point de vue de l'opposition, du point de vue du MMM devraient être apportées d'urgence à ces problèmes. Mon discours, M. le président, va s'axer sur quatre volets : la situation économique d'abord. A l'inverse du *Leader* de l'opposition, qui avait commencé par les affaires étrangères, je commencerai, moi, par la situation économique, pour passer ensuite à l'éducation, à la politique intérieure, et quatrièmement donc, à la politique étrangère avant, en conclusion, de suggérer ce qui de notre point de vue, pourrait s'avérer être des solutions à la situation actuelle.

Lorsque, je commence par la situation économique, M. le président, ce n'est pas sans raison, c'est parce que véritablement de mon point de vue, ce devrait être la situation économique actuelle du pays et l'avenir économique du pays qui devrait avant tout retenir notre attention, l'attention de cette Chambre, comme l'attention de la nation tout entière. J'estime, en effet, M. le président, que non seulement la situation économique actuelle est-elle catastrophique, mais j'estime, ce qui est encore plus grave, que l'avenir est terriblement sombre.

Je commencerai, M. le président, par le chômage, Je vous rappelle que dans son dernier discours du budget l'année dernière, le ministre des finances lui-même était venu dire que le chômage était redevenu à l'île Maurice, la priorité des priorités. Dans l'intervalle, depuis ce discours du budget, donc, non seulement l'emploi n'a-t-il pas progressé, mais au contraire l'emploi a régressé. Des licenciements ont eu lieu dans l'industrie sucrière, dans l'industrie du thé, dans la zone franche, dans le commerce, et même dans l'industrie de construction. De mon point de vue, donc, M. le président, lorsqu'à la page 2 du discours du Trône, le Gouvernement déclare tout simplement dans une situation d'emploi aussi explosive, aussi catastrophique, que "*my government's main objectives remain the continued growth of our economy and the fulfilment of our employment objectives*" il passe completement à côté du problème,

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car le drame est que les "*employment objectives*" du Plan de Développement 1975-1980 sont absolument dépassés et qu'il ne s'agit plus en fait de "*continued growth of our economy*", en particulier, de "*continued growth of employment*" mais au contraire d'une situation où le chômage malheureusement progresse. En attendant donc, de venir aux moyens de créer de l'emploi à l'île Maurice, je commencerai mon discours en insistant cette année, M. le président, sur le fait que, comme l'a dit mon collègue, Sylvio Michel, dans une motion déposée en son nom, nous estimons de ce côté de la Chambre, j'estime en particulier qu'il est absolument essentiel et urgent de mettre sur pied dans les plus brefs délais un système d'allocation chômage. Je me permets de rappeler à la Chambre qu'en 1971 la Chambre avait nommé un *Select Committee* qui avait soumis son rapport intitulé "*Report of the Select Committee on the Setting up of Unemployment Benefit Scheme*". Dépose en mai 1971, ce rapport, comme nous le savons tous, est demeuré lettre morte, et je ne prétends nullement que ce rapport devrait aujourd'hui être mis en pratique. Je rappelle cela à la Chambre uniquement afin que nous ne répétions pas cette erreur de nommer un *Select Committee* qui produirait un rapport, rapport qui disparaîtrait dans un tiroir, dans un ministère quelconque. Nous savons, M. le président, alors qu'il nous avait été dit lorsque le *National Pension Fund* avait démarré, les officiels du Gouvernement, ceux du ministère de la sécurité sociale, et même ceux du Gouvernement, nous avaient donné l'assurance que des années durant, le *National Pension Scheme* travaillerait à perte, que durant des années, le Gouvernement aurait à verser des subsides, si je puis dire, au fonds de pension national. Or, il s'est avéré que ces prévisions des experts du Gouvernement, ces prévisions du secteur privé se sont avérées complètement fausses. En quelques mois, le *National Pension Scheme* a réussi à mobiliser des fonds considérables, à développer un surplus qui a permis que dix millions de roupies, par exemple, soient prêtées à la *Mauritius Housing Corporation*. Ma suggestion c'est qu'à partir de cette base posée par le *National Pension Scheme*, si nécessaire en augmentant de, disons, 1 ou 2% la contribution des employeurs, à partir de la base posée par le *National Pension Scheme*, avec, si nécessaire, une legère augmentation des contributions, qu'un vrai système d'allocation-chômage qui se grefferait sur le *National Pension Scheme* pourrait être développé. Malgré, donc, l'expérience malheureuse du *Select Committee* de 1971, je suggère au Gouvernement devant la montée du chômage constatée par le ministre des finances lui-même, mais en fait constatée je suis certain, dans nos circonscriptions par tous les députés de cette Chambre, je suggère que le Gouvernement nomme un *Select Committee* de cette Chambre pour se pencher à nouveau sur "*the setting up of an Unemployment Benefit Scheme*" et qui se penche donc sur le fonds de pension national et propose quelquechose de concret, quelquechose de positif mais en même temps quelquechose de réaliste au Gouvernement et à la Chambre.

Le deuxième point sur lequel je m'étendrai concerne l'inflation. Là encore, M. le président, le discours du Trône passe complètement à côté de la situation réelle. Le discours du Trône dit ceci, en termes d'inflation, "*Price control will remain a priority of my Ministers*". En fait, nous savons, M. le président, qu'en cette année 1979, l'inflation depuis janvier a réagi sous un nouveau coup de fouet. Dans le seul mois de janvier 1979, le coût de la vie a augmenté de 2.3%,

pas tomber d'accord, l'*Industrial Relations Commission* devra se servir d'un *secret ballot*. Mais ce n'est pas *compulsory*, et la Commission des relations industrielles a jugé qu'il serait trop politique de faire un tel vote par bulletin secret. C'est pourquoi nous, nous estimons qu'il faudrait imposer cela, il faudrait empêcher quelque manipulation, quelque pression politique que ce soit, permettre aux travailleurs d'exprimer leur choix. Cela vient rejoindre, je le dis surtout à l'intention du ministre des finances cette fois-ci, mais aussi le Premier ministre. Il faut bien réaliser comment fonctionnent les choses. Si un syndicat est reconnu, il est à la table des négociations, il est amené à prendre connaissance des faits, des réalités, on lui soumet des *balance sheets*, il discute des *balance sheets*, etc. mais quand un syndicat, comme la *Sugar Industry Labourers' Union* et la *Union of Artisans of the Sugar Industry*, est systématiquement boycotté, alors qu'il était reconnu et qu'il est toujours majoritaire, ce syndicat ne peut pas dialoguer avec le patronat, quelle est la tentation ? La tentation est naturellement de demander des augmentations de salaires fortes puisqu'on n'est pas devant les faits, on ne discute pas les *balance sheets*, on n'a pas des réunions régulières avec le patronat. Et dans le cas de la fermeture de Solitude et de Réunion la réaction immédiate des syndicats, qui ne discutent pas avec le patronat, la réaction immédiate est de dire non tout de suite avant même d'avoir pris connaissance des faits. Alors, j'estime donc, que l'*Industrial Relations Act* doit être amendé, et qu'une clause doit prévoir que dans les cas de *recognition* un *secret ballot* tranchera, permettra aux travailleurs de se prononcer.

Je passe au quatrième volet de mon intervention, M. le présiddent, la politique étrangère, sujet sur lequel s'est étendu hier le président du parti travailliste. Là, comme l'a dit le *leader* de l'Opposition, il fait nul doute que les intentions déclarées dans le discours du Trone sont plus que louables. Participer à fond au fonctionnement de l'OUA, la libération du continent africain, participer à fond au mouvement des pays non-alignés, "*work closely with its neighbours*", faire de l'Océan Indien une zone de paix, participer au dialogue ou plutôt à l'affrontement Nord/Sud au profit du sud sous-développé, participer aux discussions ACP/CEE au profit des pays ACP, tout cela est plus que louable. Ce que nous nous considérons obligés de rappeler, c'est que la réalité contredit cela. Malgré que le Parti travailliste, à travers son président et son secrétaire général, ait demandé à participer à la conférence des partis et organisations progressistes des îles du sud ouest de l'Océan Indien. Malgré le récent voyage du Premier ministre et d'une délégation ministérielle en Libye, malgré la déclaration positive — et je félicite le Premier ministre de l'avoir faite, rapidement hier — en faveur du peuple palestinien, nous sommes obligés d'attirer l'attention sur un certain nombre de contradictions, et sur un certain nombre pour nous de positions qui ne sont pas acceptables. Je pense que certains sont en train d'essayer de changer la politique étrangère du Gouvernement. Très bien, très louable effort qui se traduit par les mots utilisés, donc, dans le discours du Trone. Mais, les mentalités ne changent pas aussi facilement, et certaines réactions que nous avons vues ici même ces derniers jours nous permettent de le constater. En effet, premièrement, au moment même ou le discours du Trone déclare que l'île Maurice va participer pleinement au mouvement des pays non-alignés,au moment même ou l'île Maurice établit des relations diplomatiques avec Cuba, au moment donc où mon ami l'ambassadeur posté à Tana-

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narive, Cardozo, viendra visiter l'Ile Maurice, c'est précisément à ce moment que le ministre des affaires étrangères a choisi, il y a à peine quelques jours, pour s'attaquer à Cuba, pour poser la question " Cuba *non-aligned* ? " sur un ton agressif qui n'était pas nécessaire dans ce contexte. Nous savons tous que Cuba a les positions que Cuba a. La coincidence veut que le mouvement des pays non-alignés se réunissent au sommet cette année à Cuba. Nous demandons de ce côté de la Chambre que le Premier ministre se rende à Cuba pas parceque c'est Cuba, mais parceque c'est la conférence au sommet des non-alignés. Ils se réuniront ailleurs à un autre moment. Si on s'y rend pour critiquer le non-alignement — ce n'est pas aussi simple que ça — mais l'alignement de Cuba, faites-le, si c'est votre conviction, faites-le, c'est la notre que Cuba n'est pas suffisamment non-aligné, mais ne boycottez pas, et n'attaquez pas sans explication Cuba au moment où vous établissez des relations diplomatiques officielles. Je dois faire remarquer que cela, que quand même l'île Maurice aura fait bien du chemin — je regardais ce matin même, j'ai oublié d'apporter le journal en question, je crois que c'était à la veille de l'élection partielle de Vacoas-Phœnix, une belle photo dans le journal travailliste " *Nation* " une photo de Guy Sinon, ministre des affaires étrangères des Seychelles, de moi-même, et moi je suis entre Guy Sinon et un ami personnel à moi, Cardozo, qui est ambassadeur à Madagascar de Cuba et qui sera donc accrédité auprès de l'île Maurice, et toute une tartine, " Subversion dans l'Océan Indien ", et le pauvre Cardozo n'en a pas cru ses yeux lorsque je lui ai porté le journal, " le pauvre Cardozo qui est l'agent numéro 1 de la déstabilisation communiste ", tout ça aujourd'hui est réduit à quoi ? Heureusement à rien du tout dans la mesure où ce sera, ce même déstabilisateur professionnel qui va venir à l'île Maurice représenter officiellement le Gouvernement de Cuba.

Deuxième point où nous constatons un désaccord ou plutot une contradiction...

The Prime Minister : Avec Georges Marchais aussi.

An hon. Member : Marchais a demandé le retour de Tromelin, ne parlez pas de Marchais ! Marchais est le stabilisateur !

Mr. Bérenger : I'll come to that.

J'en viens au deuxième point, le Moyen Orient. Oublions les faux pas passés, ce n'était pas des pas dans la bonne direction, plutot dans la mauvaise direction mais oublions cela. Oublions les félicitations, l'appui officiel à Camp David, au voyage de Sadate à Jérusalem etc. Ça c'est le passé. C'est avant le grand voyage en Libye. Oublions aussi les félicitations empressées au pauvre Bhaktiar en Iran. Oublions cela, venons à la situation actuelle où le ministre des affaires étrangères a jugé bon de déclarer — pour une fois il a essayé de ne pas dire beaucoup, il a dit une petite phrase, naturellement pas la bonne — que le traité de paix qui vient d'être signé est un pas dans la bonne direction. Chaque ministre a la dignité qu'il a. La déclaration d'hier du Premier ministre, je laisse le soin au ministre des affaires étrangères de la comparer au pas dans la bonne direction qu'il avait jugé nécessaire de prendre à peine une semaine plus tôt. Mais enfin, dans le Moyen Orient le tir est rectifié. C'est très bien mais j'espère quand même que ce ne sera pas simplement quelque vœu pieux, qu'une déclaration comme ça. Le Gouvernement devrait faire tout ce qu'il peut aux Nations Unies, à l'OUA, ici-même vis-à-

vis des Etats Unis pour obtenir d'abord que tous les territoires occupés par Israël après 1967 soient évacués, que Jérusalem en particulier retourne à son statut d'avant 1967, que le peuple palestinien ait un état, ait une terre, ait un pays à lui. J'estime donc qu'il faut que le Gouvernement, quoique l'île Maurice soit un petit pays, fasse pression dans cette direction. Sur l'océan indien, nous considérons choquant de ce côté de la Chambre qu'après les évènements en Iran, le Président René d'un tout petit pays de moins de 100,000 habitants, comparé à notre pays d'un million d'habitants, que le Président René le premier ait réagi et envoyé un message au Président Carter pour protester contre la décision américaine d'intensifier sa présence militaire, pour demander qu'il n'y ait pas une nouvelle flotte de guerre américaine postée dans l'océan indien. Le Président René du petit pays seychellois a le premier réagi. Le Président Ratsiraka a réagi lui aussi et a envoyé lui aussi un message de solidarité au Président René et est intervenu auprès du Président Carter mais l'île Maurice n'a pas réagi à ce jour. Aucune réaction, la servilité habituelle ! Là je suis obligé de venir m'étendre quelque peu sur ce que le président du parti travailliste a dit, sur le cours d'histoire absolument faussée que le président du parti travailliste a jugé utile de nous faire hier. Je n'avais pas l'intention de m'étendre là-dessus mais le président du parti travailliste l'ayant fait, je suis obligé de réfuter ce qu'il a dit et de mettre les faits devant la Chambre.

Le président du parti travailliste est venu nous dire, en quelques mots, d'abord en 1965 le Gouvernement mauricien d'alors, le parti travailliste essentiellement, ne pouvait rien faire. Deuxièmement, qu'il avait été entendu dès le départ, que le Premier ministre et le ministre des finances avaient compris dès le départ, qu'il s'agirait d'une base de communications, un point c'est tout et ensuite, à partir de petites coupures de différents journaux il a essayé de prouver que le parti travailliste a pris position comme il fallait le prendre en ce qui concerne l'océan indien. Je regrette, mais cela n'est pas la vérité historique. Revenons donc aux choses sérieuses. 1965, l'archipel des Chagos est détaché de l'île Maurice de même que certaines îles seychelloises pour former le *British Indian Ocean Territory*. Ce n'est pas sérieux de réagir à partir de coupures de presse. Lisons plutôt ce qui est déclaré à l'Assemblée Legislative le 14 décembre 1975 en réponse à une question de Monsieur J. R. Rey, Monsieur Robert Rey donc, qui n'est pas présent, député de Moka à cette occasion. J'ai pris cela au Secrétariat il y a déjà plus de cinq ans parcequ'entre temps nous nous sommes renseignés, — le Secrétariat de la Chambre nous l'a communiqué " *Extract from Debates of* 14*th December*, 1965. *Mr. Forget on behalf of the Premier and Minister of Finance tabled a reply to a parliamentary question.*" Donc ça c'est sur le premier point que le Gouvernement ne pouvait rien faire, que Diégo et les autres îles ont été détachés et que nous ne pouvons rien faire. Le ministre qui remplace donc Sir Seewoosagur Ramgoolam, pas encore "Sir" en ce temps là, dépose sur la table la réponse à la question et il dit ceci : "*In reply to a parliamentary question, the Secretary of State made the following statement in the House of Commons on Wednesday November the* 10*th*, " *With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order-in-Council made on the* 8*th November*."

Voilà la vérité et d'ailleurs le Premier ministre l'a dit ici, je le citerai tout à

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l'heure. Je le répète " *With the agreement of the Governments of Mauritius and the Seychelles etc.*" L'accord du Gouvernement mauricien a été obtenu, le Gouvernement d'alors, le Gouvernement du parti travailliste. Premier point donc, cela. Le premier ministre a eu le temps : 1965, 1967, 1968, 1969 on n'entend pas grand'chose sauf en ce qui concerne le PMSD — je viendrai là-dessus tout à l'heure. Mais finalement à l'Assemblée, le 26 juin 1974 en réponse à Dev Virah Sawmy, dans cette Assemblée même, le Premier ministre, Sir Seewoosagur Ramgoolam parlant de Diégo Garcia, dit ceci : " *The Government of Mauritius was nevertheless informed after we had discussed in England that this had taken place* — c'est-à-dire le détachement des îles — *and we gave our consent to it.*" Les mots prononcés par le Premier ministre dans le Hansard officiel. " *It was not done like this. But the day it is not required it will revert to Mauritius. But Mauritius has reserved its mineral rights, fishing rights and landing rights* — je viendrai là-dessus tout à l'heure, dans une réponse à une question parlementaire il répond exactement le contraire, il y a peine quelques mois — *landing rights and certain other things that go to complete in other words some of the sovereignty which obtained before on that island. That is the position. Even if we did not want to detach it I think* — un Premier ministre parlant de l'intégrité territoriale de son pays — *even if we did not want to detach it* — avant il a dit " *we gave our consent to it* " catégoriquement — *even if we did not want to detach it I think from the legal point of view Great Britain was entitled to make arrangements as she thought fit and proper. This in principle was agreed even by the PMSD who was in the Opposition at the time and we had consultations etc.*" D'abord, il vient dire catégoriquement que le parti travailliste donna son *consent* au détachement de ces îles et en fait de quelle loi parlons-nous ? Vous rirez peut-être mais ça fait des années que j'ai demandé au secrétariat de cette Chambre de me faire avoir copie. C'est à partir de ce petit bout de papier. C'est tout le texte de loi qui a permis au Gouvernement britannique de détacher tous ces territoires de l'île Maurice. C'est tout. Le *Colonial Boundaries Act* de 1895 et que dit le *Colonial Boundaries Act ?* " *Alteration of boundaries of Colony : Where the Boundaries of a Colony have etc etc.*" on peut changer " *provided* (*2me clause*) *that the consent of a self-governing Colony shall be required for the alteration of the boundaries thereof*". En d'autres mots, non seulement, le Gouvernement, le parti travailliste d'alors avait les moyens même légaux de protester mais ce n'était pas une protestation légale qui s'imposait. C'est en fait une protestation politique et le Premier ministre a au moins eu la décence de dire qu'il donna son *consent*. D'après mes renseignements c'est uniquement le Premier ministre et le ministre des finances qui furent associés aux discussions avec le Premier ministre d'alors, Sir Harold Wilson. Donc, le point-clé c'est qu'ils donnèrent, le parti travailliste donna, son *consent*. Mais je vais plus loin. Puisque le Premier...

The Prime Minister : We had no choice.

Mr. Bérenger : You had a choice.

Mais je vais plus loin. Après que le 27 avril 1975, lorsque les Anglais s'en vont, on a honte en relisant tout ça. Seulement le président du parti travailliste choisit les journaux qu'il lit. " Maurice regrette le départ des Britanniques " En Avril 1975, lorsque les Britanniques quittent le HMS Mauritius et s'en vont. " *It*

is a tearing away of hearts ", a déclaré hier Sir Seewoosagur, Premier ministre en invoquant le retrait du HMS Mauritius. Sir Seewoosagur a déclaré qu'il aurait souhaité qu'une telle décision ne fusse jamais prise ". Ce n'est pas *Le Militant* ou *Le Peuple*, mais *Le Nation*, journal travailliste qui rapporte les cérémonies déchirantes " *a tearing of hearts* ". Ça, c'est le 27 avril 1975, quelques mois plus tard — puisque le président du parti travailliste aime collectionner les coupures de journaux, le 26 septembre, 1975 " Conférence de Sir Seewoosagur Ramgoolam à Londres ". Je cite *l'Express* du 26 septembre 1975. Titre : "La Grande Bretagne a le droit de construire une base à Diégo " Texte : "La Grande Bretagne a le droit souverain de faire construire dans l'ilot de Diégo Garcia une base aéro-navale pour le compte des Etats Unis." Le reste suit. „ Mais tous les pays riverains de l'océan indien espèrent qu'il sera possible de transformer cet océan en une zone de paix, a déclaré mercredi le Premier ministre, Sir Seewoosagur Ramgoolam " rapporte l'AFP. En d'autres mots, il reconnait le droit souverain aux Anglais de faire ce qu'ils veulent de Diégo Garcia et ensuite on va venir nous citer je ne sais combien de bouts d'interviews raccolés ci et là. Voilà les faits. On ne peut pas réfuter, qu'en 1965 ces îles furent détachées de l'île Maurice " *in agreement with the Labour Party, with the Government* " d'alors, que le Gouvernement avait les moyens non seulement politiques mais légaux de le contester et qu'ils ne l'ont pas fait.

Maintenant je passe au deuxième point que il fut toujours clair au dire du parti travailliste, qu'il ne pouvait s'agir que d'une base de communications. Lisons le même texte que l'*Acting Prime Minister*, l'hon. Forget, déclare à cette Chambre. Il continue " *It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments* ". Dès 1965, dès le 14 décembre 1965. Et plus loin " *If the British Government decides that the Chagos Archipelago is no longer required for defence purposes, the islands will be returned to Mauritius.*" " Communications ", cherchez où vous voulez, il n'y a pas, on ne parle pas de " Communications Centre ". Le texte officiel lu par l'*Acting Prime Minister* ici parle lui-même de " *defence purposes* ". D'ailleurs, j'ai pris la peine de relire tous les journaux de l'époque. A partir du 9 août, *le Mauricien* pose des questions " La question d'une base anglo-mauricienne à Diégo serait actuellement la clé de notre avenir constitutionnel ". Le 5 octobre, feu Jules Kœnig déclare à propos de la base „ Je ne sais rien qui puisse être publié. Les conclusions sont au stade confidentiel." Déclaration de feu Jules Kœnig au journal *Le Mauricien*. Il y a plus : le 6 novembre, meeting PMSD du 5 novembre, rapport le 6, à Rose Hill. Je cite tel quel ce que *Le Mauricien* rapporte : " Un membre du public — 1965 toujours là, toujours en pleine conférence constitutionnelle — Charles Gaëtan Duval parle „ Un membre du public : Parlez-nous de la base. Quelqu'un qui crie dans la foule. Monsieur Duval dit qu'il ne peut reveler les secrets du Conseil des ministres. "Personnellement, Monsieur Duval n'est ni contre les Américains ni contre les Anglais. Il réclame d'ailleurs une forme d'association, l'installation d'une base n'est pas sans risque mais il se déclare d'accord pour une base si d'abord ils obtiennent un prix de sucre et deuxièmement un contingent d'émigrants. Donc, le PMSD lui-même reconnait que c'est d'une base qu'on parle et que cela présente des dangers pour l'avenir mais on est encore en train de marchander

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émigration, quota de sucre. Ça continue et, au cours d'une conférence de presse que tient le PMSD immédiatement après la rupture de la coalition d'alors, le 12 novembre, Conférence de Presse du PMSD. " Je tiens à déclarer ", Jules Kœnig parle, rapporté par *Le Mauricien* „ Je tiens à déclarer de la façon la plus formelle que le PMSD n'est pas contre le principe de céder les Chagos, ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident — et là on joue sur les mots — le PMSD en approuve le principe ; il est en désaccord sur les termes et les conditions de cette cession ". Duval, comme toujours, les pieds dans le plat ajoute, Duval est lui aussi d'accord en principe et ajoute, " Si l'Angleterre et les USA... n'avaient pas d'argent, l'île Maurice leur aurait donné la base." Qu'on ne vienne pas fausser les faits historiques. Tout cela montre que non seulement le parti travailliste, mais que le PMSD aussi était parfaitement conscient que c'était une base *for defence purposes* et pas seulement de communications et que, il y a eu en fait un faux pas historique — cela arrive à tout le monde, on peut demander que le manque d'expérience entre en considération mais qu'on n'essaie pas de fausser la vérité jusqu'à la fin de l'histoire finalement. Tout à l'heure j'entendais le ministre des affaires étrangères dire " Correct, Correct " quand je lisais, le Premier Ministre disant à la Chambre ici le 26 juin 1974 que l'île Maurice avait gardé ses *landing rights*, entre autres, à Diégo Garcia. En réponse à une question parlementaire ici à la Chambre, Question B 635, de l'Hon. Amédée Darga, qui demande " ... *state if Mauritius has retained its landing rights over the island, state if there has been any breach of agreement etc.* " Le Premier Ministre lui-même répond " *Sir, the reply to parts* 1 *and* 2 c.à.d. *landing rights, is generally negative, because it is not our territory although the plea was made during the constitutional conference, that any plane in difficulty should get the right of landing ; hence, there is no breach of any agreement* ". " *It is not our territory ; we don't have landing rights* ", et puis ici, on nous dit " correct, correct " comme si l'île Maurice avait gardé ses *landing rights.*

Le député Finlay Salesse, Question B/510 " *Will the Prime Minister give a list of all territories which constitute the State of Mauritius* ". Je me demande si le Premier Ministre, je sais qu'il est débordé de travail, mais avant de mettre des choses pareilles sur papier, est-ce qu'on ne peut pas refléchir ? On lui demande une liste " *of all territories which constitute the State of Mauritius*" et il donne la liste, " *Round and Flat Islands, Rodrigues, Agalega, Tromelin, Cargados Carajos Archipelago* ", et *Chagos Archipelago* pas question. Vous savez que le Cargados Carajos Archipelago c'est St. Brandon etc. Lui, en tant que Premier Ministre il donne une réponse parlementaire, il exclut lui, Diego Garcia alors qu'il dit ailleurs que cela nous sera retourné lorsqu'on n'en aura plus besoin. En d'autres mots, *he builds up the case against the return of Diego Garcia to Mauritius.* Naturellement Sir Harold Walter n'a pas manqué lui aussi une occasion de mettre les pieds dans le plat. Autre question, cette fois-ci, de James Burty David, président du parti travailliste, Question B/760, *asking " the Minister of External Affairs whether he will consider the advisability of arranging for a delegation of members of the Legislative Assembly to visit Diego Garcia. If not, why not ? " It is hardly possible to arrange any sort of visit to any territory which is not within this country's jurisdiction* ". Donc ce n'est pas notre territoire, c'est en dehors de notre jurisdiction. Je laisse au prési-

dent du parti travailliste le soin de se retrouver. Pour conclure, je rappellerai pour ceux qui nous disent qu'on n'a pas vendu Diégo Garcia, je rappellerai que le *Financial Return*, c.à.d. le *Financial Report* — je crois que tous les membres savent que chaque année il y a les *Estimates*, et puis après une année d'exercice financier, l'*Accountant General* dépose son rapport pour l'année écoulée, il certifie que les sommes ont été dépensées ; telle somme, telle somme etc. Il certifie, en tant qu'*Accountant General*. Dans le rapport de l'*Accountant General* donc, pour l'année 1965-66, *Statement* (G) *Capital Revenue, Head* L15 *Miscellaneous — Sub-heading* 4 — *Sale of Chagos Island* — 40 *millions of rupees*. Donc, le Gouvernement lui-même, dans ses propres comptes financiers, a fait inclure 40 millions de roupies, représentant *the sale*, la vente, pas la cession, mais *the sale*. Donc je crois, M. le président, qu'il était nécessaire d'être un petit peu long, pour bien préciser les choses, et je crois que l'heure est arrivée pour le parti travailliste, au nom du bien du pays,et de son intégrité pour une fois, de faire son *mea culpa* et de se joindre aux autres pour obtenir que la base de Diégo Garcia, soit démantelée tout de suite et que l'île de Diégo Garcia soit rendue à l'île Maurice dans les plus brefs délais.

Pendant que je suis sur cette question de l'océan indien, je parlerai aussi donc de Tromelin, et de Saya de Malha rapidement. Dans le cas de Tromelin, nous nous élevons contre la déclaration faite par le Ministre des affaires étrangères. Nous ne pouvons pas accepter sa suggestion d'un tribunal international — je me demande si le Premier Ministre lui a donné le feu vert pour ça — nous sommes ici au cœur de l'océan indien ; Madagascar est à côté, les Seychelles sont là ; il y a une géopolitique explosive dans notre région que le président du parti travailliste lui-même souligne le premier. La géopolitique, la décolonisation exige que ces îles soient rendues à Madagascar ou à l'île Maurice. Dans le cas de Tromelin, Madagascar a reconnu officiellement que Tromelin devrait retourner — à moi le Président Ratsiraka a dit " Nous n'allons quand même pas nous battre entre nous. L'important est que la France ne reste pas dans cet océan indien à travers des mini-colonies pareilles ". Le Président Ratsiraka m'a dit à moi donc, " Maurice revendique Tromelin, nous revendiquons Les Glorieuses, Bassas da India, Juan de Nova ". Est-ce que nous pouvons accepter que sur la base de pseudo-légalisme, la France transfère Madagascar à partir de tout un chapelet d'îles. Ce n'est pas sur le terrain légal qu'il faut se battre ; même le terrain légal est solide ; mais ce n'est pas sur le terrain légal qu'il faut se battre, mais sur le terrain géopolitique, sur le terrain diplomatique. Je demande donc au Gouvernement, de faire un pas dans la bonne direction pour de vrai, pour une fois de corriger le tir, de ne pas suivre cette ligne d'un tribunal international, avec un juge international etc. mais plutôt de s'associer aux Seychelles, à Madagascar, au Mozambique, à la Tanzanie, aux pays de la région, pour exiger que Tromelin soit rendu à l'île Maurice et que Juan de Nova, Bassas de India et Les Glorieuses soient rendus à Madagascar. Il est révoltant que tout à l'heure — encore une fois c'est la nature profonde du réactionnaire qui parle, il est étonnant qu'au moment où Ratsiraka prend position officiellement en faveur du retour de ces îles à Madagascar et à Maurice, au moment où Georges Marchais, Secrétaire-Général du Parti Communiste français, à la Réunion — vous savez que Tromelin dépend de la Réunion administrativement, le Préfet de la Réunion administre Tromelin, notre

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territoire — Georges Marchais vient faire la leçon à Sir Harold Walter, à la Réunion — et lui se permet ici au lieu de se servir de cet argument, au lieu de prévoir l'avenir où il est inévitable que la Gauche arrive au pouvoir en France, à ce moment-là il faudra déterrer cette déclaration du Secrétaire-Général du Parti Communiste et le lui mettre sous le nez pour obtenir que Tromelin nous soit rendu. Au lieu de cela, on se moque de Georges Marchais, on fait de l'ironie aux propos de Georges Marchais. Donc, nous demandons en ce qui concerne Tromelin, que le Gouvernement ...

(*Interruption*)

Mr. Bérenger : If you don't even know what you say, it's not my fault.

Sir Harold Walter : Je n'ai rien dit.

M. Bérenger : Pour une fois je vous félicite.

Je passe maintenant à Saya de Malha. Sur Saya de Malha, j'ai entendu avec intérêt, lorsque mon collègue Doongoor parlait, j'ai entendu avec intérêt, quoique cela n'a pas été rendu public, le ministre des affaires étrangères dire, " D'après ce que les Soviétiques ont déclaré ..." Qu'ont déclaré les Soviétiques ? Nous avons dénoncé les Soviétiques. Je me souviens d'un grand placard sur neuf colonnes dans *Le Militant* — Pillage des banc de Saya de Malha et de Nazareth — Les coupables : Coréens, Japonais, Soviétiques " C'était resté dans la gorge des Soviétiques, en passant. Qu'ont dit les Soviétiques ?. Les Soviétiques ont dit " Nous pêchons sur Saya de Malha ; en dehors de la zone des 200 milles ". Or tout le monde sait, enfin, plutôt dans le Gouvernement, très peu savent mais tout le monde ailleurs sait que quand on mesure la zone de 200 milles ...

(*Interruption*)

— je vais vous prouver comment vous ne savez pas, dans quelques minutes — quand on mesure la zone de 200 milles à partir d'Agaléga, dernier territoire mauricien, le territoire mauricien le plus rapproché des bancs de Saya de Malha, lorsqu'on mesure la zone de 200 milles, nous coupons à peu près un dixième des bancs de Saya de Malha, moins d'un dixième. Tout le reste tombe en dehors de la zone des 200 milles. Quand on coupe 200 milles, à partir de Coetivy, la dernière île seychelloise la plus rapprochée des bancs de Saya de Malha, on coupe encore un plus petit bout, presque rien des bancs de Saya de Malha. Ce qui veut dire que la vérité, est que 90 p. 100 des bancs de Saya de Malha tombe en dehors des 200 milles. Qu'est-ce que nous sommes en train de dire ? Nous sommes en train de dire nous, que l'île Maurice et les Seychelles ont des revendications sur les bancs de Saya de Malha, en dehors des 200 milles, non pas en se basant sur le concept des 200 milles mais sur le concept du plateau continental et des eaux historiques, du droit historique sur certaines eaux de cette région, mais malheureusement la vérité nous oblige de reconnaître ces deux autres concepts. La zone de 200 milles est aujourd'hui acceptée par les Nations Unies. La conférence n'a pas encore terminé ses travaux. Mais je pense que le ministre desaffaires étrangères est suffisamment informé pour savoir que le concept des 200 milles est accepté, ça, c'est un acquis, quoique ce ne soit pas encore officiellement dans un texte des Nations Unies, mais tout le monde l'accepte, cette zone. Mais les deux autres concepts du plateau continental et des eaux historiques ne sont pas encore

région de l'océan indien, mais en même temps nous disons que ce pays ne sortira pas — et cela le discours du Trône aurait dû l'avoir dit clairement — ce pays ne sortira pas de la situation présente s'il ne prend pas un nouveau départ. Pour cela pour nous, quelles conditions doivent être remplies ? D'abord, je le repète, que l'exemple vienne d'en haut, réduire le nombre de ministres, réduire symboliquement ne serait-ce les salaires des ministres, abolir les privilèges de *duty free*, éliminer les scandales, révoquer les nominations scandaleuses dans les ambassades, arrêter les ingérences politiques dans l'administration, le protectionisme, la politique des petits copains. L'exemple doit d'abord venir d'en haut, chaque jour que nous perdons est un drame pour le pays. L'exemple vient d'en haut d'abord. Deuxièmement, il faut un Gouvernement en lequel les travailleurs, les syndicats se reconnaissent, il faut un Gouvernement en lequel d'abord les syndicats se reconnaissent, un Gouvernement qui révoquera l'IRA, qui le remplacera par un texte de loi permettant la démocratie industrielle, qui réformera les entreprises, qui donnera le vrai pouvoir aux salariés, troisièmement, cela vient rejoindre ce que mon Collègue, Rajeev Servansingh avait dit sur le *self-reliance*, troisièmement il faudra promouvoir un nationalisme sain, mobilisateur, que tout ce peuple mauricien se sente un peuple, une nation, en marche vers un avenir. Quatrièmement, qu'il faut qu'il y ait étape par étape avec les nationalisations, les réformes fiscales, la démocratisation et la décommunalisation de la vie politique en général, il faut qu'il y ait un programme socialiste sur lequel s'appuierait un tel Gouvernement. Ce n'est que dans ces conditions que, de notre point de vue, on pourra parler de relance de la production, de relance de la productivité. Nous constatons malheureusement que le Gouvernement actuel ne peut pas le faire. Je le dis avec beaucoup de chagrin dans le cœur, nous constatons aussi qu'il nous serait impossible nous autres d'entrer au Gouvernement actuel et de résussir à faire cela. Nous entrerions au Gouvernement pour devenir des ministres, nous ferions certainement mieux que la plupart des ministres, certainement, mais le pays ne prendrait pas un nouveau départ, il n'y aurait pas cette relance, ce nouveau départ du pays. C'est pourquoi nous disons nous entrons au Gouvernement, cela ne change en rien fondamentalement au sort du pays, c'est pourquoi nous resterons donc dans l'Opposition. Mais nous demandons au Gouvernement soit de prendre ce chemin, mais nous considérons qu'il ne peut pas prendre ce chemin, nous considérons qu'il est condamné, qu'il est prisonnier de ses différences de classe, qu'il est prisonnier de ses choix politiques passés, qu'il ne peut pas le faire. Donc nous considérons, le cœur lourd, que dans le pays la situation va aller s'empirant, chômage, endettement, dévaluation possible, explosion sociale, dans un an, deux ans, trois ans. C'est dramatique, mais nous sommes en train d'évoluer à rebours de la situation 1969/70 ou le chômage était explosif, la situation était catastrophique, le prix du sucre nous a permis d'aller vers une situation d'emploi, de création d'emplois et de chômage camouflé, parceque cela aussi il faut le dire le prix du sucre nous a permis de camoufler le chômage avec des baisses de productivité qui s'ensuivent, aujourd'hui nous sommes dans l'évolution inverse, nous allons vers la catastrophe. C'est pourquoi non pas au nom du parti, mais au nom du pays, nous estimons étant donné que nous sommes persuadés que le Gouvernement ne peut pas sortir le pays de la situation où il est, ne peut pas lui permettre de prendre un nouveau

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départ, nous considérons que nous ne pouvons pas décemment vis-à-vis de notre moral, vis-à-vis de nos engagements, vis-à-vis du pays, et vis-à-vis de l'avenir de ce pays, que nous ne pouvons pas entrer au Gouvernement parceque nous étoufferions dans un carcan qui mène le pays vers la catastrophe, nous estimons étant donné que le Gouvernement n'a plus véritablement une majorité, étant donné les méthodes abjectes dont nous venons d'être témoins, et qui font qu'à Beau Bassin/Rose Hill ce qui se passe, met en jeu l'avenir du pays lui-même, est extrêmement grave pour tout le pays, et nous considérons troisièmement étant donné la situation dramatique qui se développe du côté de l'économie, du côté de l'éducation, et en termes de politique intérieure aussi, nous estimons qu'à ce stade il serait préférable de permettre à la population mauricienne de se prononcer. Qu'on aille donc à de nouvelles élections générales, que la population se prononce, d'un côté ou de l'autre, son verdict finalement aura force de loi et au moins, le pays, souhaitons-le, pourra respirer après cela.

Voilà donc ce que nous estimons de ce côté de la Chambre ce que j'estime — j'ai été très long — de ce côté de la Chambre que ce discours du Trône devrait contenir, mais que malheureusement il ne contient pas.

Merci, M. le président.

→ **Mr. C. Mourba** (First Member for Port Louis North and Montagne Longue) : Mr. Speaker, Sir, of course, I shall not be as long as my Friend has been. I shall try to be as brief as I can and before I begin my speech, Mr. Speaker, Sir, I would like to congratulate the Third Member for Quartier Militaire and Moka for his last intervention because I consider his intervention to be an able one, a clear one and a courageous one. Sir, in fact too much has been said upon our foreign relationship. The hon. First Member for Belle Rose and Quatre Bornes had spared no effort to speak on Tromelin, Diégo Garcia and so on.

I am aware that my hon. Friend, the First Member for Belle Rose and Quatre Bornes is not a lawyer but he is flanked on all sides by fairly good lawyers. For the hon. First Member for Belle Rose and Quatre Bornes to have said legally, to have insinuated at least, if legally enough Mauritius and the people of Mauritius through its representatives could have protested against the incidence of tearing away Diégo Garcia, Sir, anyone with an inkling of international law, I mean, public international law, not private international law which has to do with conflict of laws, having to do with marriage etc. I am saying, Sir, anyone with an inkling of public international law would ask oneself the question : was Mauritius at that particular moment in our history a sovereign territory ? Mauritius was not independent. Mauritius was a dependent land and legally speaking part of the extra territorial basis of U.K. At that moment in our history, we had two courses to follow. We could either have followed the legal procedure that is attended upon by the force of negotiation at diplomatic levels or we could have, as a people, declared war and opened war against Great Britain. We had only two courses open to the island which is a very small one at that, either we follow diplomatic courses at procedural levels or we declare war against Great Britain. And at that time guerilla warfare and all that was not yet imported into our local political parlance. In my opinion the people of the day who had limited powers because powers were being wielded from Westminister, the

men of the day did what they could. They had a very narrow space to manœuvre. They did not have the opportunity to do otherwise ; they were not speaking as representatives of an independent nation.

Sir, even if these men wanted to go before an international forum, we know what the International Court of Justice is, apart from declaratory judgment, apart from the fact of giving legal opinions on certain factual data — we know, going to the International Court of Justice would not have meant much ; but it is very good to stand up, to speak up and to say that it could all have been done in a better way. I am only saying at least the hon. Second Member for Belle Rose and Quatre Bornes, in an attempt not to defend certain people, but to situate history in its right perspective, has made certain quotations from certain valuable newspapers, the hon. Second Member for Belle Rose and Quatre Bornes has tried and successfully so, I believe, to situate the problem in its real perspective. No one in Mauritius, no one on this side of the House is happy with the actual predicament in the Indian Ocean. What should be congratulated is the fact that at least in 1964/65, we were not sovereign, we were not independent. Things were forced upon us but to-day we have taken conscience of it all. The Prime Minister again and again has made public statements, both local and abroad about our position in this country. We want the Indian Ocean to remain a lake of peace, not an American lake nor a *mare sovieticum*.

I am not going to labour the Diégo Garcia problem. Anyone in this country, would have done what these men did at that time, unless it were a revolutionary party which would have taken to guerilla warfare. And there can be no guerilla warfare in this country. All our mountains are naked and bare. A simple helicopter would catch all the guerilleros of this country. There are no objective conditions for guerilla in this country. So I am speaking to my ex-associates. In 1965 what would they have done if they were in the shoes, in the skin of the actual Prime Minister ? No more, no less but I am not going to labour a point which the hon. Second Member for Belle Rose and Quatre Bornes has already done so well.

Sir, the hon. First Member for Belle Rose and Quatre Bornes has mentioned the problem of the Middle East. We are all aware that the Palestinian cause is a genuine one, it is a cause to be supported ; but as a back bencher of this Government, being free to speak my personal opinion, I am saying in trying to reach a peaceful solution in the Middle East, there must be compromise on either side.

It is not a question where one side is going to invade another side to its last entrenchment. I am saying that in the Middle East, there must be a vision based on compromise, on tolerance and on mutual understanding. Although we are not 100 per cent in agreement with the Peace Treaty, I repeat, Sir, although we may not be hundred per cent in agreement with the Peace Treaty of Egypt and Israël, yet one must be bold, must be courageous enough to say that Mr. Sadate, at least one man rising against a world of many, has had the courage to take the first step. I am not congratulating him for what he did. Still less am I condemning him. But I am finding out a fact that at least Mr. Sadate of Egypt took the first step. Whether he will be thrown into the dustbin of Middle East history, I do not know, Sir, but I for one, without

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engaging this Government, speaking as a backbencher, I say that I believe in a moderate attitude towards critical problems. Sir, when you have got a crisis, it is not a man with high fever who will come and solve the critical situation out of it. It is a man with a cold head. It is a man with some moderation. Everywhere in the world where moderate men have come towards crises, they have solved critical problems ; but where people with high political temperament based on ideological extremism have tackled such problems they have only grafted upon one problem, a thousand ones more.

I am saying, I for one, I am not condemning Mr. Sadate. I am not congratulating him but I am saying he took the first step and others now may do the rest and finish the arduous jobs. Perhaps better than he did, perhaps he has not been reasonable at all, but follow him at least in that pursuit of peace.

Sir, having listened to the hon. First Member for Belle Rose and Quatre Bornes one would be tempted to think that we are living in a continent, full of mineral wealth, thinly populated, almost in a cold region, one would think that Mauritius is not Mauritius but we are living somewhere in a quiet cool corner with a high standard of living as in Europe. But this country, Sir, is poor, very poor. Apart from sugar, we do not have anything in terms of economic productivity. Our tea is not in economic terms, a productive commodity. Apart from sugar, we have no underground wealth. We have no mineral resources. We are walking on one leg, a monocrop economy based on sugar. We are being visited by cyclones, if not by anti-cyclones year in year out. We are a tiny speck of a country. We are small. We are not larger than Surrey in England. And if you take a few golf courses in England, that would be enough to make Mauritius. We are not living in a big continental mass of land. It is a tiny speck. We are devoid of mineral wealth, underground resources, only sugar and this is battered by cyclonic occurrences year in and year out. And what is worse, Sir, we are living in the midst of a fragile society made up of multi-racial components.

If you have all these problems and then you have a bomb in it called literacy, — we have given free education. Our people are the most literate people in Africa. You are poor, you are over-populated, you are small, and you are highly literate. Mr. Speaker, Sir, it is no wonder that this country despite its poverty, despite its tininess is considered to be the fourth or the fifth richest country in Africa after South Africa, Libya, Gabon, and Nigeria. I repeat, Mr. Speaker, this country despite its physical tininess, its poverty of natural resources, its over-population, its multi-racial social texture, is fourth or fifth of the richest country in Africa after South Africa, Libya, Gabon and Nigeria, and to whom does the credit go ? Mr. Speaker, Sir, just now the hon. First Member for Belle Rose and Quatre Bornes was speaking about the POA. But, Mr. Speaker, Sir, there are lawyers on the other side who have studied the Public Order Act. The Public Order Act does not cut only on one side. If somebody with a legal understanding reads the Public Order Act, even the Chief Justice and the Prime Minister can be arrested under the Public Order Act. I challenge any lawyer in this country to tell me if according to the Public Order Act the Chief Justice cannot be arrested in his slippers, and the Prime Minister in his pyjamas. This is in the Public Order Act. I have studied it many times. So, when

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Mauritius Legislative Assembly, *Reply to PQ No. B/967* (20 Nov. 1979)

Mr. Jagatsingh : The hon. Member is quoting from the Constitution. As far as I know, I sought legal advice and this is the advice I have got and I have given to the House.

CHA HOUSES — ALLOCATION

(No. B/964) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister of Housing, Lands & Town & Country Planning whether, in regard to the allocation of Central Housing Authority houses, he will state :-

(1) his policy ; and

(2) if priority will be given to the eligible persons living in Plaine Verte and Camp Yoloff for houses built there.

Mr. E. François : Sir,

(a) the policy is laid down in a paper which is being circulated.
(*Appendix VIII*)

(b) This policy will be followed strictly.

CONSUMER COOPERATIVES

(No. B/965) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister for Prices and Consumer Protection whether he will say when essential commodities will be delivered direct to consumer co-operatives and give a list of those commodities.

Mr. Virah Sawmy : Sir, delivery will start as soon as the financial and other arrangements are completed. The essential commodities will include to begin with rice, flour, sugar, edible oil, laundry and toilet soap, split peas and eventually cement and iron bars.

"NO PARKING" AREAS — PORT LOUIS — TOWING AWAY OF VEHICLES

(No. B/966) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister of Works whether, in regard to the proposed towing away of vehicles on "No Parking" areas in the commercial centre of Port Louis, he will say what decision has been taken following the recommendation of the Joint Traffic Committee of the Municipality of Port Louis.

Mr. Bussier : Sir, the matter is being discussed with the Police authorities and the Ministry of Finance, in as much as it involves purchase of new equipment and recruitment of additional personnel.

Mr Gendoo : Does the hon. Minister think that the towing away of vehicles will improve the traffic conditions in the centre of Port Louis ?

Mr. Bussier : This is being done in many countries.

DIEGO GARCIA — RETURN TO MAURITIUS

(No. B/967) Dr. B. David (Second Member for Belle Rose and Quatre-Bornes) asked the Prime Minister whether, in view of the fact that the militarization of Diégo Garcia is a serious threat to peace in the whole of the Indian Ocean, he will state :

(1) if there are any indications that Diégo Garcia will soon be returned to Mauritius ;

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(2) whether he will show greater political will to recuperate Diégo Garcia and whether he will make a statement thereon ;

(3) whether he has already discussed the Diégo Garcia issue with the United States Government ;

If so, what has been the outcome of the discussion.

If not, will he initiate immediate negotiations thereon and, if not, why not ; and

(4) whether he will say when and with whom he last discussed the Diégo Garcia issue and with what result.

The Prime Minister : Yes, Sir. The answer is as follows :

(a) The islands will be returned to Mauritius if the need for the facilities there disappeared. How soon this will be done, I cannot say.

(b) The Government believes that the best way of trying to recuperate Diégo Garcia is by patient diplomacy at bilateral and international levels, and no opportunity is lost towards this end.

(c) The United States Government is aware of our stand on this issue and we shall no doubt press our view point when opportunity arises.

(d) It is difficult to give precise dates, but whenever opportunity arose, discussions took place with the United Kingdom.

Mr. Bérenger : Sir, the last part of the question was whether he will say when and with whom he last discussed the Diégo Garcia issue. Can the hon. Prime Minister confirm that he discussed that issue this morning with Vice Admiral Foley who has just flown to Mauritius in a military plane ?

The Prime Minister : My hon. Friend is full of irrelevancies, Sir.

MULTINATIONALS OPERATING IN MAURITIUS

(No. B/968) Dr. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Minister of Finance whether, in regard to the multinationals operating in Mauritius, he will state —

(1) their names ;

(2) the names of the members of the Board of Directors of each company ;

(3) the goods they produce and the countries where they are sold ;

(4) the nature of the control exercised by Government thereon ; and

(5) the amount of money which they took out of the country for each of the years 1975 to date.

Sir Veerasamy Ringadoo : Sir, the information is being compiled and will be circulated as soon as possible.

PRIME MINISTER — PUBLIC ENGAGEMENTS 20.11.79

(No. B/969) Mr. G. Fokeer (Third Member for Grand'Baie and Poudre d'Or) asked the Prime Minister whether he will give a list of his public engagements for Tuesday 20th November, 1979.

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Mauritius Legislative Assembly, *The Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980), Committee Stage* (26 June 1980)

(10.26 p.m.)

The Attorney-General and Minister of Justice (Mr. Chong Leung) : Mr. Speaker, Sir, I move that the Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980) be now read a *second* time.

This Bill seeks to amend the Interpretation and General Clauses Act 1974 by remedying certain defects which have become apparent over the years whilst at the same time making provision for certain essentially technical matters.

In the present state of our law, the definition of " State of Mauritius " or " Mauritius " does not specifically include Tromelin and the amendment proposed in the Bill seeks to remedy this defect.

Moreover questions relating to the service of process on corporations generally and their representation in Court are not free from doubt. Clauses 7 and 8 of the Bill are designed to remedy this defect by making unambiguous provisions on that particular aspect of court procedure.

In the past, the prosecution of persons for offences under several enactments has given rise to avoidable difficulties. The proposed new section 46 of the Act which is embodied in clause 9 of the Bill seeks to put the law on a more rational basis by ensuring that, although a person may be prosecuted under several enactments for the same act or omission, he will nevertheless be punished only once for offences arising out of the same act or transaction.

The Bill further provides that on the issue of any licence, permit or authority, the Government may impose terms and conditions on the licence, permit or authority not only at the time of its issue or renewal but also during its currency.

New provision is made regarding certain corporations and other bodies. These new provisions are of an essentially technical nature. At present, certain bodies cannot operate because when they are just established, all the members thereof have not been or cannot be appointed. This Bill proposes to make provision for such bodies to operate notwithstanding vacancies when first established provided the requirements regarding quorum are satisfied.

Certain bodies may not operate in the absence of the Chairman. Provision is therefore made for these bodies to carry out their activities notwithstanding the absence of the Chairman, unless the Chairman is required to be present for the purpose of a quorum.

At present there are occasionally unavoidable delays in the reappointment of the members sitting on certain bodies. This prevents business from being transacted. This Bill therefore provides for the outgoing body to operate pending the appointment of the incoming body.

With these few remarks, Sir, I commend the Bill to the House.

Mr. Purryag *rose* and *seconded.*

(10.28 p.m.)

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, this Bill again contains many provisions that are welcome by this side of the House and, there is that section 46 of the principal Act, wherein it is provided that :

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> "Where a person on the same fact may be commiting more than one offence under different enactments, he should not be made to be punished twice."

It is very reasonable. As a matter of fact, I myself have experienced a case, where, on the same fact, even under one enactment, under the Public Order Act, someone was found with an offensive weapon in his possession with which he had threatened to strike somebody else. He was prosecuted for two offences :

(1) for being in possession of an offensive weapon and

(2) for intimidation with that offensive weapon.

I personally feel that this is not correct, this is not reasonable and in fact, it becomes a persecution, ultimately.

One other thing : it is provided also that, in case of societies and corporate bodies, anybody duly authorised, can represent that body. That is also a very good measure but, Sir, we, on this side of the House, feel that, in section 3 of this Bill which deals with the definition of " State of Mauritius ", there is a great omission on the part of those who have drafted this Bill ; and, if it is, in fact, done purposely, it is a policy matter, well we believe that those who have done it must take the blame for it. Because we think, on this side of the House, that in the definition of " State of Mauritius ", wherein we are now adding the word " Tromelin ", we believe that we should have gone further and added " Chagos Archipelago ".

Sir, I do not want to go into the whole history of the Chagos Archipelago, but we know that there have been certain deals between the Government of this country when it was a colony and before independence was granted to this country, and the British Government. There was an Order in Council, by which the Chagos Archipelago was taken away from the territories forming part of Mauritius, and it has since been called the British Indian Ocean territory. There has been a lot of controversy on that, and at the beginning, we know the explanation that has been given by the Rt. Hon. Prime Minister as to what was the real transaction concerning this. We were made to understand, at one time, that we had all our rights preserved over these islands and that, as a matter of fact, only certain facilities had been granted. Well, ultimately, as time went on, we were told finally that, in fact, there has been a sale and what not ; but one thing is certain — this is very clear to everybody in this House and the country at large, this has been mentioned throughout — that in fact, there is nothing in writing, that everything was done verbally. Therefore so far as we are concerned, we understand the position to be that the only thing that there is in writing is that Order in Council, nothing else ! And that is why we maintain that, being given that we were still a colony, and being given the United Nations Resolution, that, before a colony is granted its freedom, the power which had colonised that country has no right to extract any part of its territory, therefore we consider that it was something completely unilateral and it has no validity whatsoever ; and we, in the Opposition, have made it very clear, we have even written to the British Government, stating what is our position in the MMM, and that if ever we come to power in this country, what stand we are taking as regards the Chagos Archipelago. When Mr. Luce was here recently, I conveyed this very clearly to him and I even in-

sisted that he should see to it that, even now as it is, we be allowed to use all facilities — except for Diego Garcia, where there are certain military installation, at least for the time being — that we be allowed even to make use of the other islands where there is no military installation. I can say that Mr. Luce listened to me with great attention and even promised me that he was going to raise this matter with his Government. I hope that, later on, we will hear from the British Government, we will know what is their stand concerning this matter.

Therefore, Sir, we believe that we will not be doing a good service to our country and to the generations that will be coming, if we ourselves to-day, commit that mistake of omitting, from the description of the " State of Mauritius ", the Chagos Archipelago.

For this reason, I want to make it very clear that at the Committee stage, I am going to move that this also be inserted in the description of the Mauritian territory. Thank you Sir.

(10.39 p.m.)

Mr. T. Servansingh : (Third Member for Port Louis South & Port Louis Central) Sir, I shall speak on clause 3 of this Bill, about the amendment which the hon. Leader of the Opposition proposes to introduce at Committee stage. Sir, I am sure that there can be a lot to say about future power politics in the Indian Ocean, about keeping Indian Ocean a zone of peace and so on ; but the point I would like to make to-day is that when we are talking of the definition of the national territory, we, on this side, want that the Chagos Archipelago should be included in this definition of ...

Mr. Speaker : It should be better if the point could be taken at the Committee stage, when the motion has been made, then the hon. Member would explain.

(10.40 p.m.)

Mr. Chong Leung : Mr. Speaker, Sir, the Leader of the Opposition has stated that there has been an omission in the definition of the State of Mauritius, because Diego Garcia has not been included in that definition. First of all the definition of the State of Mauritius is wide enough to cover any island which forms part of the State of Mauritius. In section 2 of the Interpretation Act No. 33 of 1974, State of Mauritius includes :

(1) the islands of Mauritius, Rodrigues, Agalega and any other island comprised in the State of Mauritius,

(2) the territorial sea and the air space above the territorial sea etc. etc.

But the main reason why it has not been included ...

Mr. Speaker : I am sorry to interrupt the hon. Minister. This point will be taken at the Committee Stage, because many Members are going to raise the same point. The Minister will have time to answer.

Mr. Chong Leung : I thought that if I could dispose of it once and for all, it would be better.

Mr. Speaker : All the arguments of the Opposition have not been canvassed.

Mr. Chong Leung : I accept your ruling.

Question put and agreed to.

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Bill read a second time and committed.

THE LABOUR (AMENDMENT) BILL (No. XX of 1980)

(10.42 p.m.)

The Minister of Labour and Industrial Relations (Mr. R. Peeroo): Sir, I beg to move that the Labour (Amendment) Bill be read a second time.

Sir, in 1965, the Termination of Contracts of Service Ordinance, which was afterwards incorporated in the Labour Act 1975, was amended to allow an employer to deduct from severance allowance payable to a worker the share of contributions made by the employer to any pension scheme or provident fund set up for the benefit of a worker. Since 1978 when contributions started to be made to the National Pensions Scheme, deduction of the employer's share of contributions continued to be made.

Many employees became redundant recently, particularly in the construction industry, and to those who joined just before or any time after contributions started to be made to the National Pensions Fund, practically no severance allowance was paid because the employers' share of contributions exceeded the severance allowance payable in such cases.

The Government is aware that redundant employees may face some difficulties in securing another job and that it is essential that they get a lump sum payment to tide them over their temporary financial problems.

With this aim in view, the Government has decided that an employer's share of contributions to the National Pensions Fund will no longer be deductible from the severance allowance payable to a worker on termination of his employment. Instead, the worker will be assured payment of a severance allowance equivalent to one quarter of a month's pay for workers employed monthly, or eight days' pay for other categories of workers, for every year of continuous service with an employer.

The normal severance allowance rate of half a month or fifteen days' remuneration will continue to be paid for any period during which contributions have not been made to the National Pensions Fund. This normal rate will also be paid in full on that part of the salary of a worker on which contributions are not payable under the National Pensions Act 1976. At present, no contributions are paid on that part of the salary which is in excess of Rs. 1,200 a month.

Under the provisions of the Bill, a worker whose employment is terminated will therefore be entitled to his full severance allowance at the rate of half a month or fifteen days' pay for every year of service before he started contributing to the National Pensions Fund. The same rate of severance allowance will be payable on that part of the salary on which no contributions are made.

With regard to that part of the salary on which contributions are paid to the Fund, the worker will nevertheless be guaranteed a severance pay of a quarter month's salary or eight days' pay wages for every year of service.

There will be no change regarding contributions made to a private Occupational Scheme or Provident Fund or in cases of retirement.

Mr. Venkatasamy : In clause 3 (a)

"Any person may appeal to the Minister"

Subsection (b) :

"The Minister's decision on hearing the appeal"

but there is no mention about the decision on the appeal itself. There is a decision on hearing the appeal, but what about the decision of the Minister on the appeal itself ?

Sir Veerasamy Ringadoo : I think, to make it better English it is being suggested that I should delete the word 'on' and replace it by 'after'.

Clause 3, as amended, ordered to stand part of the Bill.

The title and enacting clause were agreed to.

The Bill was agreed to.

The following Bills were considered and agreed to :

(1) The Intermediate and District Courts (Criminal Jurisdiction) (Amendment) Bill (No. XVI of 1980).

(2) The Courts (Amendment) Bill (No. XVIII of 1980).

(1.20 a.m.)

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL (No. XIX of 1980)

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 (Section 2 of the Principal Act amended)

Motion made and question proposed, "that the clause stand part of the Bill".

Mr. Jugnauth : Sir, I move for the following amendment in clause 3: that the word 'Tromelin'" be deleted and replaced by the words "'Tromelin' and Chagos Archipelago'".

Mr. Doongoor : Sir, I also want to move an amendment to add to what the hon. Leader of the Opposition said that "Seychelles" also should be included in this. (*Laughter*)

Mr. Jugnauth : When we have an amendment, Sir, my hon. Friend wants to move another amendment; it will come in time.

The Chairman : May I point out to Hon. Doongoor that Seychelles is an independent country, we cannot have this amendment ?

Mr. Chong Leung : On a point of order, Sir, when the hon. Parliamentary Secretary, Ministry of Power, Fuel & Energy proposed an amendment to include Seychelles, some Members have laughed, I do not think that this is a laughing matter.

Mr. Jugnauth : Sir, I am on my feet, I have moved an amendment and I have not finished.

The Chairman : If the hon. Member has not finished, he may continue.

Mr. Jugnauth : Sir, I will explain why I am moving this amendment; we all know that the Chagos Archipelago forms part of the territory of Mauritius.

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that, before independence was granted to this country, this part of our Mauritian territory had been excised by the British Government unilaterally. I say "unilaterally", because, as I said a moment ago, when we were having the second reading of this Bill, those who represented Mauritius then, were not representatives of a sovereign country. We were still a colony and, as we know, the British Government, before it gave independence to this country, had no right whatsoever to dismember the territory that belonged to Mauritius; for this reason, we maintain that we have all rights on the Chagos Archipelago, specially when we know, it has been said in this House and outside by the Rt. Hon. Prime Minister that, as a matter of fact, only certain rights were granted to the Britishers over these islands. Even at one time a period was mentioned, and we were told that we had reserved all our rights all round the island, over the islands; all the minerals that would be found, we were even told, could be exploited by Mauritius. The more so, we have been told that there is no written agreement whatsoever between this country and Great Britain. So far as we are aware, Sir, there is but an Order in Council which has created the British Indian Ocean Territory. Some people are speaking of Seychelles, but we know that there are some islands belonging to Seychelles, which were also excised in the same manner, but which Seychelles has recuperated and which have been given back to the State of Seychelles. Therefore, as I have said before, so far as the Opposition is concerned, we have made our position very, very clear, *vis-à-vis* the British Government and, in fact, I discussed this matter with Mr. Luce. For this reason, we are coming forward with this amendment. We know, on different occasions, there had been statements made by the Members on the other side. There have been even campaigns made on the question of Diego Garcia, outside and for all intents and purposes, we have even been told, in the past, by the Prime Minister: "What do you expect me to do? Take a boat or to take guns and go and take Tromelin and Chagos and whatever it is?" Therefore what we are saying is that, for whatever it is worth, I think we will be asserting our rights by doing what I am suggesting: adding, to the definition of Mauritian territory the Chagos Archipelago. Because, if we, to night, reject this, I think the whole nation realises that, in so far as the recuperation of these islands in future is concerned, how difficult we are going to make our own position in the international forum and *vis-à-vis* Great Britain and the United States.

Therefore I strongly appeal to all the Members on the other side. This is not a partisan question: this is something very serious and very important, something which has to do with the sovereignty and the territory of our country. We will appeal to them to take it as seriously as possible; this vote that we will be taking tonight will be of very great importance for this country, and I hope that my Friends on the other side do realise the importance of this matter.

Mr. Bhayat: Sir, it is very sad that in this House, at this very late hour, we are taking such a serious matter so lightly. This is not a laughing matter and I hope Members will listen carefully to what we are saying because, this very week in the Lok Sabha — and the Prime Minister will be glad to hear this — this very week in the Parliament in New Delhi, a Parliamentary Question has been put by a Member of the Assembly as to what stand has Mauritius taken regarding

the return of Diego Garcia ? And in the Lok Sabha, Mr. Chairman, we do not hear wishy-washy answers, like " As far as I know, I do not know ". A very serious answer will, I am sure, be given there.

(*Interruption*)

By the Indian Government, of course we have to say, from information that they will receive. I do not know where they will get the information but they will give information and Ministers there will come to know about it. If they do not come to know about it, I will communicate the reply of the Minister concerned. I am sure that the reply will make Mauritius the laughing stock of the whole of India and of the whole of this region ! This is why I have said this is a very serious matter and we ought not to take it so lightly.

Having said this, Mr. Chairman, we have seen hon. Doongoor coming and saying that he will propose an amendment to include Seychelles in the territory of Mauritius. This is so laughable that I do not want to spend any time on this, except to say that Seychelles is so much so a sovereign country, and was so much so a soveriegn country in 1965 — there was an attempt to excise the islands belonging to it, in 1965, at the same time as the Chagos Archipelago was excised. There were the islands of Farquhar, Aldabra and two other islands — through the efforts of the Government of Seychelles which many Members of Government do not seem to like, through their intervention in international forum, these four islands have been returned to them. There is no question of sovereignty of the British Indian Ocean Territory. There is only one document purporting to create the British Indian Ocean Territory and it is the Order in Council published in England on the 8th November, 1965 and reproduced under the signature of the Colonial Secretary, Mr. Tom Vickers, on the 30th of November 1965. It is only reproduced here for general information, and in fact it says so, " for general information, this is the Order in Council that has been passed in Westminster ". But, we, in this country, we have never accepted this. We have always challenged this on the ground that, as a country which was on the verge of becoming independent, there is a very clear United Nations resolution that the Colonial power has no right to excise any part of a Colony before granting independence ! This has been said, this is being repeated again today, by the Leader of the Opposition; and when we say it, we do not say it in the air. Britain knows about it, England knows about it and the United States know about it ! If they did not know about it, they would not have sent Mr. Sheridan to Mauritius ! Everybody knows what happened ! When Mr. Sheridan came to Mauritius last year, sent by the British Government and received by the Prime Minister officially, in his *campement*, given an official car, given a Police escort, given an interpreter, officially here, sent by the British Government ! For what purpose ?

The Prime Minister : To help the people.

(1.35 a.m.)

Mr. Bhayat : To help the people ! To come and do what we called an act of treason ! To ask Mauritians to renounce their right to return to their country ! This, to me, is an act of treason ! Mr. Sheridan, when he came here, he committed an act of treason !

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Mr. Sheridan, when he came here, he committed an act of treason ! Anybody who helped him, was not helping the people; he was helping Sheridan to commit an act of treason, to induce Mauritians to commit an act of treason, to renounce their sacred right, to renounce their right recognised internationally, to have their land, to belong to their land, and to own their land, and to be sovereign on their land ! If the BIOT was sovereign, as some Ministers are trying to say, why did they send Mr. Sheridan ? Why did the Prime Minister have to give help to Mr. Sheridan, to get him to get these poor people to sign these papers, to renounce ? And they have not renounced! The Prime Minister has not answered to several PQs which were put to him; he played the ignorant, the person who did not know anything, as usual, when he wants to hide things to the House ! But today, here, we, the Opposition, we want not only the Members of this House, not only the people of this country, but the world at large, more particularly all the people of this region; India, Pakistan, Australia, Madagascar, Seychelles, Comores, Tanzania, all the people in this area to know that we are laying claim to what is by right ours ! We are not going to give it up and we are proposing that, within the State of Mauritius, we should say that Mr. Sheridan has failed ! Whoever sent him here has failed, and whoever wanted to help him to renouce our right has failed ! So far we still recognise the Chagos Archipelago as still belonging to us and we want this to go on record in this Bill here ! Thank you, Sir.

Mr. Servansingh : I think after my Friend, Kader Bhayat, has spoken, I must also express my deception at the fact that when this matter has been taken up in this House, some people have found it right to make jokes about this. I think this is a very important matter, and I know that all of us here realise how important it is.

Mr. Speaker, the only point I would like to make is that this question of the Chagos Archipelago is a very delicate matter. For we all know, international political reasons, for reasons of the super powers, for reasons which are much beyond our control as our country is isolated in the Indian Ocean. But what I would like to say this morning is that what we have to do in Parliament, while we add the Chagos Archipelago in the definition of our national territory, is to affirm the right of Mauritius to this country, and I would go as far as to say, that I believe the Government which is in power at any time in this country, has the right, is perfectly free, to have a policy, as far as the Indian Ocean is concerned. A Government which is in power, democratically elected, has the right to define a policy which it wants towards the Indian Ocean. Just as we have seen the Government of Australia once, when the Labour Government was in power, taking the position that the Indian Ocean should be a zone of peace. And when a Labour Government succeeded this Government, they changed their position. So I would go as far as to say that I believe a Government, which is in power in Mauritius, has the right to choose its policy towards the Indian Ocean. But I only ask in the name of all Mauritians, I ask in the name of the youth of Mauritius, I ask in the name of generations to come, that we should give that generation which is coming, that we should give the next Government that is coming, a chance to claim its right over what is our territory, a chance to define another policy which might not be the same policy as this one. This is the only claim that we want to make when we say that we should include

in the definition of the national territory, the Chagos Archipelago, Mr. Chairman. I know the line that will be taken is that it is understood, by the general definition that we already have, that the Chagos Archipelago forms part of our national territory. But we know that this is a matter of controversy, that tomorrow another Government might have to go to the International Court to fight this matter, to fight this case, and this is why we insist that this be included formally in the definition of the national territory. As I said, in respect for democracy, in respect for the next Government we will choose, in respect for the choice of future generations, I think we cannot fail, whether we are on this side of the House, or whether we are on the other side of the House, to add this archipelago to our definition of the national territory. Mr. Chairman, I have made my point. Thank you very much.

The Minister of Economic Planning and Development (Mr. R. Ghurburrun) : Mr. Chairman, years ago, I was the first person to have raised my voice, when I was the High Commissioner of Mauritius in New Delhi, that Mauritius should take this issue to the Hague, and I thought Mauritius had got a right to this land, and if we took the matter to the Hague, we were sure to win it. From that time to this day, I have not changed my mind. There is no doubt that, when the islands were excised, it was done through an undue influence. England was a metropolis, we were a Colony. Even all our leaders who were there, even if they consented to it, their consent was viciated, because of the relationship. The major issue was to gain independence, and therefore the consent was viciated, there was no consent at all. There is no doubt that everyone here would like this country to come back to the State of Mauritius; but there is unfortunately — and now I am appealing to the lawyers to see the legal issue about it — it is, as yet we have a claim one day I am sure we are going to get back this country. But at the moment, it is still with Great Britain. Today we have a very valid claim; unless we would have vindicated that claim, it won't be serving any purpose, if we were merely to add it.

(*Interruption*)

What we want to add here is what we own, Tromelin, which has never been excised; this is why we are putting it there. But this has been excised. I don't think it would, in the long run, do any good. The point I wanted to make, not only for record here, but for those outside also, is : even if it is not included here in this Act today, let it be known to everyone that it won't cause any prejudice to a claim we may have ! It is not by a tacit acceptance that we are giving it up. Our claim is there and one day, I very much hope and I can join any number of Members when the time comes; I am prepared to go and fight this case at the Hague when the time comes ! But then, we have to have the sanction of Government. We can't go and fight a case in the Court, unless you get the sanction of the Government. But so long as this is not done, I think it would be a bit futile for us to add this.

I would ask the Opposition, which has got very able lawyers there, to consider that very calmly. I have been giving some thought to this matter; because if I was satisfied that this was going to prejudice our case in the long run, I would have voted for this; but I don't want to take any step that is going to prejudice our claim in the future. That is why I am making my point, that if we don't include

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it today, it should not be constructed as a tacit acceptance; because, I very much hope, the time is not very far away when we shall go and claim this. I am confident that we shall claim this land and this land will come back to us. Thank you, Sir.

M. Bizlall : M. le président, je me suis mis debout pour empêcher le secrétaire parlementaire de faire une gaffe au niveau du parlement. Je lui demanderai, bien humblement, de ne pas insulter la République des Seychelles en venant proposer que les Seychelles soient attachés au territoire de l'île Maurice. Il s'est mis debout, j'ai cru un instant qu'il allait venir avec cette motion.

Je voudrais attirer l'attention du ministre du plan en particulier, qui a parlé sur le *Chagos Archipelago*, en ce qui concerne son inclusion avec Tromelin et Agalega, comme territoires de l'île Maurice. M. le président, faudra-t-il se rappeler que la France a déclaré que Tromelin lui appartient, que la France a des soldats à Tromelin, que la France a fait des développements économiques à Tromelin ? Pour la France, Tromelin n'est pas un territoire mauricien, c'est un territoire français. Mais cela n'a pas empêché le Gouvernement mauricien d'inclure, avec Agalega, Tromelin comme étant partie de notre territoire. Moi je crois que la même politique adoptée par ce Gouvernement en ce qui concerne Tromelin, devrait être étendu en ce qui concerne le *Chagos Archipelago*. Demain ce sera une loi — est-ce que le Gouvernement va prétendre que la semaine prochaine il pourra mettre le pied à l'île Tromelin et revendiquer ses droits là-bas ? Le Gouvernement est en train de rêver, si le Gouvernement pense qu'il pourra récupérer Tromelin en l'incluant dans le territoire mauricien ! Mais le Gouvernement a jugé, quant même, utile de le faire, bien que la France a exigé des droits sur Tromelin et se trouve en opposition directe avec le Gouvernement mauricien. Je vois mal comment le Gouvernement mauricien peut inclure Tromelin, et ne pas inclure l'archipel des Chagos !

(1.50 a.m.)

Mr. Doongoor : I want to remind the House — and you must remember also Mr. Chairman, you formed part of the delegation which left in 1977 for the United Nations — that at the last session of our work at the State Department, there were eleven countries represented. I voiced my opinion there concerning Diego Garcia. I stated that the occupation by the United States, of Diego Garcia, is a threat to peace in the Indian Ocean, and that it was the wish of the people and of the Government of Mauritius to recuperate that part of the territory of Mauritius, which is Diego Garcia. I did not stop there, Mr. Chairman. Recently I attended the conference held in Zambia where were present the President of the Labour Party, the Second Member for Belle Rose and Quatre Bornes, and my Friend, Mr. Fokeer. They both witnessed my stand at the conference, and heard what I said: that the occupation of Diego Garcia by the United States was resented by the Mauritian public. We don't feel, Mr. Speaker, that we are in complete security. What has been the history around the excision of Diego Garcia ? What I would like to see, and the public would like to see, is a copy of the agreement between the Mauritian Government, the British Government, and the United Nations, laid on the Table of the Legislative Assembly, so that more light be thrown on this issue. Mr. Chairman, when I mentioned that Seychelles

also should be included in our territory, I must go far back to 1956, when I was still a student of Standard VI, when I was studying geography. I was thirteen at that time, Mr. Chairman. And through the study of geography I learnt that the dependencies of Mauritius were the Seychelles, Rodrigues — that both Mauritius and the Seychelles formed part of the territory of Mauritius, as also Diego Garcia. When I said that Seychelles should also be included in this, I did it with the intention of throwing more light on the matter, and informing Members when, how and in what circumstances Seychelles has been excised from the territory of Mauritius. Sir, not all the Members are against the retrocession of Diego Garcia. I myself, when I was in presence of this Bill, Sir, I was astounded to see...

The Chairman : I am sorry to interrupt the hon. Member, but I want to put something on record. I am given to understand that the Reporters of the Assembly have been working since 10.00 this morning. They want to help and they are extremely tired. So I am making an appeal that we should make the speeches as short as possible, to keep to the point, in order to help, so that the Reporters who are really doing a very big effort tonight, who have been put to really hard work since the beginning of this week, can cope with the work. They want to help but they ask for our collaboration. Mr. Speaker has asked me to pass on to you that piece of information. So, I make a special appeal to all Members to go straight to the point and to be short.

Mr. Doongoor : I wish also to remind hon. Members that when I recently went on a CAP Conference in Zambia, I appealed that this issue should be taken up at the Court of The Hague.

Mr. Chairman, we are not against the retrocession of Diego Garcia. We want Diego Garcia to be part and parcel of the territory of Mauritius. But we are given to understand that, after forty to fifty years, Diego Garcia will be given back to Mauritius. So, I mentioned that Seychelles also should be included, just to throw more light on it — how another dependency of Mauritius was excised.

Mr. Boodhoo : Mr. Chairman, we fully agree with the request of the Leader of the Opposition and I believe that this request will give a golden opportunity to Government to cast aside any doubt which has crept into the minds of the public.

Mr. Bérenger : Mr. Chairman, I'll try to be as short as possible. Je considère qu'il est extrêmement triste, M. le président, que le débat, comme l'a dit mon collègue Kader Bhayat, ait demarré, comme il l'a fait avec un *front bench*, le Premier ministre, le ministre des finances le ministre des affaires étrangères — encourageant un membre qui proposait ce qui, en fait, constitue une insulte à la Republique des Seychelles. Il est heureux, que, peu après, le débat soit redevenu ce qu'il doit être, c'est-à-dire, un débat aussi fondamental, aussi important que n'importe quel débat à cette Chambre peut l'être pour le pays. Il ne peut pas y avoir une question de Parti. Nous parlons de notre pays. Je suis d'accord avec ce que mon collègue...

Sir Harold Walter : Mr. Chairman, on a point of order. Section 51(1) of our Standing Orders reads thus :

> "Mr. Speaker, or the person presiding, shall be responsible for the observance of the rules of order in the Assembly or in any Committee thereof and his decision upon any point of order shall not be open to appeal and shall not be reviewed except upon a substantive motion made in the Assembly after notice".

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The Chairman : In point of fact...

Sir Harold Walter : Wait a minute, Mr. Chairman. You ruled...

The Chairman : Please ! I have the Chair. I have the responsibility of order in this House ! Don't shout me down, please !

Sir Harold Walter : I did not shout.

The Chairman : Please ! Now, I have over-ruled the question of Seychelles. It has been shelved. The Member just alluded to it.

Sir Harold Walter : That is not the point.

The Chairman : He has not asked me to reopen the question. He has not appealed against my decision. He has simply said that it was, according to him, an insult to a sovereign country. But that is *en passant*. He is coming to the gist of the case. But I don't think the hon. Member is doing anything against the Standing Orders.

Sir Harold Walter : Mr. Chairman, if you will allow me to finish. Your ruling was based on the fact that Seychelles, being a sovereign country, and we having no sovereignty over it, the question cannot be debated. I want the same principle to be applied regarding the amendment which has been brought to this Bill. This is British Overseas Territory, excised, Mr. Chairman, by Order...

The Chairman : I am on my feet, Mr. Minister. This is why I expected you, as Minister, a long time ago to give some information to the House that it was some territory that formed part exclusively of some other territory. I was waiting for you. You did not do it. I can't help it if the Member now has the floor and speaks about it.

Sir Harold Walter : Therefore, on a point of order, your ruling is that it does not apply, Mr. Chairman ?

The Chairman : You are coming too late !

Sir Harold Walter : There are degrees in lateness.

Mr. Bérenger : I'll have to start again because he messed the whole thing, and I am very sorry for these ladies upstairs. Je répète...

Sir Harold Walter : Sir, I wish to state, on a point of order...

Mr. Bérenger : I am not giving way. I am also up on a point of order !

The Chairman : The hon. Member has the floor, if he does not want to give the Minister the floor, the Minister will have to wait until he has finished, then he will put to me his point of order. Then I shall be able to listen to the Minister. But, for the moment, he has the floor !

M. Bérenger : Je disais, M. le président, qu'il est triste que le débat ait démarré par une insulte, appuyée par le *front bench* d'en face, Riant, ricannant, alors que nous parlons du cœur même de notre pays, alors que nous parlons d'une republique indépendante qui est à deux pas de nous, M. le président !

Sir Veerasamy Ringadoo : I thought we had dealt with that.

M. Bérenger : Je le répèterai tant que j'aurais envie !

Sir Veerasamy Ringadoo : On a point of order, there is a Standing Order which says that unnecessary repetition is out of order.

Mr. Bérenger : Well, there is another Standing Order which says that interruptions like that are wasting the time of the House.

Sir Veerasamy Ringadoo : I was on a point of order, and I want the ruling of the Chair about it. Because I can't accept...

The Chairman : The Minister's point of order is absolutely receivable. I ask the Member to get to the gist of the matter now.

(2.05 a.m.)

Mr. Bérenger : If I am not stopped, I will do it. But I am stopped now and then by the front bench for no reason ! So, I carry on, as usual.

Comme je le disais, M. le président, je suis d'accord avec le député, mon camarade Servansingh, qui a proposé que, pour aujourd'hui, on sépare deux choses — la question de la politique du Gouvernement vis-à-vis de la militarisation de l'océan indien, vis-à-vis de la militarisation de Diego Garcia ou non. Qu'on sépare cela aujourd'hui de la question de la souveraineté de l'Ile Maurice sur ces îles, sur cet archipel.

J'irai loin. Je dirai qu'au nom du pays, ne retournons pas sur ce qui s'est passé en 1965 ! Qui a fait quoi, laissons cela de côté ! Au nom du pays, encore une fois ! *En passant*, je rappelle, M. le président, j'ai écouté le ministre du développement dire qu'il fut parmi les premiers, alors qu'il était à New Delhi, à soulever la question ! Non, il ne pourra pas me prouver, je suppose, qu'il a soulevé la question parceque nos dossiers sont complets pour la période avant 1974 ! Or, l'Inde, M. le président — le *Order in Council* est fait le 8 novembre 1965 — dont M. Dinesh Singh est le *Deputy Minister of State for External Affairs* d'alors — le 18 novembre 1965, c'est-à-dire moins de deux jours après l'Order in Council—a élevé la voix disant que l'Angleterre n'a pas le droit de le faire ! Que c'est contre les résolutions des Nations Unies ! Et il prend la part d'un pays qui n'est même pas indépendant ! Je crois qu'il est important de le souligner, sans vouloir revenir, en ce qui nous concerne, sur ce qui s'est passé en vérité en 1965.

M. le président, j'ai écouté le ministre du développement nous dire que, si nous n'incluons pas, dans la définition de notre territoire de l'Etat mauricien, l'archipel des Chagos, " *it will not be a tacit acceptance* ". *It will be worse than a tacit acceptance that this has been done once and for all !* M. le président, j'aimerais vous rappeler, le député Finlay Salesse dans une question B/510 de 1977 ou 1978 — je crois que c'est 1978 — demande au Premier ministre *whether he will state the list of all territories which constitute the State of Mauritius ?* Le Premier ministre répond :

> " Sir, the following islands form part of the State of Mauritius : Mauritius and the surrounding islands, such as, Round and Flat islands, Rodrigues, Agalega, Tromelin and Cargados Carajos Archipelago ".

C'est-à-dire, St. Brandon. Excluant Chagos — et ça c'est un précédent extrêmement grave, que des Français, comme Me Oraison, se permettent de nous faire la leçon, à nous, patriotes mauriciens; ça c'est déjà un précédent grave; ça peut être utilisé déjà contre nous, nonobstant

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ce que nous allons faire aujourd'hui ! Ça, c'est déjà un précédent grave, M. le président ! Heureusement — et personne ne le dit aujourd'hui — le ministre des pêcheries m'écoute — qu'il y a d'autres faits que nous pouvons mettre devant cette Chambre et devant la communauté internationale pour nous défendre ! Il y a à peine quelques mois, cette année même — que dis-je ? quelques mois — quelques semaines — nous avons voté un *Fisheries Bill*, qui a été proclamé, qui est devenu un *Fisheries Act !* Dans ce *Fisheries Act*, il est donné des pouvoirs au *Principal Assistant Secretary* du ministère des pêcheries de décider combien de *nets* pourront être distribués in *the Chagos Archipelago !* Comment reconcilier ces deux choses ? Nous avons applaudi le ministre, de ce côté de la Chambre: les Chagos forment partie de l'Etat mauricien ! Ou est la logique dans tout cela ?

The Prime Minister : Fishing rights !

Mr. Bérenger : Fishing rights ! Je continue, M. le président, j'en viens à 1974 — *Hansard* du 26 juin 1974 — le Premier ministre répond :

> 'Mauritius has reserved its mineral rights, fishing rights and landing rights and certain other things that go to complete, in other words, some of the sovereignty which obtained before, on that island'.

Je suis d'accord que c'est confus ! Mais quand même, c'est quelquechose que nous pouvons utiliser, sur quoi vient se greffer le *Fisheries Bill* et la déclaration qui a été faite .Il y a d'autres déclarations qui ont été faites. Il y a cette déclaration du Premier ministre à cette question B/634 de 1978, de mon collègue Amédée Darga lui demandant

> 'whether he will say if the British Government has recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia'.

Le Premier ministre répond :

> 'The British Government has, since July 1971, recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia'.

Nous ne comprenons pas la réaction du Gouvernement ! Je dis que — après le précédent contenu dans la réponse parlementaire B/510 — nous considérons que ce serait un véritable acte de trahison que de voter, aujourd'hui, un texte de loi incluant Tromelin et excluant spécifiquement l'archipel des Chagos ! Ce serait un véritable acte de haute trahison ! Ce n'est pas une question de politique de parti ; il est question de territoire national, de richesse nationale ! Parceque, un jour, l'île Maurice exploitera — je ne parle pas du côté militaire de la chose — mais en terme de ressources agricoles, en termes de poissons, en termes de mineraies au fond de la mer. M. le président je crois que nous n'avons pas le droit de commettre cet acte de trahison ! Je pourrais aller plus loin ! Je pourrais citer le ministre des finances faisant campagne. Quand ? Pas des mois de cela ! En février, Sir Veerasamy Ringadoo promet une campagne internationale pour obtenir le retour de l'île à Maurice — on parle de Diégo Garcia: ' Nous sommes dans une position de force pour réclamer le retour de l'île à Maurice ", a dit Sir Veerasamy. C'est pourquoi nous avons le droit de dire et aux Anglais et aux Américains qu'ils devraient ficher le camp de Diégo Garcia. Là, n'est pas la question, pour le moment ! Pour le moment, nous demandons seulement qu'un acte de trahison ne soit pas commis vis-à-vis de la nation, vis-à-vis de la patrie mauricienne et que cet amendement soit accepté *without further discussions !* Hier, apparemment, — qu'on me démente si je me trompe — un nombre de députés et de ministres travaillistes ont signé une petition qu'ils ont remis au Premier

ministre. Enfin, il faut être logique avec soi-même ! Comment peut-on signer une pétition hier, et aujourd'hui ne pas prendre position ? Il ne faut pas en faire une question de parti; nous aurions souhaité que le Premier ministre vienne lui-même avec l'amendement; nous aurions souhaité que lui-même propose que l'archipel des Chagos soit inclus dans l'Etat mauricien ! Ceci dit, M. le président, nous avons voulu ramener les débats au-dessus des partis. Je repète que ce ce que le ministre du plan et de développement économique a dit n'est pas correct. Ce serait pire qu'un *tacit agreement* si nous votions aujourd'hui ! Ce serait pire que de ne pas avoir inclus les Tromelin ! Inclure les Tromelin, en excluant les Chagos, serait pire que n'importe quoi ! C'est pourquoi nous demandons au Gouvernement — sur cette question, au moins, puisqu'il y va du sort du pays, du territoire mauricien, du territoire national — de ne pas en faire une question de parti, de prendre l'amendement — c'est un amendement qui n'appartient pas au MMM, c'est un amendement qui appartient au pays ! Nous le mettons devant tous les partis qui sont à cette Chambre et nous proposons que ce soit le Premier ministre, lui-même, qui, au nom de l'île Maurice, propose l'amendement, M. le président !

Sir Harold Walter : Sir, I know that it is late; we are in the early hours of the morning, after a hard day's work and our nerves are at the end of their tether. Therefore, we get excited; we use invectives and we allow steam to be let off after several defeats. I am prepared to concede that on a psychological platform. But, Mr. Chairman, we are dealing here with a very important question which goes to the root of the interpretation of the law regarding the definition of the State and the law governing such definition. I know that, to go to the philosophy of it, would go a long time. So, I will come back to it in a minute. But, before I do that, I would like to place on record that it is the second time in this House that the Prime Minister is taken to task in a personal manner !

The hon. Member, Mr. Bhayat, has considered it fit to tell the Prime Minister that, by acting in the way he acted, in the interests of the *Ilois*, he had committed an act of treason ! I know that my Prime Minister, in the Sheik Hossen affair, has been called a murderer ! He has been called somebody who has set fire to a dwelling-house, who has treated the Police with all the names possible ! Thank God, *il y a encore des juges à Berlin !* They *vindicated* the head of the SSS! Unfortunately, said under the parliamentary immunity, the Prime Minister could not do any thing about it ! It is sad that to-day this voice has been re-echoed by somebody who sits on the front bench of the MMM, treating the Prime Minister of traitor ! A man who has brought independence to this country ! Who has given forty-two years of his life to the service of this country ! Who has given an uplift to everybody here for the respect of their dignity ! Who has given free education ! Who has made them what they are to-day ! Is that the man whom you call a traitor. When he was only acting in good faith, when he was acting in the interests of the Ilois ? What has happened to-day, Mr. Chairman ? Is it not the same Sheridan who has been requested to defend the interests of the *Ilois ?* So, where did the Prime Minister go wrong, Mr. Chairman ? Now, you cannot have your cake and eat it ! You cannot come and ask for compensation and say that 'I renounce all my rights to go there'

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and, in the same breath, you come here and add to a Bill a territory over which you have no sovereignty ! We have been questioned, Mr. Speaker ! Why Tromelin is added ? Tromelin has never been excised, Mr. Chairman ! As early as 1956, this Government let Tromelin on lease to Mr. Britter. In 1956, when the French wanted to operate a meteorological station there, they asked for permission from this Government and they were granted it. For historical and juridical reasons, we are standing on firm ground ! But, Mr. Speaker, we do not believe *dans les mirages de la pensée idéologique de certains !* We only believe in dialogue ! Tromelin is on the good way ! Tromelin has been discussed at the highest possible level. The Prime Minister and the President of France ! Am I to disclose here the contents of that conversation when the results are not final yet ? You wait and see !

Now, Mr. Chairman, Diego Garcia : the statements of the Prime Minister have been quoted here, as if the Prime Minister has been saying a lie ! What the Prime Minister has been saying all along is that at the moment that Britain excised Diego Garcia from Mauritius, it was by an Order in Council ! The Order in Council was made by the masters at that time ! What choice did we have ? We had no choice ! We had to consent to it because we were fighting alone for independence ! There was nobody else supporting us on that issue ! We bore the brunt ! To-day everybody wants to jump on that bandwagon ! Many of those sitting opposite where were they when independence was being fought ? Who were those who wanted independence ? To-day, independence is a nice basket of fruit and everybody wants his share out of it ! Mr. Speaker, when the excision took place, it became the British Overseas Territory and it is mentioned as such ! When the discussions took place, it was made clear that the mineral rights, the fishing rights were preserved even employment of Mauritians on Diego Garcia was promised but, unfortunately, the British who discussed with us, never told us that they were going to have a military base there ! What they told us was that they wanted a station for weather purposes.

They wanted a station for fuelling, for their transport and their fleet, that is all. A communications base; the British told us that. As to how the British leased it to the Americans, that's another matter. I am not going to enter into the merits and demerits of the presence of this base there, because it goes to the security of the area. So what is wrong in the answers given by the Prime Minister on Diego Garcia ? Is that an act of treason ? Now, it was by consent that it was excised. Even that has been mentioned to Mr. Luce when he was here only two or three weeks ago. We mentioned it at the Lusaka Conference to Lord Carrington in the presence of Mrs. Thatcher, we said : " When do you think we can get back Diego Garcia ? " " Oh, you know it is on a lease, but we bear it in mind, we bear it in mind ". Is that type of action, going to be conducive to a dialogue leading to the restitution of Diego when the time comes ? There is no motive behind us ! There is no hurry for us to get it back. We don't want to see another one coming to put himself there and say : " We want peace, but I enter Afghanistan with 80,000 soldiers " ! Super powers again ! I don't want to change one for the other. I don't want to be involved in it. We know why all these words are said; the louder they are said, the more beneficial they will be, we understand that. We are not going

to play that game, Mr. Chairman. You ruled, Sir, that Seychelles was an independent country and, therefore, we had no sovereignty over it and therefore it could not be entertained. If this principle is acceptable, Mr. Chairman, then for the British Overseas Territory excised from Mauritius, your ruling must hold the same and must carry the same weight. I go further, Mr. Chairman: those who believe in the OAU — though they refuse to pair with me because I will go and vote against their policy, probably I would have been more useful here—will be interested to know that the wise men who founded the OAU when the three groups merged in Cairo, laid down a principle in the OAU Charter: that the frontiers inherited at the time of independence will not be disputed; and had there been such respect, Mr. Speaker, today we would not have seen the tearing away of Africa, we would not have seen blood all over Africa, we would not have seen this period of strike through which it is going. On these two principles, Mr. Chairman, I move that the question cannot be entertained.

The Chairman : Will the Minister of External Affairs say to this House whether the British, what you call it, the British Indian Ocean Territory forms part of the sovereign totally independent country or not ?

Sir Harold Walter : It forms part of Great Britain and its overseas territories, just as France has *les Dom Tom*; it is part of British territory there is no getting away from it; this is a fact, and a fact that cannot be denied; no amount of red paint can make it blue ! It is not receivable, Mr. Speaker, in this light, there is no point of order.

(*Interruption*)

There is no point of order, Mr. Speaker, any decision of the Speaker thereon shall not be opened to appeal.

(*Interruption*)

The Chairman : I know, I know and I am going to take my responsibility. I have ruled that the Seychelles being a sovereign country, the question of the Third Member for Rose Belle and Grand Port cannot be entertained. In the same way I regret that as the BIOT forms part of Britain and is, therefore, an independent and sovereign State, this amendment is declared not receivable by me.

M. Bizlall : Quand vous aviez rejeté la motion que Seychelles soit inclus du territoire mauricien, il existait des preuves, que Seychelles, effectivement, se trouve être un territoire indépendant; quand le ministre des affaires étrangères vient, par rapport à partir d'une motion, demander à ce que votre décision sur Seychelles soit étendue, en ce qui concerne les Chagos, la question que je me pose, M. le Président est : puisqu'il est prouvé qu'avant 1965 les Chagos formaient partie du territoire mauricien, il faudrait que le ministre des affaires étrangères prouve que cet archipel n'est plus à l'Ile Maurice et appartient à l'Angleterre ! Est-ce-que le Gouvernement peut, par un document, prouver ce que le ministre a avancé ?

Sir Harold Walter : Je réponds à cette question. L'hon. député a cité le ministre des affaires étrangères. Je réfère l'hon. membre à l'autorité qu'un propre député de son parti a cité: the Order in Council where Diego Garcia has been excised and forms part of British Overseas Territory.

The Chairman : This cannot be discussed. This is my ruling. I stand by it, whether it is right or not.

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(At this stage, the Members of the Opposition left the Chamber)

Clause 3 ordered to stand part of the Bill.

Clauses 4 to 9 ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill was agreed to.

The Labour (Amendment) Bill (No. XX of 1980) was considered and agreed to.

THE NATIONAL PENSIONS (AMENDMENT) BILL (No. XIV of 1980)

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3 — Section 20 of the principal Act amended.

Motion made and question proposed: that the clause stand part of the Bill".

Mr. Purryag : Sir, there is an amendment — I move that the words "the prescribed amount" be deleted and replaced by the words "the amount specified in the Second Schedule".

Amendment agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clauses 4 to 9 ordered to stand part of the Bill.

First Schedule ordered to stand part of the Bill.

On Second Schedule

Mr. Purryag : Sir, I move that, in regard to Section 45A(3), the following paragraph be added : "(c) in such cases as may be prescribed ".

Amendment agreed to.

Second Schedule, as amended, ordered to stand part of the Bill.

The title and the enacting clause were agreed to.

The Bill, as amended, was agreed to.

THE SUGAR INDUSTRY LABOUR WELFARE FUND (AMENDMENT BILL)

Clauses 1 to 3 ordered to stand part of the Bill.

Sir Harold Walter : Mr. Chairman, it is sad that the Members of the Opposition have left the Chamber in such a shameful way. Sir, it is very serious, what I am going to say : each time they suffer a defeat, they are in that state. Probably none of them ever box — so they never learn how to take blows and to give as many.

The Chairman : It is their right to behave as they wish.

The title and the enacting clause were agreed to.

The Bill was agreed to.

The Fire Services (Amendment) Bill (No. XV of 1980) was considered and agreed to.

Annex 118

Organization of African Unity, Assembly of Heads of State and Government, 17th Ordinary Session, *Resolution on Diego Garcia*, AHG/Res.99(XVII) (1-4 July 1980)

ORGANIZATION OF
AFRICAN UNITY
Secretariat
P.O. Box 3243

ORGANISATION DE L'UNITE
AFRICAINE
Secretariat
B. P. 3243

Addis Ababa

ASSEMBLY OF HEADS OF STATE AND GOVERNMENT
SEVENTEENTH ORDINARY SESSION
1 – 4 July 1980
Freetown, Sierra Leone

AHG/Res. 99 to 101 (XVII)

RESOLUTIONS ADOPTED BY THE SEVENTEENTH ORDINARY SESSION OF THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

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AHG/Res. 99 (XVII)

RESOLUTION ON THE DIEGO GARCIA

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July 1980,

Pursuant to article I, para 2, of the Charter of the Organization of African Unity, which stipulates "The Organization shall include the Continental African States, Madagascar and other islands surrounding Africa",

Considering that one of the fundamental principles of the Organization is the "respect for the sovereignty and territorial integrity of each state",

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the OAU,

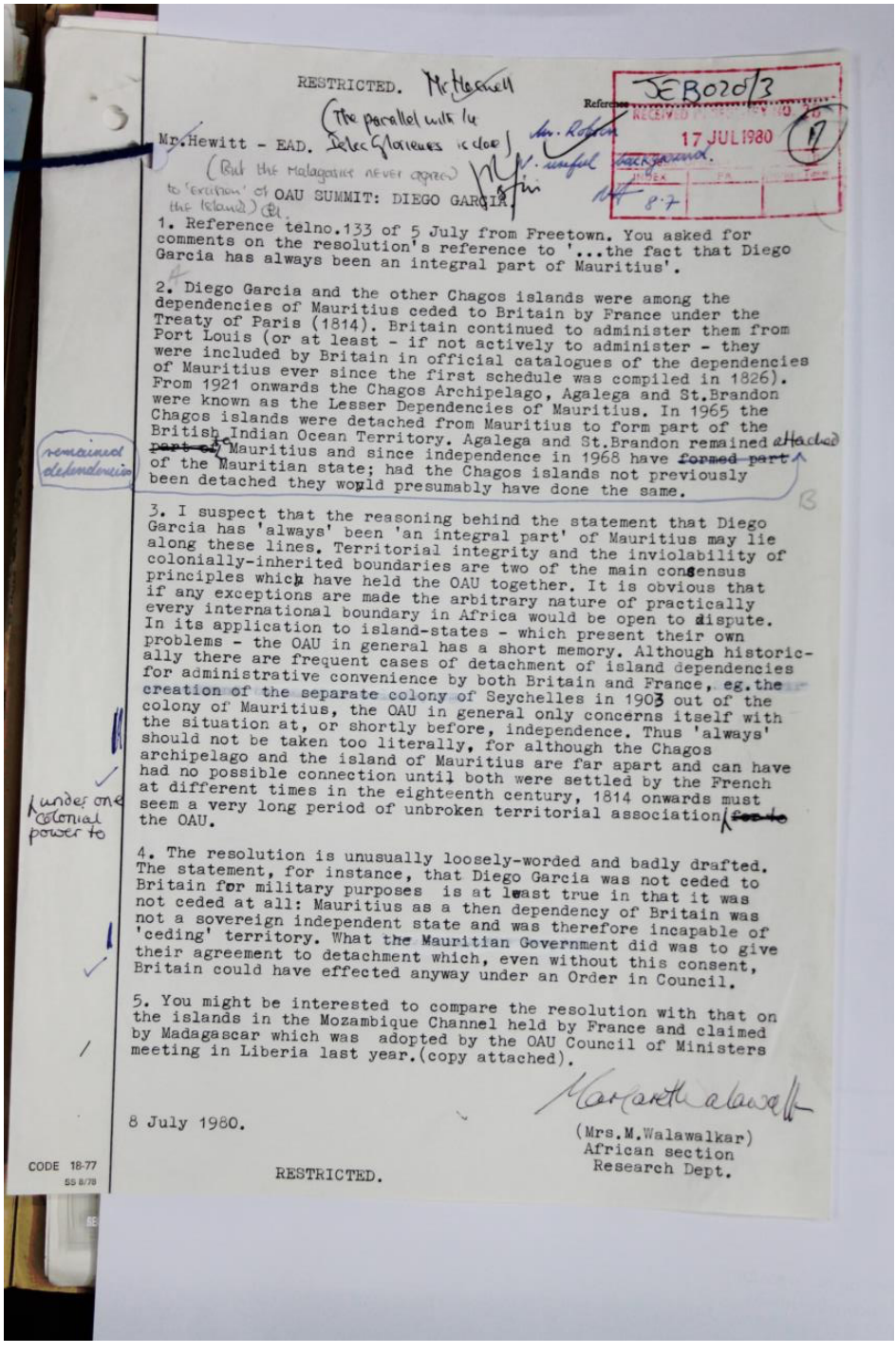
Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realizing the militarization of Diego Garcia is a threat to Africa, and to the Indian Ocean as a zone of peace,

DEMANDS that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

Annex 119

Note from M. Walawalkar of the African Section Research Department to Mr Hewitt, FCO 31/2759 (8 July 1980)



RESTRICTED. Mr Hewitt

(The parallel with Ile Glorieuses is clear) Mr. Robson

Mr.Hewitt - EAD. (But the Malagasies never agreed to 'excision' of this Island) OAU SUMMIT: DIEGO GARCIA.

JEB020/3

Reference

RECEIVED 17 JUL 1980

INDEX | FIL | REGISTRY

8.7

1. Reference telno.133 of 5 July from Freetown. You asked for comments on the resolution's reference to '...the fact that Diego Garcia has always been an integral part of Mauritius'.

2. Diego Garcia and the other Chagos islands were among the dependencies of Mauritius ceded to Britain by France under the Treaty of Paris (1814). Britain continued to administer them from Port Louis (or at least - if not actively to administer - they were included by Britain in official catalogues of the dependencies of Mauritius ever since the first schedule was compiled in 1826). From 1921 onwards the Chagos Archipelago, Agalega and St.Brandon were known as the Lesser Dependencies of Mauritius. In 1965 the Chagos islands were detached from Mauritius to form part of the British Indian Ocean Territory. Agalega and St.Brandon remained ~~part of~~ Mauritius and since independence in 1968 have ~~formed part~~ of the Mauritian state; had the Chagos islands not previously been detached they would presumably have done the same.

remained dependencies

detached

3. I suspect that the reasoning behind the statement that Diego Garcia has 'always' been 'an integral part' of Mauritius may lie along these lines. Territorial integrity and the inviolability of colonially-inherited boundaries are two of the main consensus principles which have held the OAU together. It is obvious that if any exceptions are made the arbitrary nature of practically every international boundary in Africa would be open to dispute. In its application to island-states - which present their own problems - the OAU in general has a short memory. Although historically there are frequent cases of detachment of island dependencies for administrative convenience by both Britain and France, eg.the creation of the separate colony of Seychelles in 1903 out of the colony of Mauritius, the OAU in general only concerns itself with the situation at, or shortly before, independence. Thus 'always' should not be taken too literally, for although the Chagos archipelago and the island of Mauritius are far apart and can have had no possible connection until both were settled by the French at different times in the eighteenth century, 1814 onwards must seem a very long period of unbroken territorial association under one colonial power to the OAU.

4. The resolution is unusually loosely-worded and badly drafted. The statement, for instance, that Diego Garcia was not ceded to Britain for military purposes is at least true in that it was not ceded at all: Mauritius as a then dependency of Britain was not a sovereign independent state and was therefore incapable of 'ceding' territory. What the Mauritian Government did was to give their agreement to detachment which, even without this consent, Britain could have effected anyway under an Order in Council.

5. You might be interested to compare the resolution with that on the islands in the Mozambique Channel held by France and claimed by Madagascar which was adopted by the OAU Council of Ministers meeting in Liberia last year.(copy attached).

Margaret Walawalkar

8 July 1980.

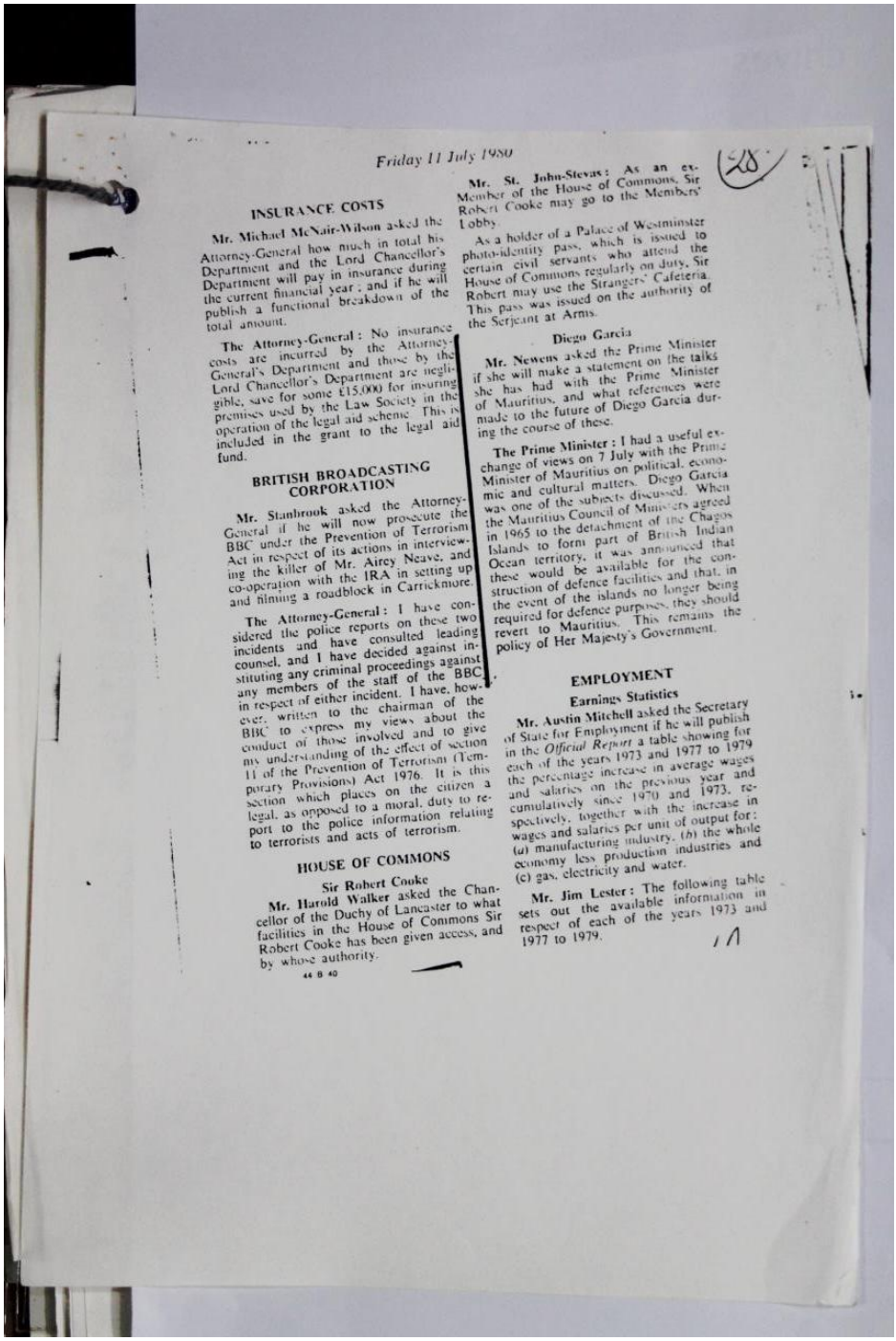
(Mrs.M.Walawalkar)
African section
Research Dept.

CODE 18-77
SS 8/78

RESTRICTED.

Annex 120

U.K. House of Commons, *Written Answers: Diego Garcia*, FCO 31/3836 (11 July 1980)



INSURANCE COSTS

Mr. Michael McNair-Wilson asked the Attorney-General how much in total his Department and the Lord Chancellor's Department will pay in insurance during the current financial year; and if he will publish a functional breakdown of the total amount.

The Attorney-General: No insurance costs are incurred by the Attorney-General's Department and those by the Lord Chancellor's Department are negligible, save for some £15,000 for insuring premises used by the Law Society in the operation of the legal aid scheme. This is included in the grant to the legal aid fund.

BRITISH BROADCASTING CORPORATION

Mr. Stanbrook asked the Attorney-General if he will now prosecute the BBC under the Prevention of Terrorism Act in respect of its actions in interviewing the killer of Mr. Airey Neave, and co-operation with the IRA in setting up and filming a roadblock in Carrickmore.

The Attorney-General: I have considered the police reports on these two incidents and have consulted leading counsel, and I have decided against instituting any criminal proceedings against any members of the staff of the BBC in respect of either incident. I have, however, written to the chairman of the BBC to express my views about the conduct of those involved and to give my understanding of the effect of section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1976. It is this section which places on the citizen a legal, as opposed to a moral, duty to report to the police information relating to terrorists and acts of terrorism.

HOUSE OF COMMONS

Sir Robert Cooke

Mr. Harold Walker asked the Chancellor of the Duchy of Lancaster to what facilities in the House of Commons Sir Robert Cooke has been given access, and by whose authority.

Mr. St. John-Stevas: As an ex-Member of the House of Commons, Sir Robert Cooke may go to the Members' Lobby.

As a holder of a Palace of Westminster photo-identity pass, which is issued to certain civil servants who attend the House of Commons regularly on duty, Sir Robert may use the Strangers' Cafeteria. This pass was issued on the authority of the Serjeant at Arms.

Diego Garcia

Mr. Newens asked the Prime Minister if she will make a statement on the talks she has had with the Prime Minister of Mauritius, and what references were made to the future of Diego Garcia during the course of these.

The Prime Minister: I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government.

EMPLOYMENT

Earnings Statistics

Mr. Austin Mitchell asked the Secretary of State for Employment if he will publish in the *Official Report* a table showing for each of the years 1973 and 1977 to 1979 the percentage increase in average wages and salaries on the previous year and cumulatively since 1970 and 1973, respectively, together with the increase in wages and salaries per unit of output for: (*a*) manufacturing industry, (*b*) the whole economy less production industries and (*c*) gas, electricity and water.

Mr. Jim Lester: The following table sets out the available information in respect of each of the years 1973 and 1977 to 1979.

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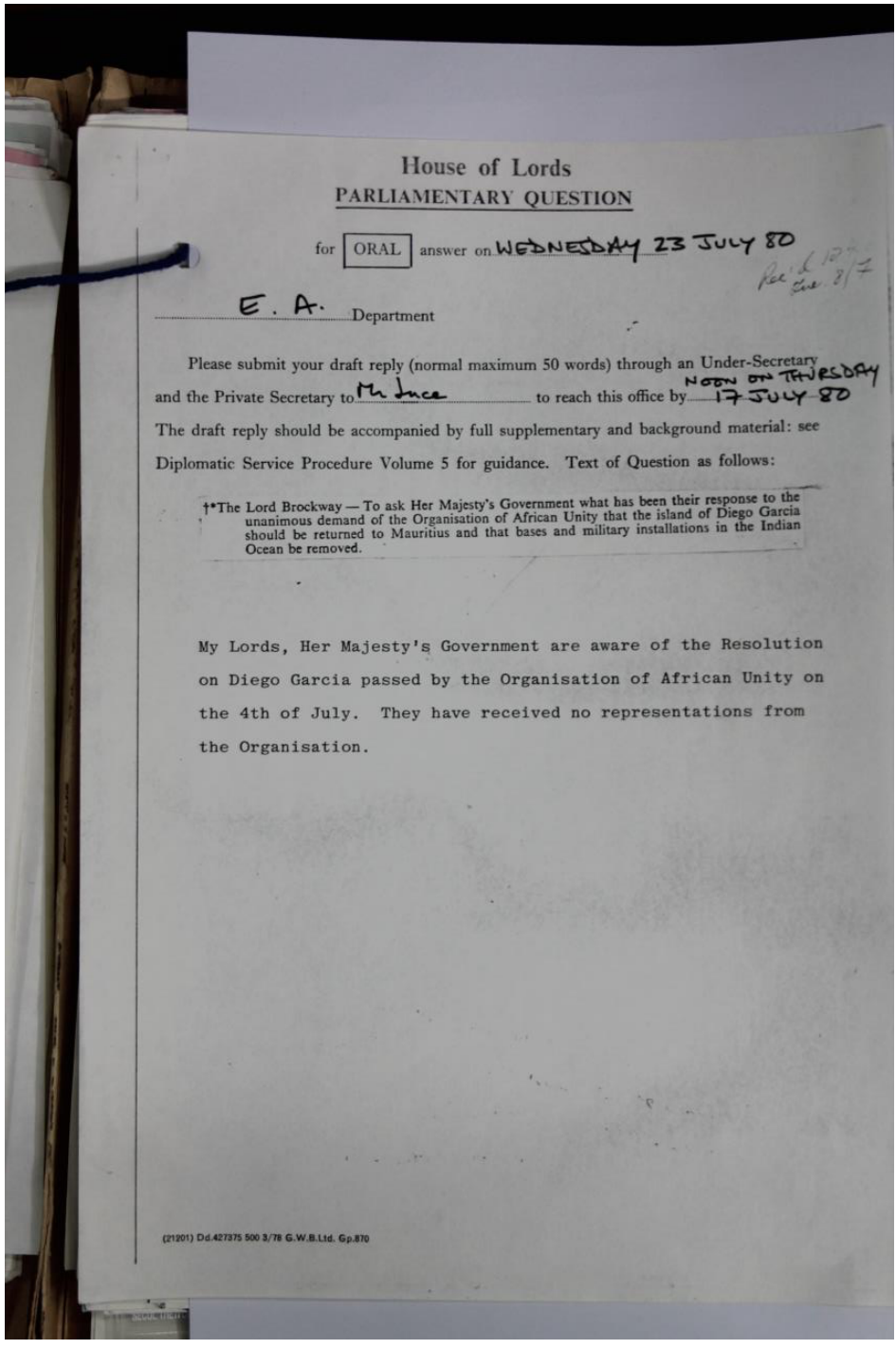
U.K. House of Lords, *Parliamentary Question for Oral Answer: Notes for Supplementaries*, FCO 31/2759 (23 July 1980)



House of Lords
PARLIAMENTARY QUESTION

for [ORAL] answer on WEDNESDAY 23 JULY 80

Rec'd 17 July 80

E. A. Department

Please submit your draft reply (normal maximum 50 words) through an Under-Secretary and the Private Secretary to Mr Ince to reach this office by NOON ON THURSDAY 17 JULY 80

The draft reply should be accompanied by full supplementary and background material: see Diplomatic Service Procedure Volume 5 for guidance. Text of Question as follows:

†*The Lord Brockway — To ask Her Majesty's Government what has been their response to the unanimous demand of the Organisation of African Unity that the island of Diego Garcia should be returned to Mauritius and that bases and military installations in the Indian Ocean be removed.

My Lords, Her Majesty's Government are aware of the Resolution on Diego Garcia passed by the Organisation of African Unity on the 4th of July. They have received no representations from the Organisation.

(21201) Dd.427375 500 3/78 G.W.B.Ltd. Gp.870

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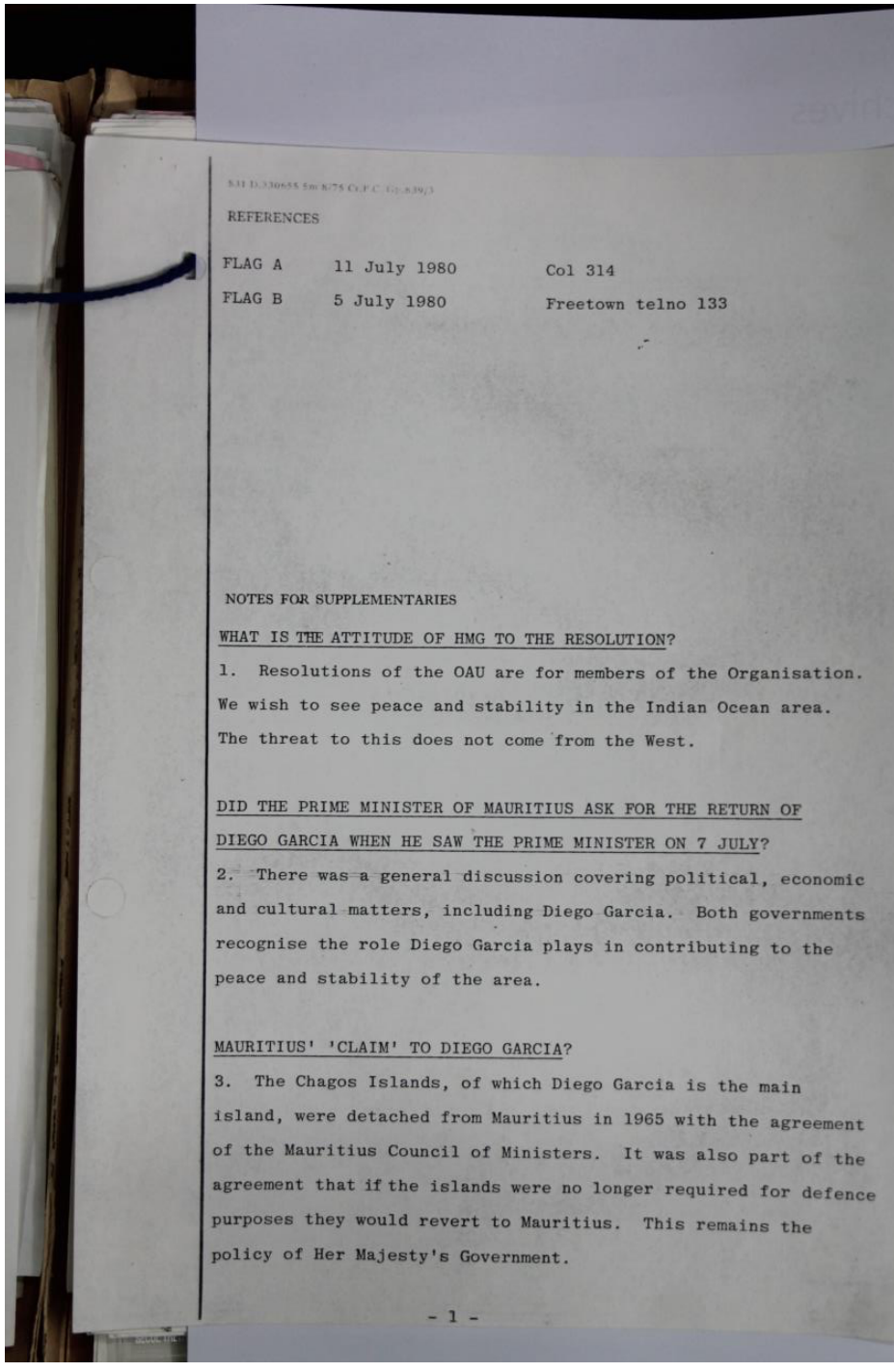


S.11 D.330655 5m 8/75 Cy.F.C. (1)-8.39/3

REFERENCES

FLAG A	11 July 1980	Col 314
FLAG B	5 July 1980	Freetown telno 133

NOTES FOR SUPPLEMENTARIES

WHAT IS THE ATTITUDE OF HMG TO THE RESOLUTION?

1. Resolutions of the OAU are for members of the Organisation. We wish to see peace and stability in the Indian Ocean area. The threat to this does not come from the West.

DID THE PRIME MINISTER OF MAURITIUS ASK FOR THE RETURN OF DIEGO GARCIA WHEN HE SAW THE PRIME MINISTER ON 7 JULY?

2. There was a general discussion covering political, economic and cultural matters, including Diego Garcia. Both governments recognise the role Diego Garcia plays in contributing to the peace and stability of the area.

MAURITIUS' 'CLAIM' TO DIEGO GARCIA?

3. The Chagos Islands, of which Diego Garcia is the main island, were detached from Mauritius in 1965 with the agreement of the Mauritius Council of Ministers. It was also part of the agreement that if the islands were no longer required for defence purposes they would revert to Mauritius. This remains the policy of Her Majesty's Government.

IF MAURITIUS ACCEPTS THE NEED FOR A BASE ON DIEGO GARCIA, WHY DID SHE TABLE THE RESOLUTION AT THE ORGANISATION OF AFRICAN UNITY DEMANDING ITS REMOVAL?

4. That is for the Government of Mauritius.

HAS A SETTLEMENT REGARDING COMPENSATION YET BEEN REACHED FOR THE ISLANDERS RESETTLED IN MAURITIUS?

5. Her Majesty's Government have made an offer of £1.25m as compensation for displacement. We await the community's response. This offer is in addition to £650,000 paid in 1973 for resettlement of the families in Mauritius.

US PROPOSALS TO DEVELOP FACILITY ON DIEGO GARCIA?

6. Earlier this year we were consulted on minor improvements, eg improvement to the water supply and fuel storage. We have also held consultations with the Americans on further measures necessary to improve facilities on the Island. Details of these further improvements are still being refined.

(if pressed)

They include larger storage areas, better refuelling arrangements and increases wharfage.

UK/US CONSULTATION ON USE OF DIEGO GARCIA?

7. The published 1976 Anglo-US Agreement establishes certain requirements for consultation about use of the facility at Diego Garcia. These requirements have not changed.

(if pressed)

We are satisfied that the two sides have a clear understanding about the circumstances in which joint decision is required.

Annex 121

PRE-POSITIONING OF UK SHIPS ON DIEGO GARCIA?

8. This summer the Americans intend to pre-position at the Island merchant ships carrying military equipment. These ships do not constitute a naval task force. They may be rotated periodically within the Indian Ocean.

ATTITUDE OF INDIAN OCEAN STATES TO UNITED STATES FACILITY ON DIEGO GARCIA?

9. The facility on Diego Garcia contributes to the maintenance of stability and security in the Indian Ocean. This is to the benefit of states in the area.

ARMS LIMITATION IN INDIAN OCEAN/INDIAN OCEAN PEACE ZONE?

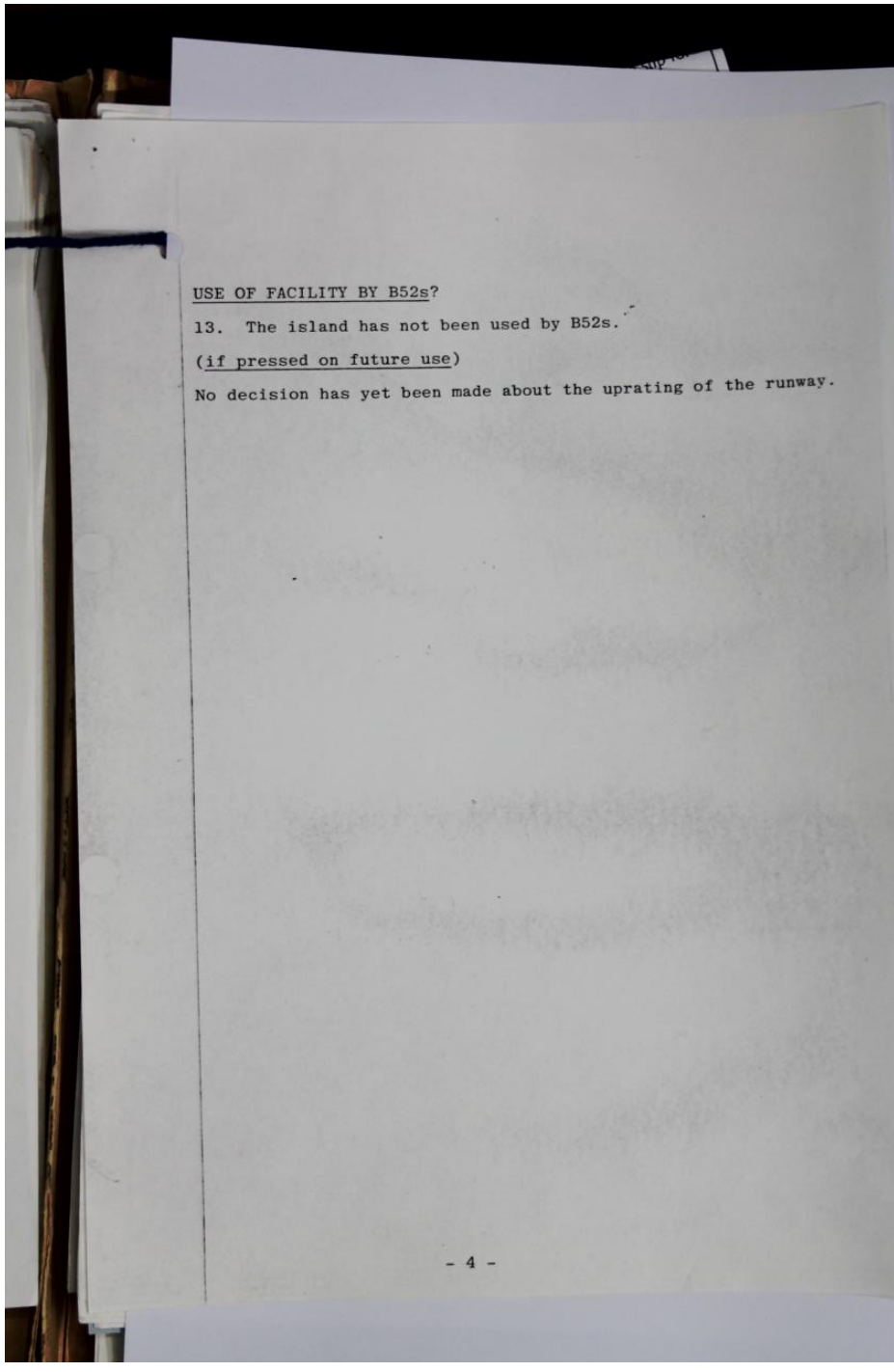
10. We support realistic moves towards peace and stability in Indian Ocean area. We are participating in the United Nations Ad Hoc Committee to consider whether implementation of the Indian Ocean Peace Zone is feasible in current circumstances.

EXISTENCE OF UNITED STATES FACILITY ON DIEGO GARCIA INCONSISTENT WITH INDIAN OCEAN PEACE ZONE?

11. The presence of large numbers of Soviet troops in Afghanistan is a far greater threat to peace in the Indian Ocean area.

UNITED KINGDOM ATTITUDE TO UNITED STATES DEFENCE POLICY IN INDIAN OCEAN?

12. Her Majesty's Government welcome United States proposals that will strengthen stability and security in the Indian Ocean area.



USE OF FACILITY BY B52s?

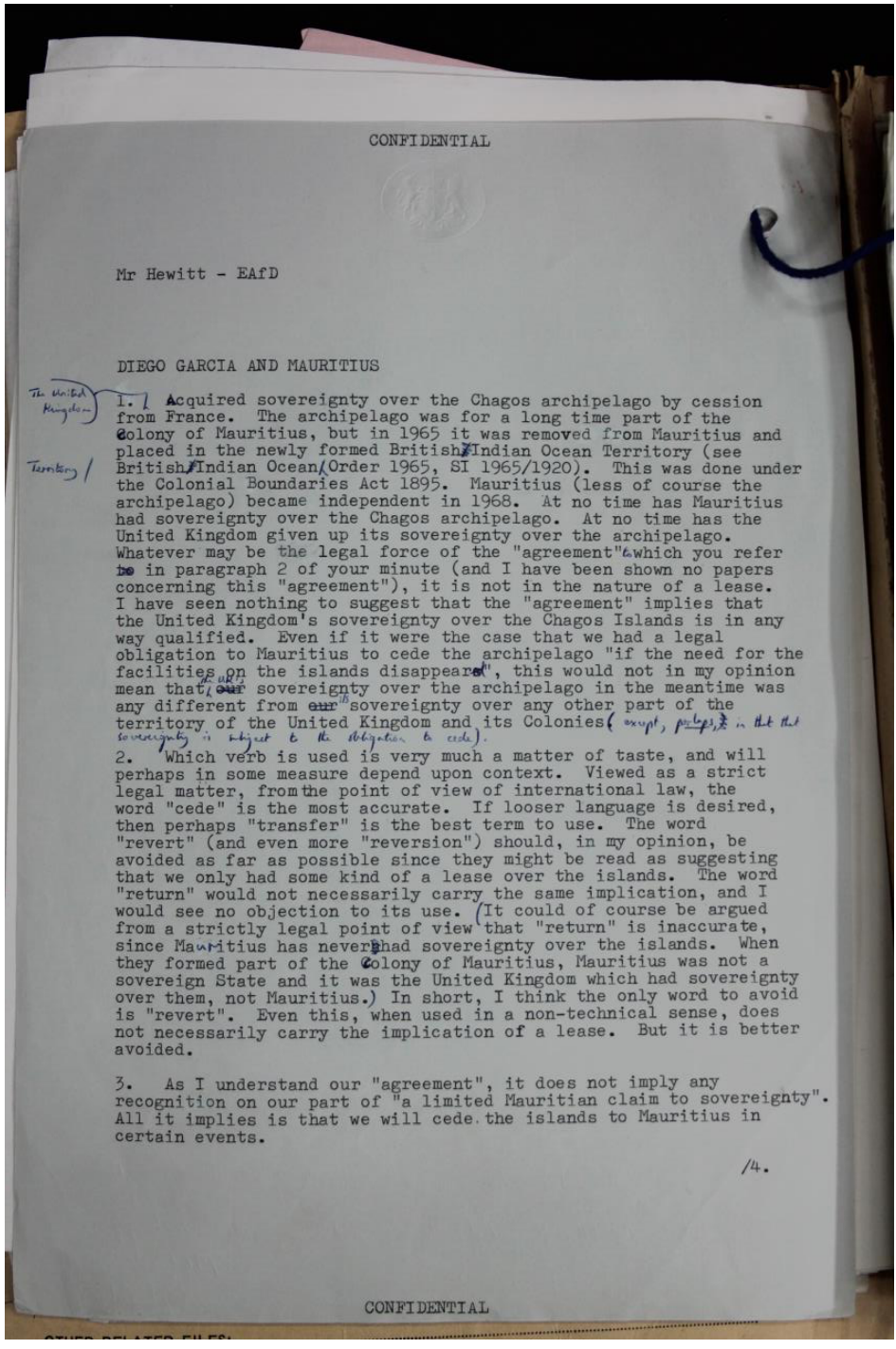
13. The island has not been used by B52s.

(if pressed on future use)

No decision has yet been made about the uprating of the runway.

Annex 122

Letter from M. C. Wood to Mr Hewitt, FCO 31/2759 (22 Sept. 1980)



CONFIDENTIAL

Mr Hewitt - EAfD

DIEGO GARCIA AND MAURITIUS

1. The United Kingdom acquired sovereignty over the Chagos archipelago by cession from France. The archipelago was for a long time part of the Colony of Mauritius, but in 1965 it was removed from Mauritius and placed in the newly formed British Indian Ocean Territory (see British Indian Ocean Territory Order 1965, SI 1965/1920). This was done under the Colonial Boundaries Act 1895. Mauritius (less of course the archipelago) became independent in 1968. At no time has Mauritius had sovereignty over the Chagos archipelago. At no time has the United Kingdom given up its sovereignty over the archipelago. Whatever may be the legal force of the "agreement" to which you refer in paragraph 2 of your minute (and I have been shown no papers concerning this "agreement"), it is not in the nature of a lease. I have seen nothing to suggest that the "agreement" implies that the United Kingdom's sovereignty over the Chagos Islands is in any way qualified. Even if it were the case that we had a legal obligation to Mauritius to cede the archipelago "if the need for the facilities on the islands disappears", this would not in my opinion mean that our sovereignty over the archipelago in the meantime was any different from our sovereignty over any other part of the territory of the United Kingdom and its Colonies (except, perhaps, in that that sovereignty is subject to the obligation to cede).

2. Which verb is used is very much a matter of taste, and will perhaps in some measure depend upon context. Viewed as a strict legal matter, from the point of view of international law, the word "cede" is the most accurate. If looser language is desired, then perhaps "transfer" is the best term to use. The word "revert" (and even more "reversion") should, in my opinion, be avoided as far as possible since they might be read as suggesting that we only had some kind of a lease over the islands. The word "return" would not necessarily carry the same implication, and I would see no objection to its use. (It could of course be argued from a strictly legal point of view that "return" is inaccurate, since Mauritius has never had sovereignty over the islands. When they formed part of the Colony of Mauritius, Mauritius was not a sovereign State and it was the United Kingdom which had sovereignty over them, not Mauritius.) In short, I think the only word to avoid is "revert". Even this, when used in a non-technical sense, does not necessarily carry the implication of a lease. But it is better avoided.

3. As I understand our "agreement", it does not imply any recognition on our part of "a limited Mauritian claim to sovereignty". All it implies is that we will cede the islands to Mauritius in certain events.

/4.

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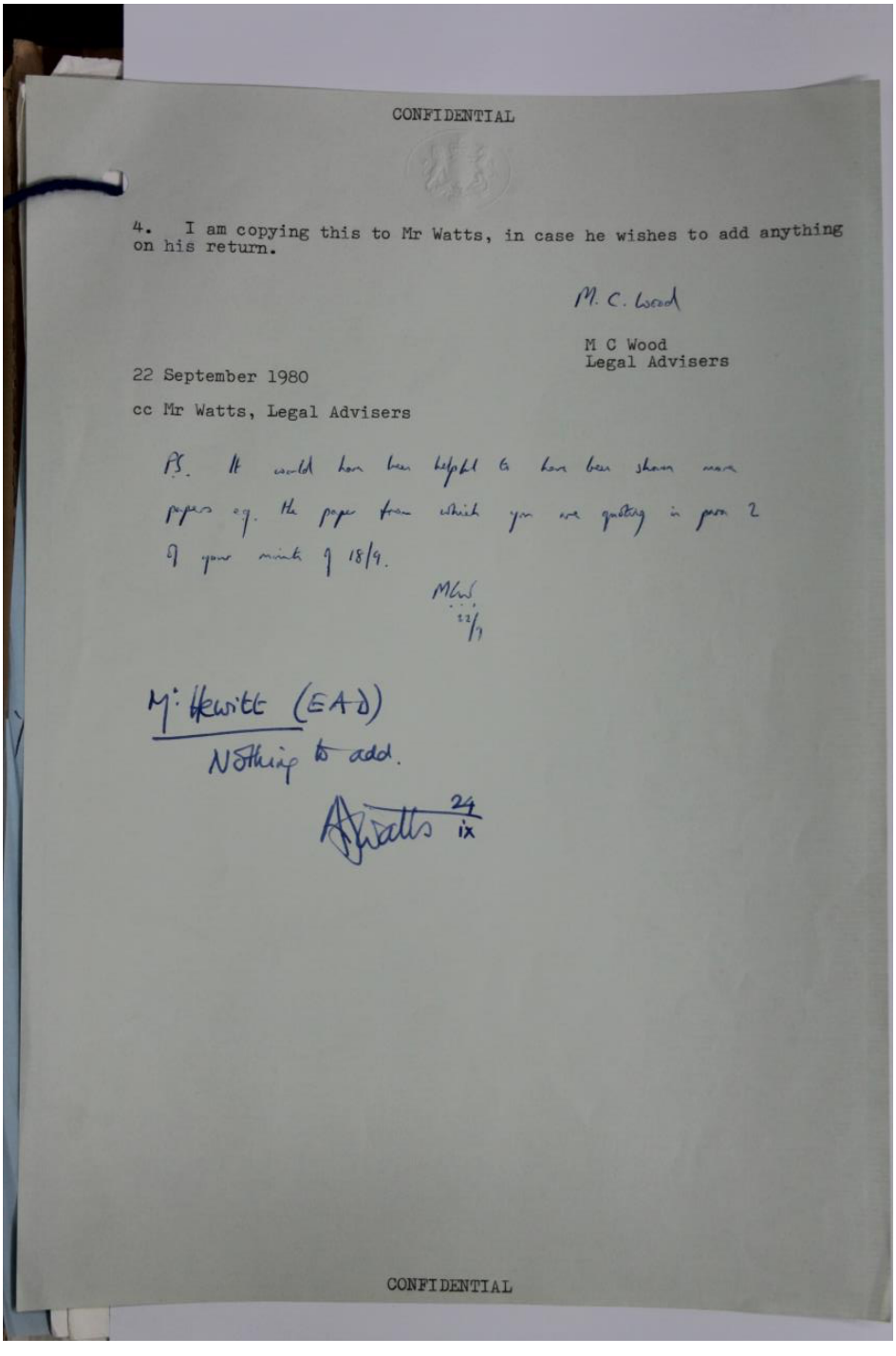

CONFIDENTIAL

4. I am copying this to Mr Watts, in case he wishes to add anything on his return.

M. C. Wood

M C Wood
Legal Advisers

22 September 1980

cc Mr Watts, Legal Advisers

PS. It would have been helpful to have been shown more papers e.g. the paper from which you are quoting in para 2 of your minute of 18/9.

MCW
22/9

Mr Hewitt (EAD)
Nothing to add.

A Watts 24 ix

CONFIDENTIAL

Annex 123

Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980)

Annex 123

CHAGOS ARCHIPELAGO — EXCISION

(No. B/1141) Mr. J. C. de l'Estrac (First Member for Stanley and Rose Hill) asked the Prime Minister whether he will give the reasons why, in 1965, he gave his agreement to the excision of the Chagos Archipelago from Mauritius.

The Prime Minister : Agreement was not necessary. We were a colony and Great Britain could have excised the Chagos Archipelago.

Mr. de l'Estrac : Will the hon. Prime Minister agree that the excision was done contrary to Resolutions of the United Nations ?

The Prime Minister : It is as it was.

Mr. Boodhoo : Was the excision of these islands a precondition for the independence of this country ?

The Prime Minister : Not exactly.

Mr. Bérenger : Since the Prime Minister says to-day that his agreement was not necessary for the "excision" to take place, can I ask the Prime Minister why then did he give his agreement which was reported both in Great Britain and in this then — Legislative Council in Mauritius ?

The Prime Minister : It was a matter that was negotiated, we got some advantage out of this and we agreed.

Mr. Bérenger : Can the Prime Minister confirm having said to the Christian Science Monitor this month the following :

> "There was a nook around my neck. I could not say no. I had to say yes, otherwise the noose could have tightened,"

Could I ask him to confirm that, in fact, he is referring to the referen[dum] which the PMSD was then requesting against independence ?

The Prime Minister : Since my hon. Friend has raised it, let him digest it.

Mr. Boodhoo : We know that there was a delegation to London comprising all political parties in 1965. Can the Rt. hon. Prime Minister inform the House to whom did the British officials first disclose their intention of excising these islands ?

The Prime Minister : There was a committee composed of people who attended the Constitutional Conference. Some of them are dead, except myself and my Friend, Mr. Paturau.

Mr. Bérenger : Can I ask the Prime Minister to confirm that in fact those who discussed with Mr. Harold Wilson when that excision was agreed to, the two culprits were himself and the Minister sitting very next to him ?

The Prime Minister : We discussed this with a committee, not with Mr. Harold Wilson.

Mr. de l'Estrac : The Prime Minister has just said that Mauritius gave its agreement because we got some advantage; can we know the nature of that advantage ?

The Prime Minister : We had about £ 3 m.

TROMELIN ISLAND — REFUELLING BY MAURITIAN AIRPLANES

(No. B/1142) Mr. J. C. de l'Estrac (First Member for Stanley and Rose Hill

Annex 123

asked the Prime Minister whether he will say if he has had discussions with the French Government with a view to allowing Mauritian airplanes to refuel at Tromelin Island en route to Agalega and back.

The Prime Minister : No, Sir. In fact, there is no need for such discussion since Tromelin is an integral part of the State of Mauritius.

Mr. Jugnauth : Can I ask the Prime Minister whether officially the Government of this country has made known to the French Government that this is the official stand of this country ?

The Prime Minister : We have put it on our map.

Mr. Bérenger : If there is no need to ask for the right to land at Tromelin island, because it forms part of the State of Mauritius, can I ask the Prime Minister whether he has any objection to himself, the Leader of the Opposition, myself and the Minister of External Affairs — if he gets in the Twin Otter of Air Mauritius — to having the Twin Otter of Air Mauritius fly to Tromelin in the very next days ?

The Prime Minister : I don't know if arrangements can be made.

Mr. Boodhoo : Is the Rt. hon. Prime Minister in a position to explain to the House in what way the French are exploiting Tromelin island ?

The Prime Minister : I cannot say.

CITÉ ROCHES BRUNES — SEWERAGE SYSTEM

(No. B/1143) Mr. J. C. de l'Estrac (First Member for Stanley and Rose Hill) asked the Minister of Housing, Lands and Town and Country Planning whether he will give the reasons why, in spite of repeated requests no action has been taken in Cité Roches Brunes, Rose Hill, to solve the serious problems caused by the defective sewerage system.

Mr. E. François : Sir, I am advised by the CHA that the emptying of cesspits at Roches Brunes is already underway as a result of representations made by occupiers of the houses. Consideration is being given for the improvement of all pits in the estate.

Mr. de l'Estrac : Will the hon. Minister be honest enough to recognise that work has started after the question was put ?

Mr. Speaker : I would ask the hon. Member to withdraw that.

Mr. de l'Estrac : I withdraw the word " honest ". Will the hon. Minister agree...

Sir Harold Walter : The hon. Member has to withdraw the whole question.

Mr. de l'Estrac : I am going to put another question, Sir. Will the hon. Minister agree that work has only started after the question was put to him last Tuesday ?

Mr. François : I need prior notice of this question, Sir.

C.E.B. TRANSPORT WORKSHOP — REPAIRS OF PERSONAL STAFF CARS

(No. B/1144) Dr. J. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Minister of Power, Fuel and Energy whether he will, for the benefit of the House, obtain from the C.E.B. the following information

Annex 124

Note from M. Walawalkar of the African Research Department to Mr Campbell of the East African Department - Diego Garcia: Research on Mauritian Government's Claim to Sovereignty, FCO 31/3437 (8 Oct. 1982)

SECRET

Reference JEB 0602

Mr Campbell - EAD

DIEGO GARCIA: RESEARCH ON MAURITIAN GOVERNMENT'S CLAIM TO SOVEREIGNTY.

1. I refer to your minute of 28 September.

(i) 1976 FCO 'Report'.

2. You will have seen a copy of my minute dated 30 September to L & RD, who have been unable to find the Note in question. They have however turned up a reference to it (see attached) on file HKT 243/436/1 Part D of 1976. L & RD believe that the Note itself may well be on Parts A, B or C of the same file, but apparently these have been with EAD for some time. You may therefore be able to put your hands on it.

3. If, as I suspect, however, the Note is indeed the same as that quoted in the footnotes of the recent Minority Rights Group Report, and speaks of "payments of compensation to the Mauritian government for loss of sovereignty* over the Chagos Archipelago" you might prefer simply to tell Mr Lesser that on the basis of information supplied, we are unable to identify the document he requests.

(ii) The £3 million grant.

4. The £3 million grant was paid to Mauritius in recognition of the detachment of the Chagos Archipelago, not, as Mr Lesser states, as compensation for loss of sovereignty over it. This was our position in 1965 and is certainly our position now. Unfortunately, however, the office has not always been consistent in its pronouncements on the matter (cf. para.3 above), though probably the most potentially embarrassing past statement is that enshrined in Hansard 21 October 1975, (Written Answers, col.130):

> "Mr Newens asked the Secretary of State for Foreign and Commonwealth Affairs what sums have been paid in compensation to the Seychelles and to Mauritius, respectively, for the surrender of sovereignty and other rights over Diego Garcia and other British territories in the Indian Ocean.
>
> Mr Ennals: Grants amounting to £3 million were provided to Mauritius as compensation for the loss of sovereignty over the Chagos Archipelago. A new international airport was constructed for Seychelles at a cost of about £6½ million as compensation for the loss of sovereignty over Aldabra, Farquhar and Desroches".

5. In fact the £3 million grant was only one of the conditions under which Mauritius Ministers agreed to the separation of the Chagos Islands. In your reply to Mr Lesser you may find it useful to draw upon the following statement made on 23 June 1977 by the Secretary of State, Mr Luard (Hansard, Written Answers, col. 549-550):-

/"The

* my italics

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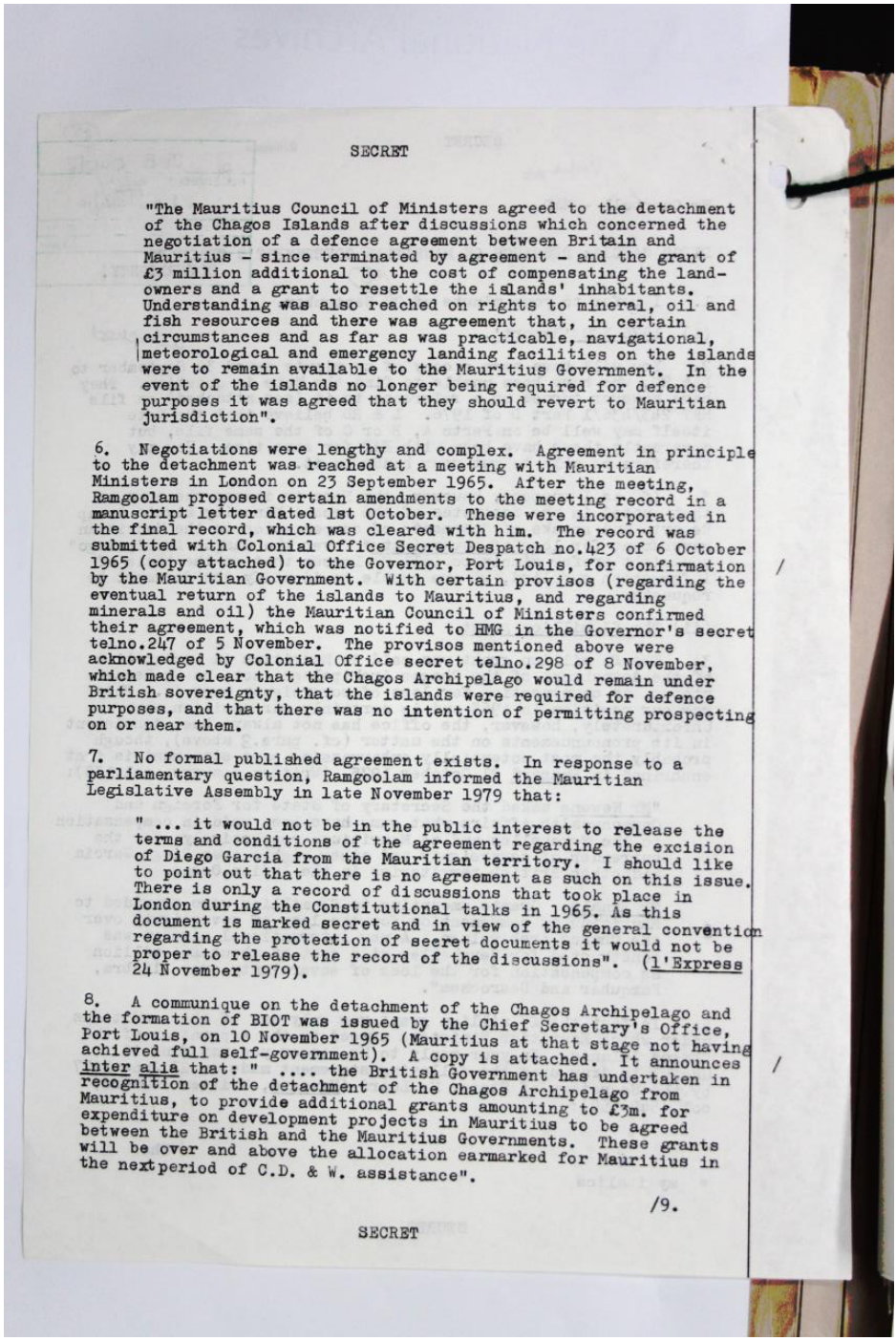
Annex 124



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"The Mauritius Council of Ministers agreed to the detachment of the Chagos Islands after discussions which concerned the negotiation of a defence agreement between Britain and Mauritius - since terminated by agreement - and the grant of £3 million additional to the cost of compensating the land-owners and a grant to resettle the islands' inhabitants. Understanding was also reached on rights to mineral, oil and fish resources and there was agreement that, in certain circumstances and as far as was practicable, navigational, meteorological and emergency landing facilities on the islands were to remain available to the Mauritius Government. In the event of the islands no longer being required for defence purposes it was agreed that they should revert to Mauritian jurisdiction".

6. Negotiations were lengthy and complex. Agreement in principle to the detachment was reached at a meeting with Mauritian Ministers in London on 23 September 1965. After the meeting, Ramgoolam proposed certain amendments to the meeting record in a manuscript letter dated 1st October. These were incorporated in the final record, which was cleared with him. The record was submitted with Colonial Office Secret Despatch no.423 of 6 October 1965 (copy attached) to the Governor, Port Louis, for confirmation by the Mauritian Government. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5 November. The provisos mentioned above were acknowledged by Colonial Office secret telno.298 of 8 November, which made clear that the Chagos Archipelago would remain under British sovereignty, that the islands were required for defence purposes, and that there was no intention of permitting prospecting on or near them.

7. No formal published agreement exists. In response to a parliamentary question, Ramgoolam informed the Mauritian Legislative Assembly in late November 1979 that:

" ... it would not be in the public interest to release the terms and conditions of the agreement regarding the excision of Diego Garcia from the Mauritian territory. I should like to point out that there is no agreement as such on this issue. There is only a record of discussions that took place in London during the Constitutional talks in 1965. As this document is marked secret and in view of the general convention regarding the protection of secret documents it would not be proper to release the record of the discussions". (l'Express 24 November 1979).

8. A communique on the detachment of the Chagos Archipelago and the formation of BIOT was issued by the Chief Secretary's Office, Port Louis, on 10 November 1965 (Mauritius at that stage not having achieved full self-government). A copy is attached. It announces inter alia that: " .... the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance".

/9.

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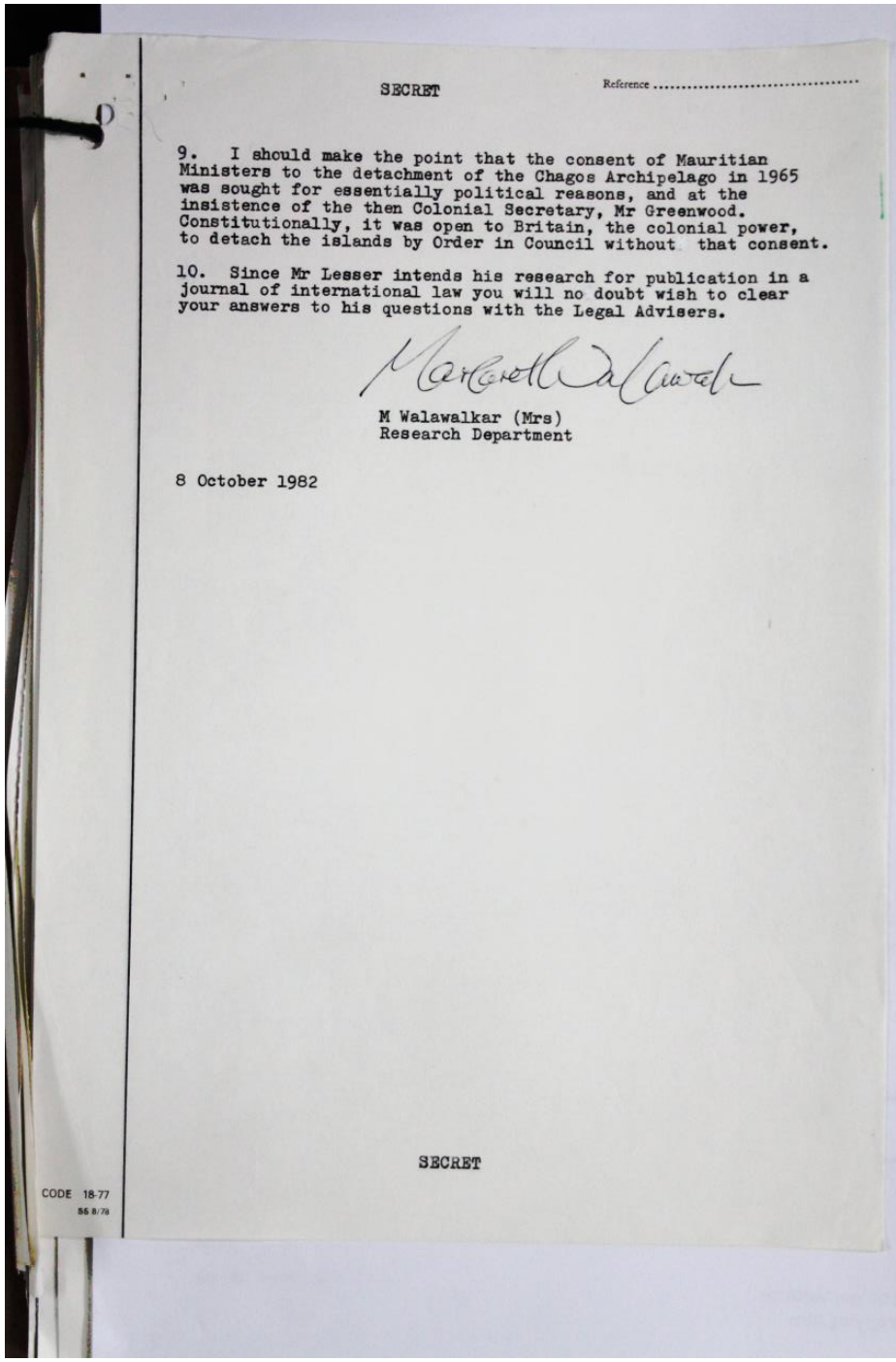

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Reference .....

9. I should make the point that the consent of Mauritian Ministers to the detachment of the Chagos Archipelago in 1965 was sought for essentially political reasons, and at the insistence of the then Colonial Secretary, Mr Greenwood. Constitutionally, it was open to Britain, the colonial power, to detach the islands by Order in Council without that consent.

10. Since Mr Lesser intends his research for publication in a journal of international law you will no doubt wish to clear your answers to his questions with the Legal Advisers.

M Walawalkar (Mrs)
Research Department

8 October 1982

SECRET

CODE 18-77
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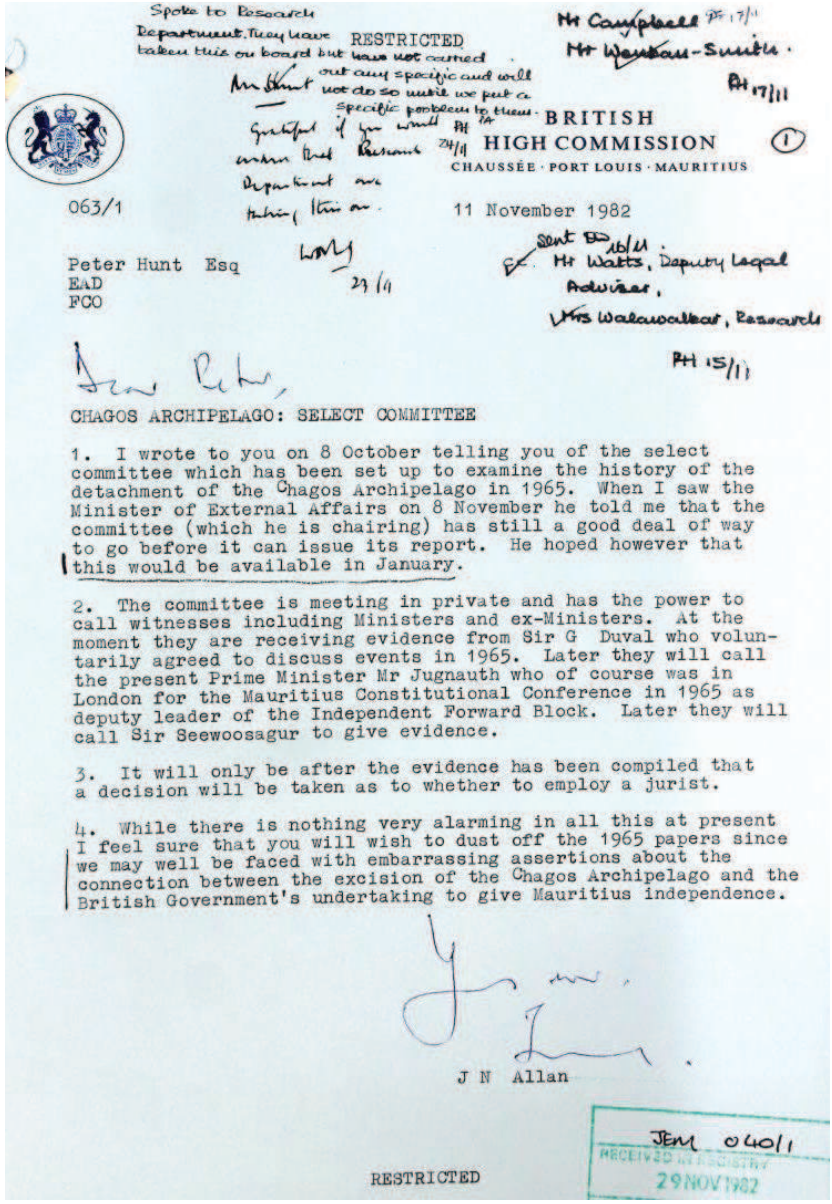
Annex 125

Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3622 (11 Nov. 1982)



Spoke to Research Department. They have taken this on board but have not carried out any specific and will not do so until we put a specific problem to them.

Mr Campbell PS 17/11
Mr Wareham-Smith.
PH 17/11

Grateful if you would PH 24/11 ensure that Research Department are thinking along these lines.

RESTRICTED

BRITISH HIGH COMMISSION
CHAUSSÉE · PORT LOUIS · MAURITIUS

063/1

11 November 1982

Peter Hunt Esq
EAD
FCO

WMJ 23/11

Sent ED 16/11

cc Mr Watts, Deputy Legal Adviser,
Mrs Walawalkar, Research

PH 15/11

Dear Peter,

CHAGOS ARCHIPELAGO: SELECT COMMITTEE

1. I wrote to you on 8 October telling you of the select committee which has been set up to examine the history of the detachment of the Chagos Archipelago in 1965. When I saw the Minister of External Affairs on 8 November he told me that the committee (which he is chairing) has still a good deal of way to go before it can issue its report. He hoped however that this would be available in January.

2. The committee is meeting in private and has the power to call witnesses including Ministers and ex-Ministers. At the moment they are receiving evidence from Sir G Duval who voluntarily agreed to discuss events in 1965. Later they will call the present Prime Minister Mr Jugnauth who of course was in London for the Mauritius Constitutional Conference in 1965 as deputy leader of the Independent Forward Block. Later they will call Sir Seewoosagur to give evidence.

3. It will only be after the evidence has been compiled that a decision will be taken as to whether to employ a jurist.

4. While there is nothing very alarming in all this at present I feel sure that you will wish to dust off the 1965 papers since we may well be faced with embarrassing assertions about the connection between the excision of the Chagos Archipelago and the British Government's undertaking to give Mauritius independence.

Yours ever,

J N Allan

RESTRICTED

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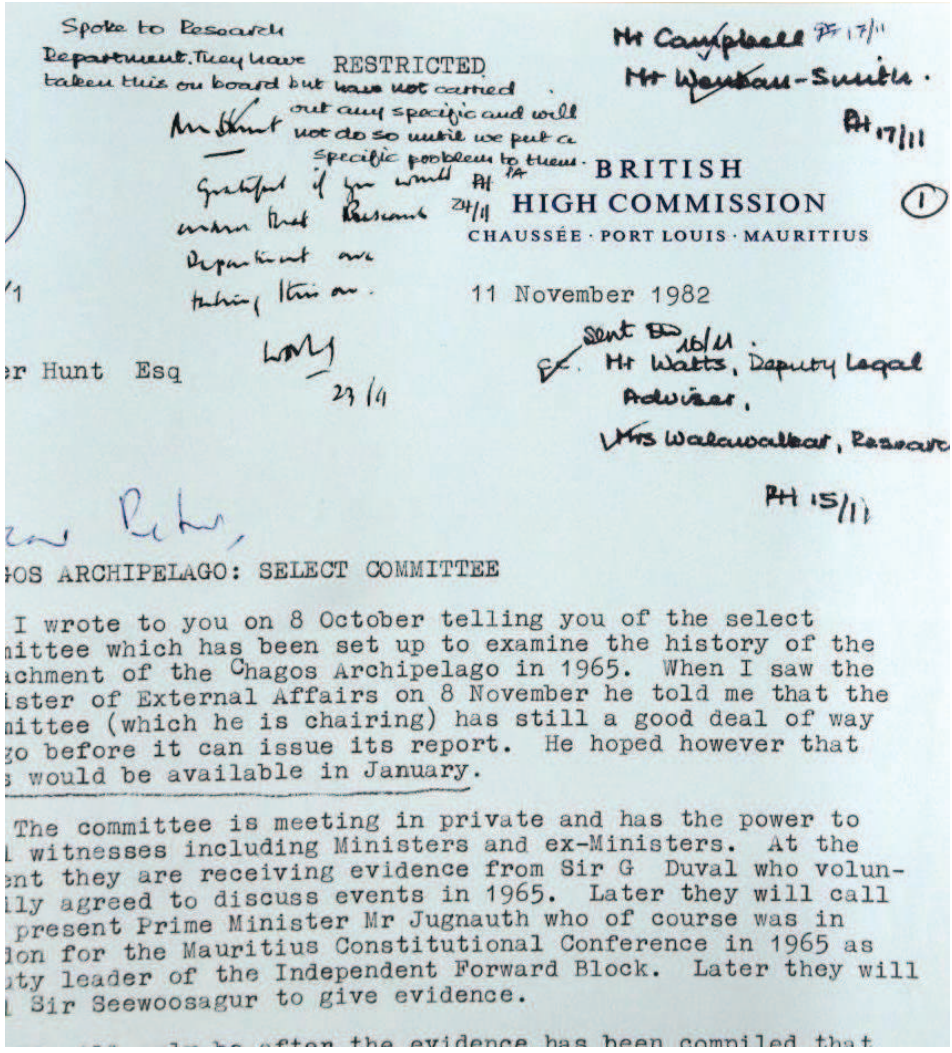
Annex 125



Spoke to Research Department. They have taken this on board but have not carried out any specific and will not do so until we put a specific problem to them. Grateful if you would inform that Research Department are taking this on.

Mr Campbell PH 17/11
Mr Wenban-Smith.
PH 17/11

RESTRICTED

BRITISH HIGH COMMISSION
CHAUSSÉE · PORT LOUIS · MAURITIUS

(1)

11 November 1982

Sent ED 16/11.
cc. Mr Watts, Deputy Legal Adviser,
Mrs Walawalkar, Research

PH 15/11

r Hunt Esq

OS ARCHIPELAGO: SELECT COMMITTEE

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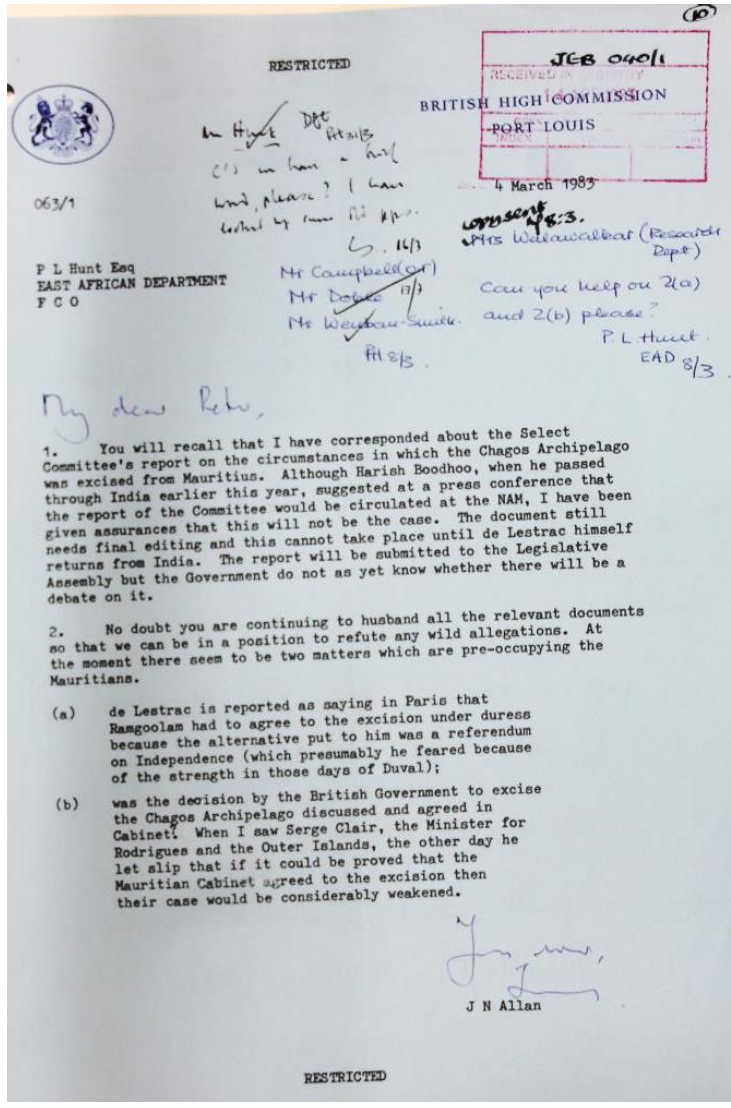
The committee is meeting in private and has the power to l witnesses including Ministers and ex-Ministers. At the ent they are receiving evidence from Sir G Duval who volun- ily agreed to discuss events in 1965. Later they will call present Prime Minister Mr Jugnauth who of course was in ion for the Mauritius Constitutional Conference in 1965 as ity leader of the Independent Forward Block. Later they will l Sir Seewoosagur to give evidence.

[illegible] after the evidence has been compiled that

Annex 126

Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (4 Mar. 1983)



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JEB 040/1

BRITISH HIGH COMMISSION
PORT LOUIS

4 March 1983

063/1

P L Hunt Esq
EAST AFRICAN DEPARTMENT
F C O

Mr Campbell (QM)
Mr Dafter 17/3
Ms Weyman-Smith.
FH 8/3.

Copy sent 14.3. JMHS Wilkinson (Research Dept)

Can you help on 2(a) and 2(b) please?
P L Hunt.
EAD 8/3.

My dear Peter,

1. You will recall that I have corresponded about the Select Committee's report on the circumstances in which the Chagos Archipelago was excised from Mauritius. Although Harish Boodhoo, when he passed through India earlier this year, suggested at a press conference that the report of the Committee would be circulated at the NAM, I have been given assurances that this will not be the case. The document still needs final editing and this cannot take place until de Lestrac himself returns from India. The report will be submitted to the Legislative Assembly but the Government do not as yet know whether there will be a debate on it.

2. No doubt you are continuing to husband all the relevant documents so that we can be in a position to refute any wild allegations. At the moment there seem to be two matters which are pre-occupying the Mauritians.

(a) de Lestrac is reported as saying in Paris that Ramgoolam had to agree to the excision under duress because the alternative put to him was a referendum on Independence (which presumably he feared because of the strength in those days of Duval);

(b) was the decision by the British Government to excise the Chagos Archipelago discussed and agreed in Cabinet. When I saw Serge Clair, the Minister for Rodrigues and the Outer Islands, the other day he let slip that if it could be proved that the Mauritian Cabinet agreed to the excision then their case would be considerably weakened.

Yours ever,

J N Allan

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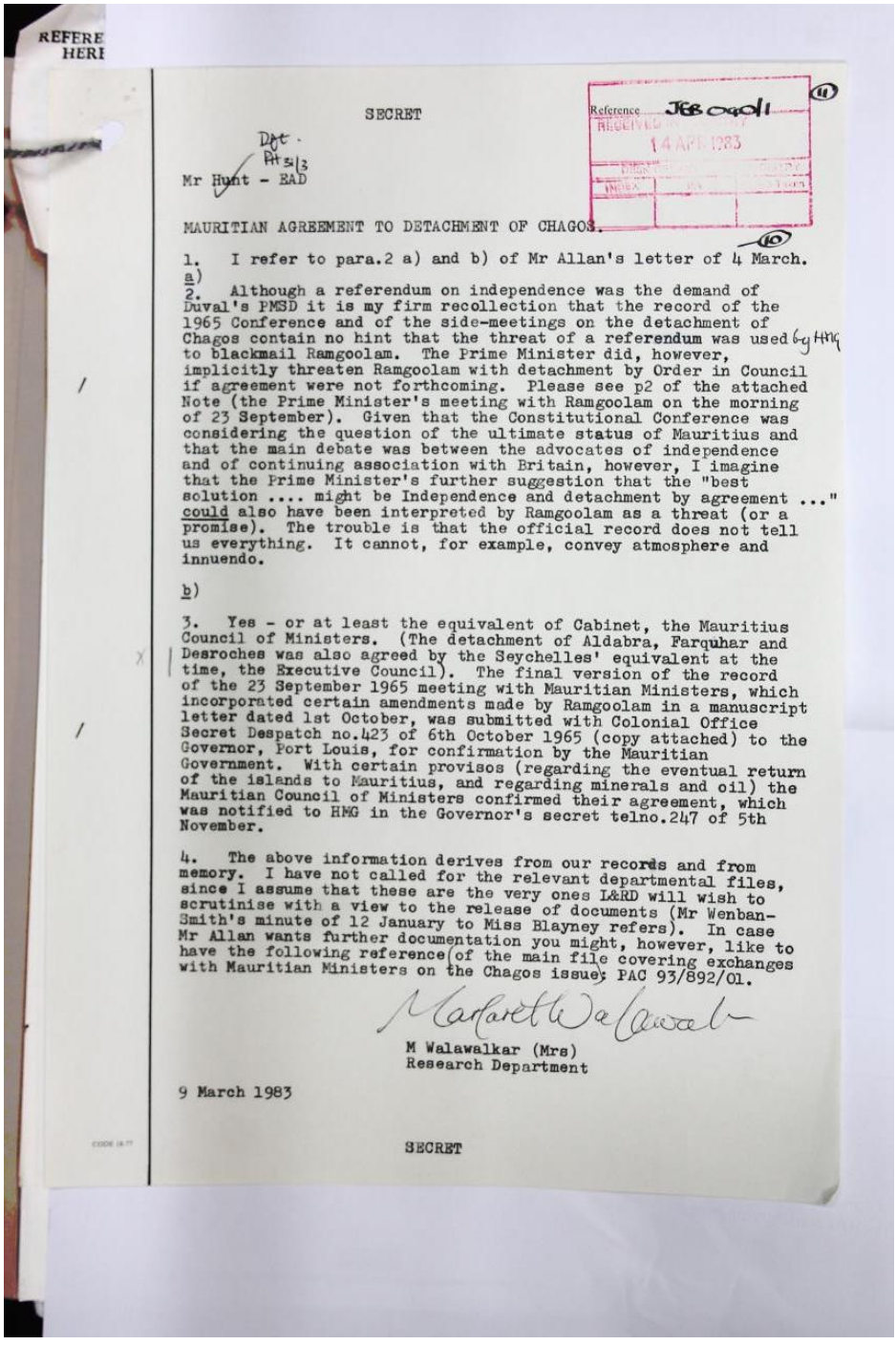
Annex 127

Letter from M. Walawalkar of the African Section Research Department to P. Hunt of the East African Department on the Mauritian Agreement to Detachment of Chagos, FCO 31/3834 (9 Mar. 1983)



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Dpt.
Pt 5/3
Mr Hunt - EAD

MAURITIAN AGREEMENT TO DETACHMENT OF CHAGOS.

1. I refer to para.2 a) and b) of Mr Allan's letter of 4 March.

a)

2. Although a referendum on independence was the demand of Duval's PMSD it is my firm recollection that the record of the 1965 Conference and of the side-meetings on the detachment of Chagos contain no hint that the threat of a referendum was used by HMG to blackmail Ramgoolam. The Prime Minister did, however, implicitly threaten Ramgoolam with detachment by Order in Council if agreement were not forthcoming. Please see p2 of the attached Note (the Prime Minister's meeting with Ramgoolam on the morning of 23 September). Given that the Constitutional Conference was considering the question of the ultimate status of Mauritius and that the main debate was between the advocates of independence and of continuing association with Britain, however, I imagine that the Prime Minister's further suggestion that the "best solution .... might be Independence and detachment by agreement ..." could also have been interpreted by Ramgoolam as a threat (or a promise). The trouble is that the official record does not tell us everything. It cannot, for example, convey atmosphere and innuendo.

b)

3. Yes - or at least the equivalent of Cabinet, the Mauritius Council of Ministers. (The detachment of Aldabra, Farquhar and Desroches was also agreed by the Seychelles' equivalent at the time, the Executive Council). The final version of the record of the 23 September 1965 meeting with Mauritian Ministers, which incorporated certain amendments made by Ramgoolam in a manuscript letter dated 1st October, was submitted with Colonial Office Secret Despatch no.423 of 6th October 1965 (copy attached) to the Governor, Port Louis, for confirmation by the Mauritian Government. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5th November.

4. The above information derives from our records and from memory. I have not called for the relevant departmental files, since I assume that these are the very ones L&RD will wish to scrutinise with a view to the release of documents (Mr Wenban-Smith's minute of 12 January to Miss Blayney refers). In case Mr Allan wants further documentation you might, however, like to have the following reference of the main file covering exchanges with Mauritian Ministers on the Chagos issue: PAC 93/892/01.

Margaret Walawalkar

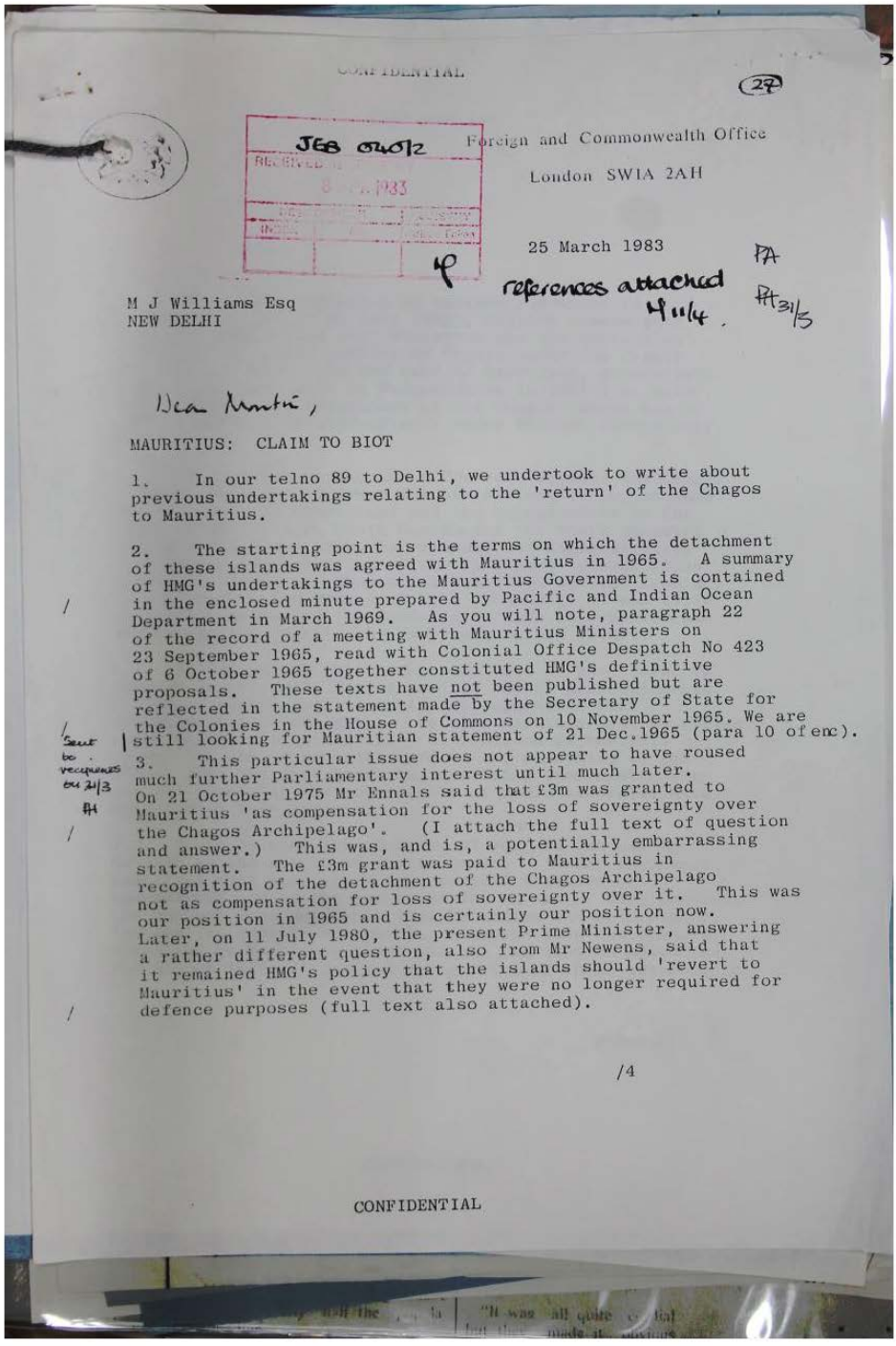
M Walawalkar (Mrs)
Research Department

9 March 1983

SECRET

Annex 128

Letter from W. N. Wenban-Smith of the Foreign and Commonwealth Office to M. J. Williams, with draft, FCO 31/3835 (25 Mar. 1983)



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(27)

JEB 040/2

RECEIVED 1983

Foreign and Commonwealth Office

London SWIA 2AH

25 March 1983

PA

references attached 4/11/4

PA 31/3

M J Williams Esq
NEW DELHI

Dear Martin,

MAURITIUS: CLAIM TO BIOT

1. In our telno 89 to Delhi, we undertook to write about previous undertakings relating to the 'return' of the Chagos to Mauritius.

2. The starting point is the terms on which the detachment of these islands was agreed with Mauritius in 1965. A summary of HMG's undertakings to the Mauritius Government is contained in the enclosed minute prepared by Pacific and Indian Ocean Department in March 1969. As you will note, paragraph 22 of the record of a meeting with Mauritius Ministers on 23 September 1965, read with Colonial Office Despatch No 423 of 6 October 1965 together constituted HMG's definitive proposals. These texts have not been published but are reflected in the statement made by the Secretary of State for the Colonies in the House of Commons on 10 November 1965. We are still looking for Mauritian statement of 21 Dec.1965 (para 10 of enc).

Sent to recipients 04 21/3 PA

3. This particular issue does not appear to have roused much further Parliamentary interest until much later. On 21 October 1975 Mr Ennals said that £3m was granted to Mauritius 'as compensation for the loss of sovereignty over the Chagos Archipelago'. (I attach the full text of question and answer.) This was, and is, a potentially embarrassing statement. The £3m grant was paid to Mauritius in recognition of the detachment of the Chagos Archipelago not as compensation for loss of sovereignty over it. This was our position in 1965 and is certainly our position now. Later, on 11 July 1980, the present Prime Minister, answering a rather different question, also from Mr Newens, said that it remained HMG's policy that the islands should 'revert to Mauritius' in the event that they were no longer required for defence purposes (full text also attached).

/4

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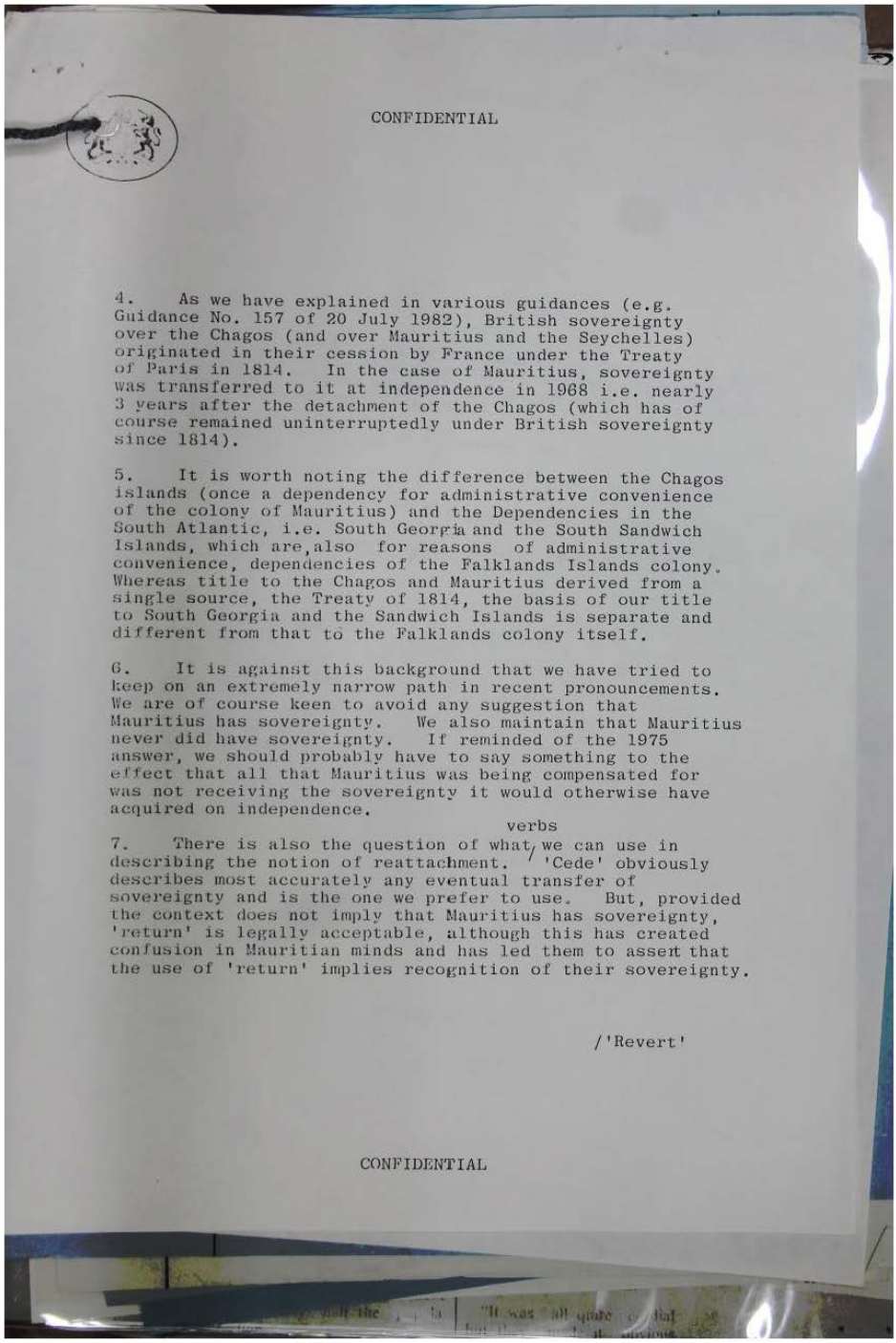
Annex 128



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4. As we have explained in various guidances (e.g. Guidance No. 157 of 20 July 1982), British sovereignty over the Chagos (and over Mauritius and the Seychelles) originated in their cession by France under the Treaty of Paris in 1814. In the case of Mauritius, sovereignty was transferred to it at independence in 1968 i.e. nearly 3 years after the detachment of the Chagos (which has of course remained uninterruptedly under British sovereignty since 1814).

5. It is worth noting the difference between the Chagos islands (once a dependency for administrative convenience of the colony of Mauritius) and the Dependencies in the South Atlantic, i.e. South Georgia and the South Sandwich Islands, which are, also for reasons of administrative convenience, dependencies of the Falklands Islands colony. Whereas title to the Chagos and Mauritius derived from a single source, the Treaty of 1814, the basis of our title to South Georgia and the Sandwich Islands is separate and different from that to the Falklands colony itself.

6. It is against this background that we have tried to keep on an extremely narrow path in recent pronouncements. We are of course keen to avoid any suggestion that Mauritius has sovereignty. We also maintain that Mauritius never did have sovereignty. If reminded of the 1975 answer, we should probably have to say something to the effect that all that Mauritius was being compensated for was not receiving the sovereignty it would otherwise have acquired on independence.

verbs

7. There is also the question of what we can use in describing the notion of reattachment. 'Cede' obviously describes most accurately any eventual transfer of sovereignty and is the one we prefer to use. But, provided the context does not imply that Mauritius has sovereignty, 'return' is legally acceptable, although this has created confusion in Mauritian minds and has led them to assert that the use of 'return' implies recognition of their sovereignty.

/'Revert'

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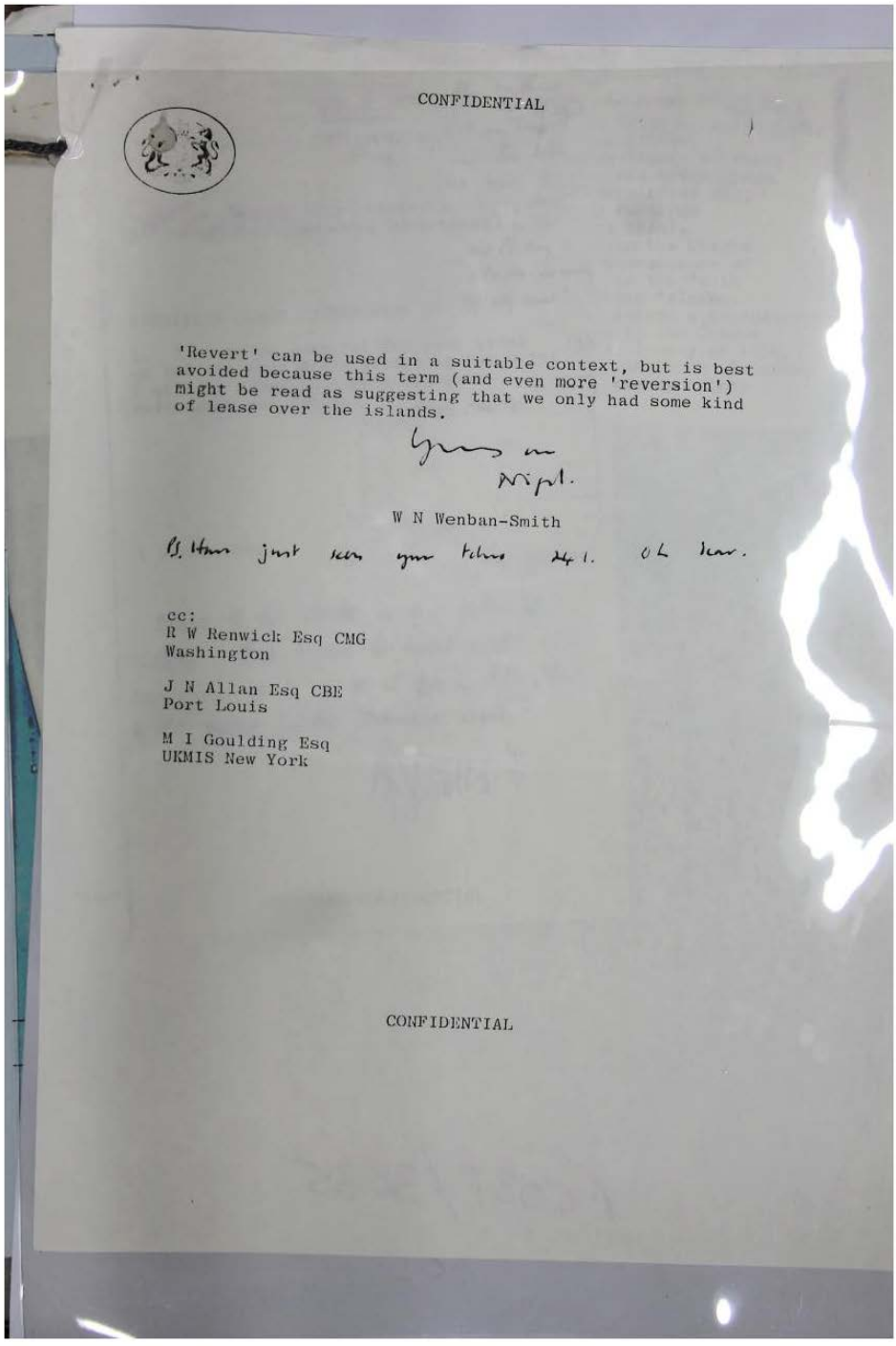

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'Revert' can be used in a suitable context, but is best avoided because this term (and even more 'reversion') might be read as suggesting that we only had some kind of lease over the islands.

W N Wenban-Smith

cc:
R W Renwick Esq CMG
Washington

J N Allan Esq CBE
Port Louis

M I Goulding Esq
UKMIS New York

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Annex 128

DSR 11 (Revised)

DRAFT: ~~minute/letter/telegram/despatch/note~~ TYPE: Draft/Final 1+

FROM: W N Wenban-Smith

DEPARTMENT: East African Dept TEL. NO: 233 4549

Reference

SECURITY CLASSIFICATION

~~TOP SECRET~~
~~SECRET~~
Confidential
~~RESTRICTED~~
~~UNCLASSIFIED~~

TO: M J Williams Esq
NEW DELHI

Your Reference

Copies to:

R W Renwick CMG Esq
WASHINGTON
J N Allen CBE Esq
PORT LOUIS
M I Goulding Esq
UKMIS NEW YORK

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Blind copy to me, pl. [illegible] 4/11

1. In our telno 89 to Delhi, we undertook to write about previous undertakings relating to the 'return' of the Chagos to Mauritius.

2. The starting point is the terms on which the detachment of these islands was agreed with Mauritius in 1965. A summary of HMG's undertakings to the Mauritius Government is contained in the enclosed minute prepared by Pacific and Indian Ocean Department in March 1969. As you will note, paragraph 22 of the record of a meeting with Mauritius Ministers on 23 September 1965, read with Colonial Office Despatch No 423 of 6 October 1965 together constitute HMG's definitive proposals. These texts have not been published but are reflected in the statement made by the Secretary of State for the Colonies in the House of Commons on 10 November 1965.

Mr Wenban-Smith
P. L. Hunt
17/3

Enclosures—flag(s).....

3. This particular issue does not appear to have roused much further Parliamentary interest until much later. On 21 October 1975 Mr Ennals said that £3m was granted to Mauritius 'as compensation for the loss of sovereignty

/over

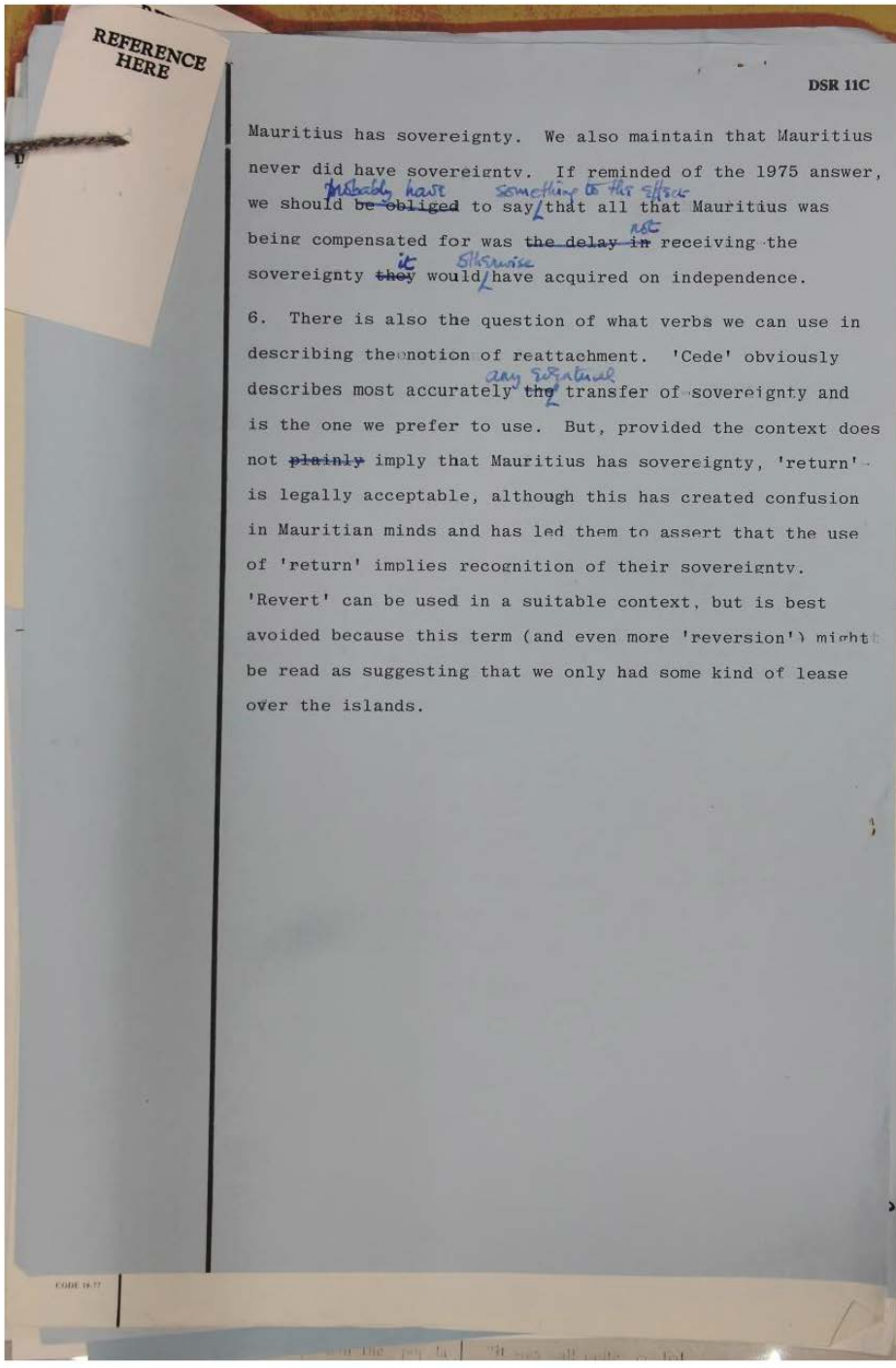
over the Chagos Archipelago'. (I attach the full text of question and answer.) This was, and is, a potentially embarrassing statement. The £3m grant was paid to Mauritius in recognition of the detachment of the Chagos Archipelago not as compensation for loss of sovereignty over it. This was our position in 1965 and is certainly our position now. Later, on 11 July 1980, the present Prime Minister, answering a rather different question, also from Mr Newens, said that it remained HMG's policy that the islands should 'revert to Mauritius' in the event that they were no longer required for defence purposes (full text also attached).

4. As we have explained in various guidances (eg Guidance No 157 of 20 July 1982), the main basis for our continued sovereignty over the Chagos is that the islands were included among those ceded to us by France by the Treaty of Paris in 1814, and that Mauritius acquired no sovereignty over any territory until the time of its independence in 1968, nearly 3 years after the detachment of the Chagos islands from its administrative jurisdiction. It is worth noting in passing that there is a difference here between the Chagos, whose status had been that of a Lesser Dependency of Mauritius and the ~~lesser~~ Dependencies in the South Atlantic, i.e. South Georgia and the South Sandwich Islands. The latter are administered from the Falklands solely for ~~the~~ administrative convenience, and our title to them is ~~quite~~ separate and different from that of our title to the Falklands themselves. But, when we acquired the Chagos they were already in some sense dependencies of Mauritius.

5. It is against this background that we have tried to keep on an extremely narrow path in recent pronouncements. We are of course keen to avoid any suggestion that

/Mauritius

Annex 128


REFERENCE HERE
DSR 11C
Mauritius has sovereignty. We also maintain that Mauritius never did have sovereignty. If reminded of the 1975 answer, we should probably have to say something to this effect that all that Mauritius was being compensated for was the delay in receiving the sovereignty it would otherwise have acquired on independence.
6. There is also the question of what verbs we can use in describing the notion of reattachment. 'Cede' obviously describes most accurately any territorial transfer of sovereignty and is the one we prefer to use. But, provided the context does not imply that Mauritius has sovereignty, 'return' is legally acceptable, although this has created confusion in Mauritian minds and has led them to assert that the use of 'return' implies recognition of their sovereignty. 'Revert' can be used in a suitable context, but is best avoided because this term (and even more 'reversion') might be read as suggesting that we only had some kind of lease over the islands.

Annex 129

Mauritius Legislative Assembly, *Report of the Select Committee on the Excision of the Chagos Archipelago*, No. 2 of 1983 (June 1983)

Annex 129

Rs. 20.00

MAURITIUS LEGISLATIVE ASSEMBLY

REPORT

OF THE

Select Committee

ON THE

Excision of the Chagos Archipelago

(No. 2 of 1983)

PRINTED AND PUBLISHED BY
L. CARL ACHILLE, GOVERNMENT PRINTER,
PORT LOUIS, MAURITIUS
JUNE 1983

Annex 129

REPORT

OF THE

Select Committee

ON THE

Excision of the Chagos Archipelago

REPORT
of
The Select Committee on the Excision of the Chagos Archipelago

I — Introduction

1. On 21st July 1982, the following motion standing in the name of the Honourable The Prime Minister was unanimously approved:—

> "This Assembly is of the opinion that, in accordance with Standing Order 96 of the Standing Orders and Rules of the Legislative Assembly, a Select Committee of the House consisting of not more than nine members to be nominated by Mr Speaker, be appointed to look into the circumstances which led to and followed the excision of the Chagos Archipelago, including Diego Garcia, from Mauritius in 1965 and the exact nature of the transactions that took place with documents in support and to report; the said Select Committee to have powers to send for persons, papers and records." (1)

2. On 20th August 1982, Mr Speaker nominated the following Honourable Members to form part of the Select Committee (2):—

The Honourable Minister of Finance
The Honourable Minister of Commerce, Industry, Prices & Consumer Protection
The Honourable Minister of External Affairs, Tourism & Emigration
The Honourable Minister of Agriculture, Fisheries & Natural Resources
The Honourable Attorney-General and Minister for Women's Rights & Family Affairs
The Honourable Minister for Rodrigues & the Outer Islands
The Honourable A. Gayan
Dr the Honourable S. Peerthum
The Honourable Mrs F. Roussety

3. At its first meeting, the Select Committee unanimously elected the Honourable Jean-Claude de l'Estrac, then Minister of External Affairs, Tourism and Emigration, to the Chair.

4. The Committee met on 11 occasions and in the course of its proceedings heard witnesses whose names are listed in Appendix 'A' of this Report.

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(1) Mauritius Legislative Assembly—Debates No. 8 of 21st July 1982—Col. 1026-1056.
(2) Mauritius Legislative Assembly—Debates No. 17 of 20th August 1982—Col. 2397—2398.

Annex 129

II — The Chagos Archipelago

5. The Chagos Archipelago — until 8th November 1965, a dependency of Mauritius — comprises the islands of Diego Garcia, Egmont or six Islands, Peros Banhos, Salomon Islands, Trois Frères, including Danger Island and Eagle Island. It lies some 1200 miles north-east of Mauritius and covers an area from 7°39′ to 4°41′ S and from 70°50′ to 72°41′ E. The largest island of the group is Diego Garcia which is about 11 square miles.

6. The early history of the archipelago is closely associated with that of the Seychelles which were both explored by the Portuguese as far back as the first half of the sixteenth century. Since then, both archipelagoes have known the fate common to the other islands of the region which changed hands, most particularly, according to the hazards of the long standing rivalry between the British and the French in the Indian Ocean. It is to be noted—as a premonition to the present status of Diego Garcia—that on 18th March 1786 an attempt was made from Bombay, by the East India Company to convert the island into a military base.(1) The venture proved unsuccessful. But when, during World War II, Diego Garcia happened to be a valuable 'naval port of call' (2), the assessment proved to be a worthy one which dates back as far as 1769 when the French Naval Lieutenant La Fontaine made 'a thorough survey of the bay, the first sign of French appreciation of the possible strategic value of that island. (3)

Indeed, the strategical situation of the main island of the Chagos Archipelago—about 3,400 miles from the Cape of Good Hope, 2,600 miles from the North West Cape, Australia, 2,200 miles from Berbera, Somalia and 1,900 miles from Masirah Island, Oman (4)—was bound to make of Diego Garcia a point of capital importance in modern geo-politics. This position, in the nearest vicinity of the Maldives and of India, became more evident after World War II when England gradually withdrew from the region, in the wake of its new policy of granting political independence to its colonies.

7. Hence, the Chagos Archipelago was bound to play a pre-eminent role in what tended to constitute, through Britain's withdrawal, 'one of the largest and most complex power vacuums of the post-war periods.' (5) Later, the Gulf crisis was soon to make of the region a most strategic field of action for the powers which are bent upon controlling the energy routes to Europe and Asia.

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(1) Auguste Toussaint — L'Océan Indien aux XVIIIe siècle — Flammarion, p. 65.
(2) Joël Larus — Diégo Garcia; Political clouds over a vital U.S. base. Strategic Review, Winter 1982—United States Strategic Institute, p. 46.
(3) Robert Scott — Limuria, The Lesser Dependencies of Mauritius — Oxford University Press, p. 244.
(4) Robert Scott — Op. cit. p. 68.
(5) Joël Larus — Op. cit.

8. It might be useful to record here that it was not long after the British colonisation of Mauritius that the islands which constituted the dependencies thereof became an object of considerable interest to the new administering government. On 21st March, 1826, the House of Commons voted a resolution asking that an address be presented to His Majesty requesting that he 'be graciously pleased to give directions that there be laid before this House a return of the number of all the islands, which come under the denomination of dependencies of Mauritius, showing their geographical position in reference to that island, the extent of their territory, and any census which may have been taken of their population together with their civil and military establishments and the description of naval force which may have been stationed there at any time since the conquest of the colony.' (1) Complying with the request, Sir Lowry Cole, the then Governor of Mauritius, submitted, on 19th September of the same year, to Lord Bathurst what one of his successors described as 'the first catalogue of the dependencies of Mauritius ever to have been compiled' and which even included two islands 'which are now known to have existed only in the imagination of cartographers.' (2)

9. However, since the coming into force of the instructions contained in the Letters Patent of 31 August 1903 which made of the Seychelles a colony administratively independent from Mauritius, thought was constantly given by the British Government to the necessity of sharing between the two colonies the islands around. Such an exercise was concluded in 1921 and the Chagos Archipelago remained one of the lesser dependencies of Mauritius.

III — The British Indian Ocean Territory

10. The long association of the Chagos Archipelago with Mauritius came to an end on 8th November 1965 with the coming into force of the British Indian Ocean Territory Order (Appendix 'B'). The new "*colony*" originally included not only the Chagos Archipelago, but the Farquhar Islands, the Aldabra Group and the islands of Desroches which formed part of the then British Colony of the Seychelles. Mention of these dependencies of the Seychelles is of strong political relevance. The two main political parties of the Seychelles which met the British Authorities during the first constitutional talks on the independence of that country (14—27 March 1975) made it a point to claim the islands back, but to no avail. However, as a result of the second talks with the Foreign and Commonwealth Office and which culminated into the independence of the then colony (28th June 1976) the Farquhar Islands, the Aldabra Group and the islands of Desroches were finally returned to the Seychelles. Hence, with the coming into force on 28th June 1976, of the British Indian Ocean Territory Order 1976, the 'territory' now comprises only the Chagos Archipelago, one of the former lesser dependencies of Mauritius.

(1) Mauritius Archives—SA 9.
(2) Robert Scott op. cit. p. 3.

Annex 129

11. The excision from Mauritius of the Chagos Archipelago was effected in accordance with the provisions of the Colonial Boundaries Act, 1895, but in complete violation of Resolution 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the 948th General Meeting of the United Nations Organizations, on 14th December 1960 (Appendix 'C'). Later,

(i) the United Nations General Assembly Resolution 2066 voted on 16th December 1965 (Appendix 'D'), in line with the Declaration on the Granting of Independence to Colonial Countries and Peoples (Appendix 'C'); and

(ii) the Resolution on Diego Garcia voted by the Assembly of Heads of State and Government of the Organization of African Unity at its 17th Ordinary Session in Sierra Leone from 1st to 4th July 1980. (Appendix 'E')

will be flouted in the same manner.

12. It would be wrong, however, to pretend that the excision of the Chagos Archipelago was a unilateral exercise on the part of Great Britain. In a statement in the House of Commons, no less a person than the Prime Minister of Great Britain declared that "the Government of Mauritius have been kept fully informed of, and have raised no objection to, the proposed use of Diego Garcia as a naval communication facility". (1) Details of such connivence, together with the Select Committee's opinion on the legal and moral validity of the transaction are shown later in the report. (Para. 52). The Committee, however, hastens to record that the attitude of the political delegation which attended the Mauritius Constitutional Talks 1965 when the question was first mooted is in sharp contrast with the firm and patriotic stand of the Seychelles political leaders who succeeded during the Constitutional Talks which preceded the independence of the Seychelles to recover the territorial integrity of their country.

13. The first public announcement in regard to the excision was made in the House of Commons on 10th November 1965 by the then Secretary of State for the Colonies, Mr Anthony Greenwood. (2). The news, embargoed for release in Mauritius at 20.00 hrs on that day, reproduced *in extenso* the Secretary of State's statement and contains the vague indication that the islands would be used for "defence facilities by the British and United States Governments." Mention is also made therein of the compensation to be paid to the company which exploited the plantations on the islands, the cost of "resettling elsewhere those inhabitants who can no longer remain there" and an additional grant of £3m. for development projects in Mauritius (Appendix 'F'). Later, the freeholds were acquired at agreed prices totalling £1,013,200.

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(1) House of Commons debates — Vol. 811, Col. 138.
(2) House of Commons debates—Vol. 720, Col. 1-2.

14. The decision of the British Government became immediately a matter of big concern to most of the countries of the world and particularly to those located in the Indian Ocean and which saw in the process the beginning of a long term militarization of the region, with inevitable risks of involvement in nuclear warfare.

15. On the excision issue, as early as 16th December 1965, the United Nations, as its 1398th Plenary Assembly voted a Resolution inviting, *inter alia*, 'the administering power to take no action which would dismember the territory of Mauritius and violate its territorial integrity.' (Appendix D).

16. The Resolution did not, in the least, deter the British Government in its plans. On 30th December 1966, an Exchange of Notes was signed in London between the United Kingdom and the United States Governments on the Availability of certain Indian Ocean Islands for Defence Purposes (Common Paper No. 3231) and which confirmed the deal to use the islands in a joint military venture by the two countries. Indeed, the United States Government agreed at the very start ' to contribute up to £ 5m towards the costs of setting up the British Indian Ocean Territory, by waiving to that extent research and development surcharges for the United Kingdom purchase of the Polaris missile system.' (1) The islands of the British Indian Ocean Territory were made available for the defence purposes of both governments for an initial period of 50 years. (2)

17. The nature of these defence arrangements was first released to local public information in a press communique issued on 3rd December 1965 by the Government of Mauritius and which indicated "that at the time the matter was discussed with the Mauritius Government, the British and the American Governments were considering the establishment of a communications centre, supporting facilities and a naval refuelling depot" on the islands. (3) The disturbing element in the communique and which was for the first time brought to the public knowledge refers to prior consultation with the Government of Mauritius on the issue. This feature will be analysed later in the report. (Paras 39-44) In addition, it should be noted that the relatively more detailed press release of the Mauritius Government bears contrast with the euphemistic approach of the United Kingdom Government which persisted as late as 1970, on the eve of an upgrading of such facilities, to pretend that these innocently consisted of "a limited United States naval communications centre, partly operated by the United Kingdom and which would provide communications support to United States and United Kingdom ships and aircraft in the Indian Ocean." (4)

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(1) House of Commons debates—Vol. 899, Col. 271-272.
(2) House of Commons debates—Vol. 870, Col. 1274.
(3) Mauritius Legislative Assembly debates No. 27 of 14th December, 1965, Col. 1850-1851.
(4) House of Commons debates—Vol. 808, Col. 328.

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These arrangements, within the terms of the 1966 Exchange of Notes, were approved, in principle, by the United Kingdom Government in 1968. A further Exchange of Notes was signed on 24th October, 1972, and the facility began operating in 1973 (1) when the United Kingdom Government agreed to "a limited expansion of the radio station" (2) in addition to the original defence facilities which were said then to "consist of a United States navy radio station, an 8,000 ft runway which is not capable of taking the larger transport and tanker aircraft fully laden; a natural anchorage restricted in draught and turning room; accommodation for some 450 personnel; and limited aircraft parking space and oil storage facilities." (2)

18. However, on 5th February, 1974, a statement made in the House of Commons by the Secretary of State for Foreign and Commonwealth Affairs, Mr Julian Amery, revealed that Her Majesty's Government had agreed in principle to a proposal of the United States Government made in January 1974 and in accordance with the 1966 Anglo-American Agreement (Command Paper No. 3231) to the expansion of the facilities at Diego Garcia and which would involve "improvements to the anchorage and to the airfield as well as to the shore facilities". The last part of the statement is however, indicative of military concern of a larger dimension:—

> "Her Majesty's Government have long felt that it is desirable in the general Western interest to balance increased Soviet activities in the Indian Ocean area. Accordingly, they welcome the expansion of the United States facilities which will also be available for British use. Against this background, the United States and the British Governments have agreed to consult periodically on joint objectives, policies and activities in the area. As regards the use of the expanded facilities in normal circumstances, the United States and British representatives in Diego Garcia will inform each other of intended movements of ships and aircraft. In other circumstances the use of the facilities would be a matter for the joint decision of the two Governments." (3)

Later, on 20th March, 1974, the Under-Secretary of State for Foreign and Commonwealth Affairs, Miss Joan Lestor, again stressed that one of the reasons for the United Kingdom's acceptance of the United States proposal was the fact that the Soviet naval presence in the Indian Ocean had increased steadily in quantity and quality over the last five years and is larger than that of the Western countries. (4)

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(1) House of Commons debates—Vol. 870; Col. 1274.
(2) House of Commons debates—Vol. 897; Col. 204.
(3) House of Commons debates—Vol. 868; Col. 276-277.
(4) House of Commons debates—Vol. 870; Col.1275.

19. An assessment of the actual military arrangements on the islands is obviously difficult and whatever may be their size and nature is immaterial to this report. On two occasions at least,—11th March and 22nd July, 1975—the then British Secretary of State for Defence, Mr Roy Mason, declared to the House of Commons that it was not the policy of the British Government "to confirm or deny the presence of nuclear weapons in ships, aircraft or any particular location"—a statement pregnant with alarming military connotations.

Ten days after the announcement in regard to the constitution of the British Indian Ocean Territory, the then Secretary of State for the Colonies, Mr Anthony Greenwood, declared to the House of Commons: "There is certainly no question of any derogation from Britain's sovereignty of these territories." (1) And, later, the then Secretary of State for Foreign and Commonwealth Affairs, Mr Hattersley, re-echoed: "The island of Diego Garcia is British Sovereign Territory." (2) At this stage, the Committee cannot dismiss the fact that such sovereignty was claimed in the teeth of strong opposition from the United Nations Organisation, the Organisation of African Unity and most of the independent States in the Indian Ocean, including India, whose Prime Minister, Mrs Indira Gandhi, on 7th February, 1974, highlighted the danger that the militarization of the Chagos Archipelago constituted for the security of her country.

IV — The Mauritius Constitutional Conference, 1965

20. On 7th September, 1965, a Mauritius delegation comprising representatives of the Mauritius Labour Party, the Parti Mauricien Social Democrate, the Independent Forward Bloc, the Muslim Committee of Action and two independent Members of the Legislative Assembly (Appendix G) met at Lancaster House, under the chairmanship of the then Secretary of State for the Colonies, Mr Anthony Greenwood, "to reach agreement on the ultimate status of Mauritius, the time of accession to it, whether accession should be preceded by consultation with the people and, if so, in what form." (3) The Conference met until 24th September, 1965.

21. The claim for independence was supported at the Conference by the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action, although this party had put up certain conditions in regard to the electoral system. The Parti Mauricien Social Democrate advocated, as a substitute for independence, close constitutional associations with Great Britain and submitted that, in any event, the people of Mauritius should be allowed to express their preference in a free referendum.

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(1) House of Commons debates Vol. 720, Col. 1309.
(2) House of Commons debates Vol. 872, Col. 327.
(3) Repart of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 1.

Annex 129

22. In the final communiqué issued on 24th September 1965, the Secretary of State for the Colonies ruled out the proposal submitted by the Parti Mauricien Social Democrate for association with Great Britain on the ground that "given the known strength of the support for independence, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled." The plea for a referendum which, in the Secretary of State's opinion would prolong "the current uncertainty and political controversy in a way which would harden and deepen communal divisions and rivalries" was also discarded. The United Kingdom's Government ultimate decision on the issue was "to fix a date and take necessary steps to declare Mauritius independent after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly." (1)

23. The final communiqué also referred to the following defence arrangements between the British and the Mauritius Governments:—

> 23. At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield. (2)

(1) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 4.
(2) Op. cit., p. 5.

That section of the communiqué which touches upon military arrangements makes no mention of any agreement in regard to the excision of any part of the Mauritian territory in the context of either mutual defence or what was ultimately termed "in the general western interest to balance increased Soviet activities in the Indian Ocean." (1)

However, in the light of evidence produced by representatives of the political parties which took part in the Mauritius Constitutional Conference 1965, and which is reviewed at paragraph 25 hereunder, the Committee is convinced, without any possible doubt, that, at a certain time while the Constitutional talks were on, the question was mooted. And, further, the Committee is satisfied that the genesis of the whole transaction is intimately connected with the constitutional issue then under consideration.

24. The Committee regrets that, apart from Sir Seewoosagur Ramgoolam who led the Mauritius Labour Party delegation, the leaders of the other participating political parties are no more. Nevertheless, the Committee has been fortunate enough to hear members from each of the parties present at Lancaster House, in September 1965.

25. Their reports to the Select Committee can be summarized as hereunder:

A *The Mauritius Labour Party*

The Mauritius Labour Party, led by the then Premier and Minister of Finance, Dr the Honourable Seewoosagur Ramgoolam, now Sir Seewoosagur Ramgoolam, was, numerically speaking, the most important political party which attended the Constitutional Conference. Sir Seewoosagur was heard by the Select Committee on 6th December 1982. He declared that the eventual excision of the Chagos Archipelago from Mauritius never appeared on the agenda of the Constitutional talks nor was it ever brought for discussion in Mauritius prior to the Conference. It was only, while the talks were on, that he had two private meetings with the British Authorities; one, at 10, Downing Street where the British Government's decision to grant independence to Mauritius was communicated to him by the then Prime Minister, and the second, on 23rd September, 1965, in one of the committee rooms of Lancaster House where he was, for the first time, informed by the Secretary of State, Mr Anthony Greenwood, of the United Kingdom's intention of detaching the Chagos Archipelago from Mauritius.

(1) House of Commons debates Vol. 868, Col. 277.

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Sir Seewoosagur declared that he accepted the excision, in principle, as (i) he felt he had no legal instrument to prohibit the United Kingdom Government from exercising the powers conferred upon it by the Colonial Boundaries Act 1895, which powers could not be resisted even by India when the partition of this country took place before its independence (ii) he could not then assess the strategic importance of the archipelago which consisted of islands very remote from Mauritius and virtually unknown to most Mauritians and (iii) it was concretely expressed to him that the islands would be used as a communications centre and not as a military base.

Sir Seewoosagur strongly emphasised that, at no time, during that meeting and during meetings he had subsequently with the Secretary of State — after the Constitutional talks — to discuss details of the excision, was he made aware that the United States of America were in the deal and that the islands would be required for a joint U.K./U.S.A. defence venture. So much so that the statement made in the Legislative Assembly, on 14th December 1965, by the then Acting Premier, Mr Guy Forget, (Appendix 'F') came as a surprise to him. He even declared to the Select Committee that the circumstances which led to the introduction in that statement of certain elements then unknown to him were still shrouded in 'mystery'. He did not deny, however, that while the Conference was on, a Mauritian delegation led by late Mr Guy Forget met the Minister in Charge of Economic Affairs in the American Embassy in London.

Sir Seewoosagur maintained that the choice he made between the independence of Mauritius and the excision of the archipelago was a most judicious one. He thought, however, that had all the political parties present at Lancaster House been united in the claim for independence, better conditions might have been obtained. But, the Parti Mauricien Social Démocrate (P.M.S.D.) walked out of the Conference, as soon as it became evident that independence could not be avoided.

Sir Seewoosagur recalled that at one of the meetings on the excision issue, with the Secretary of State, he stressed that the sovereignty of Mauritius over the islands should be maintained and all rights connected with fishing and mineral prospection should be preserved. He also claimed the possibility for planes to use the strip on Diego Garcia for any emergency landing on their route to and from Mauritius. No records of these proceedings were communicated to him, but he had the impression

that, apart from the claim for sovereignty, all the other points were agreeable to the British Government including a proposition that, in the event of excision, the islands would be returned to Mauritius when not needed by the United Kingdom Government. He recognised, however, that apart from certain statements made by himself and members of his Government in international meetings, no official request had been made for the retrocession of the islands to Mauritius.

Touching upon the question of the displacement of the Ilois community, Sir Seewoosagur said that it was never raised with him at any time in London and whatever correspondence he exchanged later in Mauritius with the British High Commission on the subject, had to take into account the unexpected nature of the statement made in the House by late Mr Guy Forget. (Appendix 'F')

Sir Veerasamy Ringadoo confirmed that, at no time, was the question of the excision of the Chagos Archipelago brought on the table of the Mauritius Constitutional Conference of September 1965. He might have been informed of such proposals after the private meeting Sir Seewoosagur Ramgoolam had with the Secretary of State, Mr Anthony Greenwood, on 23rd September, 1965. He did not object to the principle of the excision as he felt that, being given the defence agreement entered into with Great Britain (paragraph 23)—a decision which had the unanimous support of all political parties present at Lancaster House, most particularly in view of the social situation which had deteriorated in Mauritius—the United Kingdom Government should be given the means to honour such agreement. It was in this context that he viewed the excision of the islands which were to be used as a communications station.

Sir Veerasamy stated that, about one week after the Constitutional talks, Sir Seewoosagur Ramgoolam and himself had discussions with officials of the Foreign Office on the excision issue, where both of them stressed that (i) when no longer needed, the islands should be returned to Mauritius (ii) all rights connected with fishing and mineral prospection would be maintained for Mauritius (iii) the possibility for planes to use the strip on Diego Garcia, in any emergency, on their route to and from Mauritius should be recognized and (iv) 'all the requirements for the installation of the station and for the food and everything would, as far as possible, be taken from Mauritius.' Unfortunately, no minutes of this meeting were circulated.

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Sir Veerasamy supported Sir Seewoosagur's contention that nothing was heard in Mauritius about the excision until Mr Guy Forget made a statement in the Legislative Assembly on 14th December, 1965. He also maintained that the substance of this statement was absolutely alien to the nature of the talks he had, in company of Sir Seewoosagur, with the officials of the Foreign Office, in London.

Sir Harold Walter also stated that, at no time in Mauritius, prior to the Constitutional talks, was the question of the excision brought up for discussion. He happened to learn of this issue when he saw the definition of the State of Mauritius in a draft Constitution prepared for the country by the Colonial Office. He then questioned Sir Seewoosagur Ramgoolam on the matter and the latter revealed to him that he had to make some concessions on that score, as he felt that at one time during the Conference, the British Authorities tended to agree to the claim of the Parti Mauricien Social Democrate (P.M.S.D.) for a referendum.

Sir Harold did not resist the stand taken by the Leader of the Mauritius Labour Party as he knew the amount of pressure that was made to bear on the United Kingdom Government against the grant of independence to Mauritius. Moreover, public opinion in the country was largely divided on the nature of constitutional progress to be achieved. Indeed, he had got Sir Seewoosagur's assurance that the abandonment of the Chagos Archipelago had been agreed on certain conditions, namely, that (i) fishing and mineral prospection rights would be preserved for Mauritius (ii) the islands would be returned when no more needed and (iii) Mauritians would be employed to work there. He further stressed that no Mauritian delegate present at Lancaster House had expressed any dissent on the principle of the excision.

Sir Harold declared having been made aware of the United States' interest in the archipelago "years after" the Constitutional Conference. Everything that could have been published on that issue before or immediately after the talks might have escaped his attention as he was mainly interested in the accession of Mauritius to national sovereignty.

Sir Harold stated that the question of the Ilois was raised in London and they were considered as Mauritians who had migrated to work on the islands. However, the amount of compensation to be paid by the United Kingdom was not discussed at his level and he came to know about it much later.

Sir Satcam Boolell informed the Committee that the question of the excision of the Chagos Archipelago was raised by the British Officials in private with Sir Seewoosagur Ramgoolam, in London. He was not much concerned about it as he only had in mind the independence of Mauritius. He can vaguely recollect that the United Kingdom Government wanted Diego Garcia to be used as a signal station and that the whole archipelago would be returned to Mauritius when no more needed. He was further given to understand that all mineral resources around the islands would remain the property of the Government of Mauritius. At no time was he made aware of the United States involvement in the deal.

Sir Satcam further added that, in spite of the fact that he was then the Minister responsible for agriculture, he had no idea of any bid for the sale of Mauritian sugar on the American market as that transaction was in the hands of the Mauritius Sugar Syndicate.

Sir Satcam affirmed that he did not attend any meetings where the excision of the Chagos Archipelago was discussed and on this question he had put all his trust in the wisdom and experience of Sir Seewoosagur Ramgoolam.

B. *The Parti Mauricien Social Démocrate (P.M.S.D.)*

The first political commotion which took place in Mauritius, as a result of the excision of the Chagos Archipelago was the resignation, on 11th November, 1965, of the three P.M.S.D. Ministers (Messrs Koenig, Duval and Devienne) from the coalition Government. The next day, they convened a press conference in Port Louis and explained that the reason for their resignation was Government stand in regard to the excision of the Chagos Archipelago. The party's leader, Mr Koenig, stressed that the P.M.S.D. was not against the use of the archipelago for a joint United Kingdom/United States defence venture. But his party felt that Government should have retained the sovereignty of Mauritius over the islands and negotiated their occupation, on the best possible terms, direct with the occupying powers. The P.M.S.D. had in mind the possibility of securing a substantial sugar quota on the United States market and defining a policy of emigration to the United States for unemployed Mauritians.

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This stand was supported by Sir Gaëtan Duval, Q.C., one of Mr Koenig's co-delegate, when he appeared before the Select Committee on 12th November, 1982. He underlined that a periodical review of such arrangements direct with the occupying powers would have been most beneficial to Mauritius. Sir Gaëtan further assured the Committee that the Council of Ministers was, from the very start, aware that the Chagos Archipelago would be used for defence purposes jointly by the United Kingdom and the United States. He indicated that this state of affairs is contained in official documents. The possibility of recruiting Mauritian workers for the construction of military installations at Diego Garcia and the purchase, as far as possible, of materials from Mauritius was even envisaged at that time.

Sir Gaëtan explained that, on 23rd September, 1965, while the Mauritius Constitutional Conference was discussing the proposition for a referendum put forward by his party, the chairman, Mr Anthony Greenwood, suspended the proceedings and invited the Mauritian delegates to meet him and offer their views on the future of the Chagos Archipelago. The P.M.S.D. refused to attend the meeting, feeling that such a question was outside the agenda of the Conference and that the party had no mandate to consider any possible excision of part of the Mauritian territory. Sir Seewoosagur Ramgoolam, Sir Abdool Razack Mohamed and Mr Sookdeo Bissoondoyal, representing respectively the Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc responded to the invitation but Sir Gaëtan was not in a position to say if the final decision was taken in their presence or as a result of private consultations between Mr Anthony Greenwood and Sir Seewoosagur Ramgoolam. It was, revealed Sir Gaëtan, at the resumption of proceedings, after such a meeting extraneous to the Conference agenda, that the Secretary of State ruled out the suggestion for a referendum, leaving the clear impression that some sort of blackmailing had taken place.

Alluding to the question of the displaced Ilois, Sir Gaëtan argued that the excision having taken place in 1965, that is, three years before the independence of Mauritius, those persons cannot be considered as citizens of Mauritius but British nationals. He regretted that (i) the case of Mr Vencatassen had been withdrawn from the British Law Courts, thus depriving the community at large from obtaining the verdict of the Court on this delicate issue and (ii) the attitude of the Mauritius Government, after independence, vis-à-vis the United Kingdom, might, in a large measure, have jeopardised the claim of Mauritius for recovering its sovereignty over the archipelago.

C *The Independent Forward Bloc (I.F.B.)*

Honourable Aneerood Jugnauth, Q.C., Prime Minister of Mauritius, who formed part of the Mauritius Delegation to the Constitutional talks 1965, under the banner of the I.F.B., was heard by the Select Committee. He stated that never, in the course of the talks, was the question of the excision of the Chagos Archipelago raised. Some time before the Conference ended, the Leader of the Mauritius Labour Party, Dr Seewoosagur Ramgoolam, came to the desk of the I.F.B. delegation and told the delegates that he had accepted a proposition from the United Kingdom to use Diego Garcia as a communications station. There was no indication that the islands would be used as a military base, nor was the question of an excision from the Mauritian territory mentioned. Mr Jugnauth said that, at the time, the I.F.B. "had not much to say about it", as the party thought that the installation of communications facilities on the islands was an innocuous venture.

Mr Jugnauth stressed that, at no time, did the Leader of the I.F.B. inform his co-delegates that he had taken part in any private talks on the issue with the British authorities, nor was the eventual excision of the islands ever discussed at party level. He added that the statement made by Mr Guy Forget in the Legislative Assembly on 14th December, 1965, (Appendix 'F') came as a surprise to him in the sense that it contained facts that were never brought to his knowledge or to that of his party before. He was not a minister when the excision was discussed in the then Council of Ministers and he was never informed subsequently of the decision then taken.

Mr Jugnauth recalled that the withdrawal of the P.M.S.D. from the Constitutional talks had nothing to do with the excision of the Chagos Archipelago which, he repeated, was never brought on the Conference agenda. The P.M.S.D. delegates left when they learnt of the United Kingdom's intention to grant independence to Mauritius.

The Committee wishes at this stage to reproduce a statement made in the Legislative Assembly, on 19th October, 1976 by late Mr. S. Bissoondoyal, then Leader of the I.F.B. on the excision of the archipelago and which supports substantially the evidence of Mr. Jugnauth:—

> The London Conference in 1965 witnessed this question coming out whether Mauritius would agree to part with Diego Garcia. That was the question put to me as a Member of the Government, put to me in private. I had an answer for it and that question was also put to the Leader

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of the Parti Mauricien. I am aware of the attitude of the Parti Mauricien at that time. Now let me make it clear to the House, the aftermath of all this matter was dealt with personally by the Prime Minister and no Government then existing. I was a Member of the Government, I knew what was taking place: (1)

D. *Mr Maurice Paturau, D.F.C., C.B.E.—Independent Member*

Mr Paturau appeared before the Select Committee on 13th December 1982. He formed part of the Mauritius delegation which attended the Constitutional talks of September 1965. He revealed that he participated in no less than two meetings with the British authorities on the question of the excision of the Chagos Archipelago, but all these meetings were extraneous to the open Constitutional Conference which was then in progress. it was in the course of the first of these meetings that Dr Ramgoolam himself and the other party leaders took cognizance of the amount of compensation proposed by the United Kingdom. When the possibility of securing a sugar quota on the American market was evoked by the Mauritian side, the British officials suggested that this question should be dealt with direct with the American Embassy in London. A meeting was accordingly arranged and Mr Guy Forget led the Mauritian delegation which comprised, *inter alia*, Messrs Abdool Razack Mohamed and Jules Koenig. The request of Mauritius was turned down by the American officials who stated that "as far as Chagos was concerned, they would not commit the American Senate or House of Representatives about anything like a sugar quota." They intimated that anything connected with the Chagos Archipelago issue was a matter for direct negotiation between the United States and the United Kingdom Governments, and not with Mauritius.

The second meeting took place after the P.M.S.D. had retired from the Conference and the Mauritius delegation was then represented by Dr Ramgoolam, Messrs Abdool Razack Mohamed, Sookdeo Bissoondoyal and himself. A final compensation of £3m was then proposed by the United Kingdom Government. He expressed dissent as he thought the compensation inadequate, but the other delegates agreed.

Mr Paturau stressed that during all the negotiations that took place, he had in mind the lease of the Chagos Archipelago by Mauritius. An initial period of thirty years was even proposed during which term a sugar quota at more remunerative prices would be negotiated, coupled with the possibility of obtaining

(1) Debates No. 28 of 1976, Col. 2885-2886.

rice and flour from America at subsidized rates. Such lease would have been, more or less, on the model of the North West Cape Agreement between Australia and the United States, signed in 1963. He did not agree that the idea of a communications station was devoid of any military connotation. The American sub-marines needed in fact a land base which would 'generate enough messages at low frequency, but of high power so that they could reach the sub-marine and give it the actual position it was in so that it could fire its missiles with as much precision.'

Referring to the attitude of the P.M.S.D. on the excision issue, Mr Paturau said that, at no time, either in London or in Mauritius, did that party express any opposition to the principle of the excision. The party was most concerned at Lancaster House with reservations in the electoral system and walked out of the Conference on that issue, whereas the resignation of the Ministers of that party from the then Council of Ministers was motivated by the inadequacy of the compensation offered by the United Kingdom Government. As regards the inhabitants of the islands, he explained that, to his mind, those who came from the Seychelles were considered as migrants, whereas the others were "established Mauritians" whose fate was never discussed at the meetings he attended.

V — The Lesser Dependencies in the Wake of a New Destiny

26. In November 1959, a Commission headed by Professor J. E. Meade was appointed to report to His Excellency the Governor of Mauritius, then Sir Colville Montgomery Deverell, K.C.M.G., C.V.O., on ways and means of improving the economic and social structure of Mauritius. Although the terms of reference of the Commission were wide enough, the Commissioners did not feel that a study of the economic potentialities of the dependencies of Mauritius, including Rodrigues, was justified. Indeed, the temptation of ignoring whatever contribution the lesser dependencies particularly, could make to the economy of Mauritius was so great that at paragraph 6:44 of their report, the Commissioners invited Government to reject an application for financial assistance made by the two private companies which were then engaged in copra production on the Chagos and Agalega islands. (1)

27. The outright ignorance of the lesser dependencies and of their possible contribution to the economy of Mauritius, by the Meade Commission, did not deter the private sector in its attempt to rehabilitate the islands by a more scientific approach to copra production. The sector felt that if the soap and oil industry were to be maintained in Mauritius, as a means of helping both to combat unemployment and to save foreign exchange,

(1) J. E. Meade & Others, The Economic and Social Structure of Mauritius—Frank Cases & Co. Ltd. p. 138.

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it was imperative that the raw materials produced on the islands should not be abandoned. Hence, in September/October 1961, an exploratory survey of the islands was undertaken by a team composed of Mr René Maingard de la Ville-es-Offrans, acting on behalf of Rogers & Co., Mr Paul Moulinié, an entrepreneur from the Seychelles and Dr Octave Wiehé.

28. Mr René Maingard de la Ville-es-Offrans, now Sir René Maingard de la Ville-es-Offrans, C.B.E., was heard by the Select Committee on 8th February 1983. He related to the Committee the attempts made by the private sector to rehabilitate copra production on the islands, with a view particularly to saving the soap and oil industry in Mauritius. These attempts may be summarized as follows. In August 1961, the two private companies which were operating on the islands offered to Rogers & Co. to buy 55% of their shares. Rogers & Co., before taking any decision on the offer, resolved to conduct a survey *in situ* of the islands and this exercise was undertaken by the team referred to at paragraph 27 above. After a full assessment of the economic situation of the operating companies and a thorough survey of the prospects of the industry, the party recommended that the islands be purchased by a private enterprise made up with the equal participation of Rogers & Co., the existing shareholders and Mr Paul Moulinié of the Seychelles. Mr Maingard de la Ville-es-Offrans tried to enlist, for the purpose, the financial support of the Government of Mauritius. Hence, through the agency of Dr Seewoosagur Ramgoolam, a meeting was arranged at Le Reduit between himself and the Governor of Mauritius (Sir Colville M. Deverell, K.C.M.G., C.V.O.), the Colonial Secretary (Mr Tom Vickers, C.M.G.), the Financial Secretary (Mr A. F. Bates, C.M.G.) and Mr A. L. Nairac, C.B.E., Q.C. who was then Minister of Industry, Commerce & External Communications.

The Governor then informed him that, taking into consideration the recommendations of the Meade Commission, the Colonial Office was opposed to any form of Government financial participation in the venture.

On 7th March 1962, the Colonial Steamships Co. Ltd. offered to put up a society, the Chagos Agalega Ltd., at par with Mr Paul Moulinié and shareholders from the Seychelles with a view to purchasing the islands. That company was registered in the Seychelles and the promoters suggested that the sovereignty of the islands should be transferred from Mauritius to the Seychelles. Although the then Governor of the Seychelles seemed agreeable to the project, the Colonial Office again stood in the way. Hence, the exploitation of the islands remained the sole concern of the Chagos Agalega Ltd., which had become the owners of the islands.

In 1964, Mr René Maingard de la Ville-es-Offrans had again the possibility of discussing, *inter alia*, the future of the islands with top British political personalities, such as Messrs Lennox-Boyd, Patrick Wall, Ian Mac Leod and Sir Tufton Beamish. He got the firm impression out of the talks that the British Government had no intention of parting with the islands for which they had conceived projects of a nature other than industrial.

In April 1967, the assets of the Chagos Agalega Ltd. were compulsorily acquired by the United Kingdom Government and the administering company gave full powers to Mr Paul Moulinié to discuss the compensation issue and to take all measures connected with the displacement of the local population. Indeed, neither the Government of Mauritius nor any of the Mauritian shareholders took part in the negotiations. The amount paid by the United Kingdom Government was £660,000.—, but consideration of the company's assets brought the figure to Rs 7,500,000. The Chagos Agalega Ltd was wound up on 19th December 1975 after the compulsory acquisition, on 1st October 1975, of Agalega by the Government of Mauritius. Its registration at the Registrar General's Office of the Seychelles was cancelled on 11th December 1980.

29. The Meade Commission was appointed 'to make recommendations concerning the action to be taken in order to render the country capable of maintaining and improving the standard of living of its people, having regard to current and foreseeable demographic trends' with particular reference to 'the economics of the staple agricultural industries of Mauritius'. In the chapter introductory to their report, the commissioners, however, explained that in their assessment they had chosen to ignore the dependencies of Mauritius, namely Rodrigues, the Chagos Archipelago, Agalega and St. Brandon. They did not even consider a visit to these dependencies necessary. The reason for this deliberate omission is thus outlined in chapter 1:2 of the report. 'Unfortunately, we had no opportunity of visiting the dependencies and have not therefore included them within the scope of our report. We do not think this greatly detracts from our report, however, since the dependencies amount for only 12% of the colony's area and 3% of its population, and play little or no part in the economic life of the island of Mauritius itself.' (1)

This statement might have proved surprising at the time it was published in as much as it looked contradictory to the terms of reference of the Commission which invited the Commissioners, *inter alia*, to look for a definition of 'the broad lines of development policy in the future.' It is indeed unbelievable that, in that particular context, the unquestionable potentialities of the dependencies, including Rodrigues, in the framing of a new social and economic structure for Mauritius could not have attracted the attention of the experts who formed part of the Meade Commission.

The Select Committee is thus tempted, at this stage, to share Sir Rene's feelings that the deliberate assignment of the dependencies of Mauritius to purposes in no way connected with the economic and social interests of Mauritius, formed part of a definite and long term strategy on the part of the United Kindom Government.

(1) J. E. Meade and Others—op. cit.

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PART II

DOCUMENTARY EVIDENCE

VI — Preliminary Remark

30. At the very outset, the Committee wishes to report a most deplorable state of affairs. To an application for copies of correspondence exchanged between the Governor of Mauritius and the Secretary of State for the Colonies, pertaining to the years immediately preceding the independence of Mauritius, the Private Secretary and Comptroller, Le Reduit, replied that there were 'no record concerning the despatch of document from this office to other departments prior to 1970.' He further added: "I have also made searches in our Archives but have not been able to find any document where the information asked for could have been registered. I understand from Mr E. G. Goldsmith, former Private Secretary, that at the time of independence in 1968, a lot of documents were either destroyed or taken over by Mr Young, who was then Information Officer at the British High Commission."

The Committee deeply regrets that such valuable documents have not been allowed to form part of our archives. Their removal or destruction, in addition to being a national calamity, will be most harmful to the efforts of students in our local political history.

VII — The Anglo-American Survey

31. The first serious hint at the possibility of the United Kingdom Government using Mauritius and its dependencies, most particularly Diego Garcia, as a unit for its defence stategy in the Indian Ocean, came from Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in the course of an interview given on the B.B.C. in the programme 'London Calling Mauritius', on 21st February, 1964. (1). This opinion was subsequently carried by the written press overseas which made no mystery of the United Kingdom's choice of 'keeping Aden at all costs, enlarging Britain's fleet of aircraft carriers, or finding some territory in the Indian Ocean, if there is one, with natural facilities and a small, politically isolated population.' (2).

32. However, no allusion to any consultation between the United Kingdom Government and the local authorities was reported until the 31st July, 1964, when a local daily reproduced the following information from its London correspondent:

> "Il y a eu à Maurice, une importante réunion du Cabinet des Ministres, présidée par Sir John Rennie, probablement le 13 ou le 14 juillet. Au cours de cette réunion, Sir John a tenu les ministres présents au courant d'un communiqué dans lequel le Secretaire d'Etat aux Colonies, M. Sandys, révèle l'intention de Londres de faire de Maurice, des Seychelles et d'Agalega une importante base navale militaire.' (3)

(1) Advance—22nd February 1964.
(2) The Economist—4th July 1964
(3) Le Mauricien—31st July 1964.

33. The meeting of the Council of Ministers referred to in the press excerpt quoted at paragraph 32 above took place on the 14th July 1964. The Minutes of that meeting indicate that the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., O.B.E., made a statement on certain devements in the field of defence. The Select Committee regrets that the Governor's pronouncement cannot be reproduced as it, undoubtedly, forms part of the records which have either been destroyed or removed to the British High Commission as mentioned in paragraph 30 of this report. However, this situation does not deter the Select Committee in its opinion that Sir John's statement was of a nature which cannot but render absolutely misleading, both to the House and to the nation, the interjection made in the Legislative Assembly, on 10th November, 1964, by Honourable Satcam Boolell to the effect that the Government of Mauritius was not aware of any military project conceived by the United Kingdom Government for either Mauritius or any of its dependencies. (1) Indeed, in reply to a parliamentary question in the House of Commons on 5th April 1965, Mrs Eirene White, then Under-Secretary of State for the Colonies, revealed that consultation prior to the survey had in fact taken place both at the level of the Premier and of the Council of Ministers. She stated: "The Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or in Washington." (2) However, the Select Committee will establish hereunder (para. 34) that not only the Council of Ministers but the whole Legislative Assembly sitting in 1964 were informed, in unequivocal terms, of the British-American technical survey of the islands. The information was even released to the press on 14th December, 1964.

34. On 10th November, 1964, in the Legislative Assembly, at adjournment time, Honourable B. Ramlallah intervened lenghtily on certain speculation to the effect that a joint Anglo-American survey was in progerss in Diego Garcia and requested a full and prompt explanation from Government (Appendix 'H'). The reply came on 14th December, 1964, in the form of a letter from the then Chief Secretary, Mr Tom Vickers, C.M.G., addressed to Honourable Ramlallah, copied to all Members of the Legislative Assembly and released to the press. (Appendix 'I'). Confirmation is contained therein of (i) the presence of a joint British-American survey team 'on certain islands, including the Chagos Archipelago, Agalega, but not including Mauritius' and (ii) prior notification of this exercise having been given to the Council of Ministers. Such notification was no doubt contained in Sir John Rennie's statement to the Council of Ministers on 14th July, 1964. (paragraph 33) and

(1) Mauritius Legislative Assembly Debates No. 23 of 10th November 64 Col. 1574.
(2) House of Commons Debates—Vol. 710, Col. 26.

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brings to naught all future submissions to the effect that any United Kingdom's project for the islands was first communicated to both the Premier and his Ministers *en marge* of the Constitutional talks of September 1965 and that the United States participation therein was unheard of prior to that conference.

35. The news of the Anglo-American survey of the islands met with protests from nearly all quarters of the Mauritian press which urged the then Government to combat the project. The danger of thus pushing the Indian Ocean into the zone of nuclear warfare was vehemently denounced in the Upper House of Parliament, India, on 18th November 1965, by the then Indian Minister of State for External Affairs, Mr Sardar Swaran Singh, and a no less energetic condemnation of the project was echoed in Sri Lanka by the then Prime Minister, Mrs Bandaranaike. And, at this stage, the Select Committee wishes to underline that, in the face of the complete indifference of the then Government, even a group of Mauritians living in the United Kingdom took the initiative of publishing in the British press their strong opposition to the Anglo-American venture. (1) Unfortunately, none of these outbursts of indignation succeeded in provoking from the then Premier of Mauritius and his Ministers a single note of protest.

36. On 15th June 1965, nearly on the eve of the Constitutional talks, Dr J. M. Curé, pressed Government to say whether the United States of America had any military interests in our dependencies. He urged Government to convey to the British Authorities 'the inadvisability of entering into any agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next' and to ascertain, in the first instance 'the presence of oil fields in our dependencies before alienating them'. (Appendix J) The reply again came from Mr Tom Vickers who referred the Legislative Assembly to the reply he made on 14th December 1964 to Honourable Ramlallah. (Appendix I) Hence, when the parliamentary vacations came on 29th June, 1965, the Ministers who formed part of the Mauritius delegation to the Constitutional talks of September of that year, prepared their trip to Lancaster House in a spirit which, as far as the lesser dependencies were concerned, bordered, in the Select Committee's opinion, on outright collusion. Indeed, Sir Seewoosagur Ramgoolam when he deponed before the Select Committee on 6th December, 1982, made no bones of submitting that his main concern at Lancaster House was the independence of Mauritius and that he was prepared to achieve that aim at any costs. He stated: 'A request was made to me. I had to see which was better—to cede out a portion of our territory of which very few people knew, and independence. I thought that independence was much more primordial and more important than the excision of the island which is very far from here, and which we had never visited, which we could never visit.' He added: "If I had to choose between independence and the ceding of Diego Garcia, I would have done again the same thing.'

(1) Le Mauricien—29th September, 1964.

VIII — Outside the Conference Table, 1965

37. The Select Committee accepts the unanimous statements made by the participants at the Constitutional Conference of September 1965, and who deponed before the Select Committee (paragraph 25), to the effect that at no time was the question of the excision of any part of the Mauritian territory brought for discussion at the open Conference. Such decision of the United Kingdom Government was privately communicated to the then Premier, Dr the Honourable Seewoosagur Ramgoolam. But the Select Committee is not prepared to put on the sole shoulders of the latter the blame for acceding unreservedly to the United Kingdom's request. Evidence is not lacking to show that, indeed, the Premier shared with, at least, the leaders of the political parties present at Lancaster House, and with some independent participants, including Mr Paturau, D.F.C., the United Kingdom's offer of excision of the islands and the interests of the United States of America in the deal. So much so that, at one time during the Conference, a Mauritian delegation comprising MM Guy Forget (Labour), Jules Koenig (PMSD), Abdool Razack Mohamed (CAM) and Maurice Paturau (Independent) met the Minister in charge of Economic Affairs in the American Embassy in London in an attempt to secure, against the proposal for excision, a remunerative market in America for Mauritian sugar. The only surviving member of that particular delegation, Mr Maurice Paturau, D.F.C., informed the Select Committee that the American authorities turned down the proposition and stressed that all matters incidental to the Chagos Archipelago issue were meant for discussion between the United States and the United Kingdom and not with Mauritius.

38. The most decisive event in the history of the excision of the Chagos Archipelago occurred on Thursday, 23rd September, 1965, on the eve of the closing session of the Constitutional talks. On that day, discussions were officially held between a group of United Kingdom officials, headed by the Secretary of State for the Colonies, Mr Anthony Greenwood, and a number of Mauritain Ministers. Evidence produced before the Select Committee shows, without any possible doubt, that the following Ministers took part in the proceedings: The Premier (Dr Seewoosagur Ramgoolam), the Minister of Social Security (Mr Abdool Razack Mohamed), the Minister of Industry, Commerce and External Communications (Mr Maurice Paturau, D.F.C.), the Minister of Local Government (Mr Sookdeo Bissoondoyal). As regards Mr Koenig, the minutes do not refer to his presence (Appendix K). The Chief Secretary's memorandum (Appendix M) mentions his attendance at certain discussions, without specifically referring to the meeting held on 23rd September 1965. Sir Gaëtan Duval categorically affirmed that Mr Koenig did not attend that meeting and Mr Paturau stated that he had no recollection of Mr Koenig being present. Record of the proceedings (Appendix K) indicates (i) the eight conditions on which Dr the Honourable Seewoosagur Ramgoolam undertook to obtain the approval of the local Council of Ministers and (ii) the acceptance thereof, in principle, by MM Mohamed (CAM) and Bissoondoyal (IFB). As regards the other participant, Mr Paturau, he had expressed dissent about the amount (£ 3m) of final compensation offered, which he considered to be totally inadequate. (Paragraph 25).

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IX—Before the Council of Ministers

39. The relevant parts of the minutes of the meeting held on 23rd September, 1965 (Appendix 'K') were transmitted to the Governor of Mauritius under cover of Colonial Office Despatch No. 423 dated 6th October 1965. (Appendix 'L'). The Select Committee notes that this document does not give any definite character to the proposals which Dr the Honourable S. Ramgoolam had undertaken to carry to the approval of his colleagues in the Council of Ministers. Hence, (i) defence and internal security would have to be negotiated, after independence (ii) projects to which the £3 m compensation would be devoted would be the subject of further discussions (iii) the British Government would use their good offices, without any firm guarantee of success, with the United States Government to secure concessions over sugar imports, supply of wheat and other commodities, to use labour and materials from Mauritius for construction works on the islands and (iv) to ensure that navigational and meteorological facilities, fishing rights and the possibility of using the air strip for emergency landing and refuelling of civil planes be made available to Mauritius. As regards the two other crucial points, namely, the return to Mauritius of the islands when no more needed and the exclusive right of Mauritius to 'the benefit of any mineral and oil discovered in or near the Chagos Archipelago', the United Kingdom Government simply took note, whilst stressing that the archipelago would remain under British Sovereignty.

40. The arrangements regarding defence and internal security appear, in more details, in the final communiqué issued at the end of the Conference, (para. 23) Hence, in the Memorandum (Appendix 'M') prepared by the Chief Secretary, Mr Tom Vickers, C.M.G., for the Council of Ministers and embodying the United Kingdom's reservations on the proposals agreed to in principle by the Premier, Mr Mohamed and Mr Bissoondoyal (Appendix 'K'), a significant change had occurred. Point (i) relating to the defence agreement had been replaced by the following: (i) the Chagos Archipelago would be detached from Mauritius and placed under British Sovereignty by Order in Council. And the last paragraph of the Memorandum invited the Government of Mauritius to give confirmation of his willingness 'to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago'. The Select Committee notes with concern that this unexpected proposition which had supposedly emerged from the discussions held on 23rd September 1965, but which is not contained in the original record of proceedings (Appendix 'K') did not strike the attention of any Mauritian Minister as being new and unwarranted.

41. The Council of Ministers met on 5th November 1965 and the names of the Ministers present are listed in Appendix 'N' of this Report. Telegram 247 from Mauritius to the Secretary of State (Appendix 'O') translates the views of the Council of Ministers on the Chief Secretary's memorandum (Appendix 'M') and reports the dissent of the P.M.S.D. Ministers, in relation to the inadequacy of the compensation offered. No dissentient voice was

recorded on the principle of (i) the detachment of the archipelago and (ii) the establishment of "defence facilities" thereon (Appendices 'P' & 'Q'). On the 11th November 1965, the P.M.S.D. Ministers resigned from the Coalition Government and in a press conference held the next day, they re-affirmed that their objection was not based on the principle of putting the islands at the disposal of the joint U.K./U.S. venture, but merely on the conditions under which such facilities have been granted, in complete indifference of the social and economic needs of Mauritius.

42. The United Kingdom's views on the last hour reservations of the Council of Ministers in regard to the excision came by way of telegram 313 dated 19th November 1965 (Appendix 'R'). It reasserts the hypothetical character of all future negotiations with the United States about sugar imports. The conditions under which the islands would be returned to Mauritius and prospections for oil and minerals permitted, are worth quoting:

> 3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.
>
> 4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

43. The latest development as regards the eventual return of the islands to Mauritius when no more required is contained in a reply made by the British Prime Minister in the House of Commons, on 11th July, 1980, and which is reproduced hereunder:—

> I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean Territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government. (1)

As regards the plea for employing Mauritian labour on construction works on the islands, the Select Committee is reproducing at Appendix 'S' of this report, an eloquent and self-explanatory exchange of correspondence between the Prime Minister of Mauritius and the British High Commissioner, as late as February/March 1971.

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(1) House of Commons debates — Vol. 988, Col. 314.

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44. The agreement of the Council of Ministers for the detachment of the Chagos Archipelago from Mauritius having been obtained at the sitting of 5th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addressed a confidential letter to Ministers on 10th November,1965, conveying the substance of the public announcement to that effect that was to be made in the House of Commons later on the same day. Sir John's letter together with the text of a communique to be released immediately afterwards are herewith reproduced as annexures T and U respectively.

X—The Public Announcement

45. Before entering into the last stage of description of the circumstances which led to the excision of the Chagos Archipelago, the Select Committee wishes to summarize hereunder the sequence of events leading thereto and underline at the same time the responsibilities of the then Premier, Dr the Honourable Seewoosagur Ramgoolam and its Council of Ministers therein:—

(i) In August 1964, an anglo-american survey of the islands takes place. On the 14th July preceding, the whole Council of Ministers is so informed by the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E. (Para. 33)

(ii) In September 1965, the Mauritius Constitutional Conference is held in Lancaster House, London. *En marge* of these talks, the Premier is apprised in private of the joint UK/US project of using the islands for "defence" purposes. This information is conveyed by him to his fellow delegates and a delegation comprising the Deputy Leader of the Mauritius Labour Party, the Leader of the P.M.S.D., the Leader of the CAM and an Independent Member meets the Minister in Charge of Economic Affairs in the American Embassy, London, in an attempt to negotiate, in return for the use of the Chagos Archipelago, certain facilities from the United States of America. (Para. 37)

(iii) On 23rd September 1965, the Secretary of State for the Colonies, Mr Anthony Greenwood, meets the Premier and certain Ministers of the Coalition Government. The discussions include the eventual detachment of the Chagos Archipelago. (Para. 38).

(iv) On 5th November 1965, the Council of Ministers is invited to give *inter-alia*, its agreement to the detachment. The agreement is given, in principle. (Para. 41).

(v) On 8th November, 1965, the British Indian Ocean Territory Order is issued. (Para. 10).

(vi) On 10th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addresses a confidential letter to Ministers informing them of the United Kingdom's Government final decision on the issue and attaching the text of a press release in that connection. (Para. 44).

The above catalogue of events is most important for the comprehension of the most undignified attitude of certain Labour Ministers of the last Government who deponed before the Select Committee. (Para. 25).

46. Evidence shows that Dr the Honourable Seewoosagur Ramgoolam came back from the London Constitutional Conference on 11 October 1965 and left again for the United Kingdom on 29 November 1965, for medical treatment. He returned on 3 January 1966.

47. As already indicated by Sir John Shaw Rennie, K.C.M.G., C.B.E. (para. 44), the Secretary of State for the Colonies, Mr Anthony Greenwood, made on 10th November, 1965, an announcement in the House of Commons regarding 'new arrangements for the administration of certain islands in the Indian Ocean.' The text of that communication was released in Mauritius by the Chief Secretary's Office on the same day. (Appendix 'U')

48. On 14th December 1965, a parliamentary question was put to the Premier and Minister of Finance requesting a comprehensive statement 'on the question of the sale or hire of the island of Diego Garcia to either the United Kingdom Government or the United States of America or to both jointly' and certain other related matters. (Appendix F.) Honourable Guy Forget, on behalf of the Premier and Minister of Finance, replied to the question and reproduced *verbatim* the reply made by the Secretary of State for the Colonies, in the House of Commons, on 10th November, 1965 (Appendix U).

49. On 6th December 1982, when Sir Seewoosagur Ramgoolam appeared before the Select Committee, he declared, to the Committee's astonishment and dismay, that the statement made in the Legislative Assembly, on 14th December 1965, by Mr Guy Forget, came as a surprise to him. 'Something was done mysteriously', he added. Indeed, he further stated: 'When I came back from the Conference to Mauritius, I was faced with the statement made to a question put in Parliament, by the late Mr Forget, which I said, as I still maintain, is a mystery to me.' And Sir Seewoosagur Ramgoolam went further as to declare that as late as 1972, when, as Prime Minister, he accepted on behalf of the Mauritius Government the receipt of a sum of £ 650,000 from the United Kingdom Government 'in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago' (Appendix W), he was still unwillingly bound by Mr Forget's statement.

When asked by the Select Committee to comment on Sir Seewoosagur Ramgoolam's observations that, "Mr Forget's statement came as a complete surprise to him and that there is a mystery surrounding Mr Forget's statement on the 14th December," Sir Veerasamy Ringadoo replied:—"If he had said that, then his recollection is as good as mine." Sir Veerasamy, who was then Minister of Education and Cultural Affairs, did not remember having seen the text of the communique (Appendix 'T') which the Governor of Mauritius addressed to Members of the Council of Ministers on 10th November 1965.

That element of surprise in the face of Honourable Forget's statement was also shared by Sir Harold Walter.

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XI. The Displaced Ilois

50. On 3rd October 1980, the Public Accounts Committee, a Sessional Select Commitee of the Legislative Assembly produced a detailed report on the "financial and other aspects of the 'sale' of Chagos Islands and the resettlement of the Displaced Ilois." The report is reproduced at Appendix 'Z'.

The Committee wishes to underline a new disturbing element in the question of the resettlement of the displaced population of the excised islands. Deponing before the Select Committee on 6th December 1982, Sir Seewoosagur Ramgoolam stated that the resettlement issue was "taken up here in Mauritius" after the Constitutional Conference of September 1965. He stated that the issue was so extraneous to the proceedings at Lancaster House that, when he wrote to the British High Commissioner, on 4th September 1972, acknowledging receipt of a sum of £ 650,000 from the British Government "in full and final discharge" of the United Kingdom's undertaking given in 1965 " to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago" (Appendix 'W'), he was simply acting in the "context" of the unexpected reply made by Mr Forget in the Legislative Assembly on 14th December 1965 (Appendix 'F').

In the light of documentary evidence produced, the Committee cannot but reject Sir Seewoosagur's submission. Item (iii) of the Record of Meeting held at Lancaster House, on 23rd September 1965, (Appendix 'K') indicates that the question was raised with him on that occasion. And Colonial Office Despatch No. 423 of 6th October 1965 (Appendix 'L') reports that he agreed that the document under reference was an accurate report of the proceedings.

On 4th November 1965, a Memorandum by the Chief Secretary (Appendix'M') conveying the points agreed upon at the meeting of 23rd September 1965, was circulated to the then Council of Ministers and item (iii) thereof again alluded to the resettlement question.

Hence,as far back as September 1965, documents relating to such a delicate issue were in Government files and the Committee, whilst deploring Sir Seewoosagur's inaccurate statement before the Select Committee, strongly condemns the then Government for its indifference towards the displaced Ilois. Although the amount of compensation had been paid into the public treasury as far back as 1972, it was not until January 1977, after Mr Prosser's visit to Mauritius as a result of strong public agitation that, as a measure preliminary to some sort of rehabilitation, a survey of the persons involved was conducted.

XII. The Latest Developments

51. The Committee feels much comfort in the Resolution contained in the Political Declaration voted at the Non-Aligned Movement's New Delhi Summit Meeting, 1983, about Diego Garcia. (Appendix 'X'). It fully concurs with the views expressed to the effect that "the establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other states". It sincerely hopes that this new Resolution, added to those already adopted by international organisations, such as the United Nations General Assembly (Appendix 'D') and the Organisation of African Unity (Appendix 'E') will contribute to the return to Mauritius of that part of its territory.

XIII. Conclusions

52. Five main themes emerge from the Committee's proceedings and they are set out hereunder as a concluding chapter to this report.

A. *The political climate prior to the Constitutional Conference, 1965*

All the political parties which appeared before the Committee, —with the exception of the P.M.S.D. whose stand will be commented upon in the subsequent sub-paragraph— were unanimous in their submission (para. 25) that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference of September 1965. So much so that none of them did think it appropriate to make their stand known before leaving for the Constitutional talks. Sir Seewoosagur Ramgoolam alleged that the proposition of the U.K. Government was first communicated to him in private talks while the Conference was in progress. Honourable Aneercod Jugnauth, Q.C., then a member of the I.F.B. delegation, stated to the Committee that before the different delegations to the 1965 Constitutional Conference parted, Sir Seewoosagur Ramgoolam had come to the desk where the I.F.B. delegation was and had informed them that he had had private talks with the British Government and had agreed, on behalf of the Government of Mauritius, to a request for communications facilities to be installed at Diego Garcia. He added:—"When he told us that, we took note and we had not much to say about it."

Evidence produced before the Committee does not support the claim that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference. Amongst others, the more

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salient features indicative of the U.K. Government's definite plans for the militarization of the islands with United States involvement and their possible excision therefor are listed chronologically hereunder:—

1. On 21st February 1964, Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in a broadcast styled "London Calling Mauritius" hinted, in most unequivocal terms, at the U.K.'s decision of using Mauritius and its dependencies as a unit for its defence strategy in the Indian Ocean (para. 31). Report of this broadcast was lengthily reproduced in the local press. (Appendix 'A 1').
2. On 4th July 1964, the *Economist*, reviewing the U.K.'s military strategy as a result of the political uncertainties in Aden, called for a "military effort" for the setting up of a new Indian Ocean base and stressed that "this way of thinking points unerringly to some kind of Anglo-American exercise." Again, this article was taken up in the local press. (Appendix 'A 2').
3. On 22nd July 1964, the Australian paper "Daily News" revealed that talks had been initiated between Washington and Whitehall for a joint military venture in the Indian Ocean and pointed Mauritius as a logical base for such operation both for reasons of strategy and political stability. This excerpt was also published in the local press. (Appendix 'A 3').
4. On 30th August 1964, Reuter confirmed that "high level discussions" were in progress for providing new American bases "on British islands in the Indian Ocean" and reported that a technical survey had already been effected. (Appendix 'A 4').
5. On 31st August 1964, the "Daily Telegraph" directly alluded to the possibility of using Diego Garcia as a Polaris communications centre. (Appendix 'A 5').
6. On 5th September 1964, the *Economist* carried a more direct allusion to the "present Anglo-American search for a communications centre (and may be something more) in the Seychelles or one of the Mauritius dependencies." (Appendix 'A 6').
7. On 23rd September 1964, a group of Mauritian nationals residing in London lodged in the British press a strong protest against the possible installation of "military bases on Mauritian territory and on other islands in the Indian Ocean." This denunciation was reproduced in the local press. (Appendix 'A 7').

8. On 10th November 1964, Honourable B. Ramlallah intervened rather lengthily on the question (Appendix'H') in the Legislative Assembly. His intervention succeeded in obtaining from Government side two contradictory statements. On the same day, Honourable Satcam Boolell, then Minister of Agriculture and Natural Resources, interjected that Government was not aware of the project. This assertion will be contradicted on 14th December 1964 when the Chief Secretary will confess that indeed "a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius" had been in progress and that the Council of Ministers—of which Honourable Boolell was a member—had been duly informed. (Appendix 'I'). Such information was, indeed, communicated to the Council of Ministers by the then Governor-General on 14th July 1964. (Para. 33).

9. On 16th January 1965, the *Economist*, in an article headed "Strategies West and East" confirmed that a joint Anglo-American survey of the islands had been effected and, for the first time, hinted at the necessity of excising the Aldabra Group from the Seychelles and Diego Garcia from Mauritius, by an Order-in-Council. (Appendix A 8).

10. On 5th April 1965, Reuter made mention of a statement in the House of Commons by Mrs Eirene White, then Under-Secretary of State for the Colonies, who indicated that consultations about the joint Anglo-American survey of the islands had taken place with the Mauritian authorities, at two levels: namely, with Dr. the Honourable Seewoosagur Ramgoolam, in July 1964 and with the Council of Ministers in November of the same year. (Appendix 'A 9').

11. On 9th May, 1965, the Washington Post revealed that, as a result of the technical survey, Diego Garcia stood first on the priority list drawn by the American and British authorities as a recommended location for a joint Anglo-American military facility in the Indian Ocean and referred to the necessity of entrusting the administration of the island to London. The paper revealed that the United States had requested that the "entire archipelago be acquired" and that such exercise should be completed before the forthcoming Constitutional Conference. This

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illuminating article even hinted at the U.S. idea "wherever possible, to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere." (Appendix 'A 10').

12. On 3rd June 1965, news broke out in the local press that the Anglo-American military base would, in fact, be installed on the dependencies of Mauritius and of the Seychelles and that a sum of Rs 135 m had been voted for the acquisition of the islands and the displacement of their inhabitants. (Appendix 'A 11').

13. On 15th June 1965, Dr. M. Curé, by way of a parliamentary question, urged Government to "express to the British Government the inadvisibility of entering into any agreement with the United States of America" for the eventual acquisition of the dependencies of Mauritius, before the forthcoming Constitutional Conference. The Chief Secretary replied that he had nothing to add to the information communicated by him to Mr Ramlallah on on 14th December 1964. (Appendix 'I')

14. On 19th June 1965, the local press carried information to the effect that the joint U.K./U.S. military project in the Indian Ocean was on the agenda of the Commonwealth Prime Ministers' Conference which was then in session and requested the prompt intervention of the Premier of Mauritius and of the Government. The appeal fell on deaf ears. (Appendix 'A 12').

15. On 27th July 1965, the local press again reported that the Government of Mauritius had been put in presence of the whole scheme, including the excision of the islands and that the Premier had offered, as a counter-proposal, the lease thereof. (Appendix 'A 13').

This long—but not complete—catalogue of events translates, in the Committee's opinion, the psychosis prevalent in the public mind, both in Mauritius and overseas, on the issue, prior to the Constitutional Conference of September 1965. It is a matter of regret therefore, that none of the political parties which, at that time, formed part of the Coalition Government, did think it fit to allay the fears of the population. Hence, the Select Committee strongly condemns the passive attitude of the political class represented in the then all-party Government and which formed part of the Mauritian delegation which attended the Constitutional Conference of September 1965. Their silence, in the light of such repeated warnings from responsible sectors of public opinion, bordered, in the Committee's judgment, on connivence.

Even more strongly, the Select Committee condemns the attitude of the then Ministers who, as will be commented upon at sub-paragraph (C), gave their agreement to the excision of the Chagos Archipelago and to its use for U.K./U.S. defence interests.

B. *The attitude of the Parti Mauricien Social Démocrate (P.M.S.D.)*
The position of the P.M.S.D. on the excision of the Chagos Archipelago was made known to the Select Committee by Sir Gaëtan Duval when he deponed on 12th November 1982. He claimed that the P.M.S.D. had not been against the use of the archipelago for a joint U.K./U.S. venture, but had been dissatisfied with the conditions attached to the deal. The sovereignty of Mauritius ought to have been preserved and negotiations for terms most beneficial to the social and economic betterment of the Mauritian population, subsequently conducted with any nation interested in the use of the islands. Sir Gaëtan explained that the then Leader of the P.M.S.D. even refused to attend the meeting held on 23rd September 1965, as a proof that the party was adamant on the excision issue. Referring to the reasons for the resignation of P.M.S.D. Ministers from Government, Sir Gaëtan had this to say: *"Je dois vous dire qu'à ce moment là nous démissionnons non pas parcéque nous étions contre l'idée de la construction d'une base américaine, mais parce que nous étions contre l'idée de la cession d'une partie du territoire mauricien"*. He will later state: *"Nous étions d'accord sur le principe de la base anglo-américaine à Diego Garcia mais nous refusions la cession."*

The Select Committee regrets not being able to accept Sir Gaëtan's submission. On no less than three occasions, documentary evidence will establish without the least possible doubt that the P.M.S.D. was indeed agreeable, in principle, to the excision of the Chagos Archipelago but objected to the terms thereof. These occasions are listed hereunder:—

(i) the Minutes of the Council of Ministers indicate that on 5th November 1965, the Council was called upon to give "their agreement that the British Government should take necessary legal steps to detach the Chagos Archipelago." On that day, the P.M.S.D. Ministers intimated that "while they were agreeable to detachment of the Chagos Archipelago they must reconsider their position as Members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate". (Appendix 'P'). These Minutes were approved without any amendment to that effect, on 12th November 1965, (Appendix 'Q') in the absence of the P.M.S.D. Ministers who had resigned the day before.

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(ii) Public confirmation of the Minutes of the Council of Ministers held on 5th November 1965 (Appendix 'P') was however given at a press conference held by the leaders of that party on 12th November 1965 to explain their resignation as Ministers. The following excerpts from press reports are worth quoting:—

Je tiens à déclarer de la façon la plus formelle que le P.M.S.D. n'est pas contre le principe de céder les Chagos ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident. Le P.M.S.D. en approuve le principe: il est en désaccord sur les termes et les conditions de cette cession. (Mr Koenig) (1) Nous ne sommes pas contre l'excision des îles pour les besoins militaires de l'Ouest. (Mr Koenig) (2)

(iii) On 14th December 1965, Mr Duval, by way of a parliamentary question invited Government to give an opportunity to the Legislative Assemb'y "to discuss the detachment of the Chagos Archipelago from Mauritius and its inclusion in the British Indian Ocean Territory, specially in view of the stand taken by India and other Afro-Asian countries". Mr Forget, on behalf of the Premier and Minister of Finance, rightly referred Mr Duval to the press conference of the P.M.S.D. held on 12th November 1965 where no disagreement against the excision was expressed by the party. The supplementary question put by Mr. Duval re-affirmed that the P.M.S.D. was concerned by the conditions of the excision and not by the excision itself. (Appendix 'Y').

Hence, the plea of the P.M.S.D.'s opposition to the excision of the islands does not hold water.

C. *The existence of documents*

Both Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, when they deponed before the Select Committee (para. 25A) stated that at no time were they put in presence of any document relating to the excision of the islands. They argued that there never existed any agreement thereon nor any minutes of proceedings of possible discussions on the issue. This statement was made not only to the Committee but was very often repeated in the Legislative Assembly, in the past, in reply to interventions from all sides of the House.

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(1) Le Mauricien—13th November 1965

(2) L'Express—13th November 1965

The Select Committee is in a position to reject these statements. In spite of Sir Seewoosagur's declaration to the effect that no Minutes whatsoever had been produced to him, the Select Committee has been able to obtain at least two documents from files kept at the Prime Minister's Office and which indicate the contrary. They are listed hereunder:—

(i) The record of the meeting held at Lancaster House and which outlines the points agreed upon between the Secretary of State for the Colonies on one side and on the other Dr the Honourable Seewoosagur Ramgoolam, the Honourable Abdool Razack Mohamed and the Honourable Sockdeo Bissoondoyal. The document is reproduced at Appendix 'K' of this report.

(ii) Colonial Office despatch No. 423, dated 6th October, 1965, which confirms that the contents of the record mentioned above had already been agreed in London with Dr the Honourable Seewoosagur Ramgoolam "and by him with Mr Mohamed, as being an accurate record of what was decided". (Appendix 'L').

(iii) Furthermore, on 5th November 1965, the Council of Ministers, including Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, gave their agreement to the effect that, "the British Government should take the necessary legal steps to detach the Chagos Archipelago." (Appendix 'P').

In these circumstances, the Select Committee cannot but record its indignation at the attitude of these Senior Ministers of the then Government who, before the Committee, in the Legislative Assembly, and in public pronouncements, denied the existence of any documents relating to the detachment of the islands. In the same breath, the Select Committee wishes to denounce the then Council of Ministers which did not hesitate to agree to the detachment of the islands.

D. *The United States Involvement and Defence Considerations*

The Select Committee again rejects the submission made by the then Leaders of the Mauritius Labour Party and the Independent Forward Bloc to the effect that, from information made available to them, in 1965, the islands would be used as a communications centre only with no United States involvement.

The United States interest in the deal was evident ever since 1964 when the technical survey of the islands was being carried out. The evidence is contained in the then Chief Secretary's reply to Mr Ramlallah, (Appendix 'I'). Again, at the Constitutional

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Conference of September 1965, the United States involvement was such that a delegation headed by the Deputy Leader of the Mauritius Labour Party visited the Minister in Charge of Economic Affairs at the American Embassy, in London, in an attempt to secure, for Mauritius, some benefits in return for the excision. (Para. 37). And later, the record of the meeting held at Lancaster House on 23rd September 1965, will, in no uncertain terms, at items (iv) (v) and (vi) bear testimony of the U.S. presence in the deal. (Appendix 'K').

In addition, all documents exchanged between the Secretary of State for the Colonies and the Mauritius Government preceding and following the then Council of Ministers' agreement to the excision (Appendices 'L', 'M', 'O', 'R') bear reference to a joint U.K./U.S. venture. Some of the letters, including the memorandum submitted to the Council of Ministers by the Chief Secretary on 4th November 1965 (Appendix 'M') were even boldly headed "U.K./U.S. Defence Interests".

Here again, the Select Committee cannot but strongly denounce such deliberate misleading of public opinion on the matter.

E. *The Blackmail Element*

Sir Seewoosagur Ramgoolam's statement before the Select Committee is highly indicative of the atmosphere which prevailed during the private talks he had, at Lancaster House, with the British authorities. He avered that he was put before the choice of either retaining the archipelago or obtaining independence for his country, but refused to describe the deal as a blackmail. Sir Gaëtan Duval argued that the choice was between the excision and a referendum on independence. This contradiction is substantially immaterial to the Committee. What is of deeper concern to the Select Committee is the indisputable fact that a choice was offered through Sir Seewoosagur to the majority of delegates supporting independence and which attitude cannot fall outside the most elementary definition of blackmailing. Sir Harold Walter, deponing before the Select Committee on 11th January 1983, will even go to the length of stating that the position was such that, had Diego Garcia which "was, certainly, an important tooth in the whole cogwheel leading to independence" not been ceded, the grant of national sovereignty to Mauritius "would have taken more years probably".

The Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the General Assembly of the United Nations on 14th December 1960 (Appendix 'C') clearly sets out at para. 5 that the transfer of power to peoples living in "Trust and Non-Self Governing Territories or all other Territories" should be effected "without any conditions and reservations". In addition , at para. 6, it expressedly lays down that, "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."

Hence, notwithstanding the blackmail element which strongly puts in question the legal validity of the excision, the Select Committee strongly denounces the flouting by the United Kingdom Government, on these counts, of the Charter of the United Nations.

1st June 1983.

JEAN-CLAUDE DE L'ESTRAC
Chairman

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APPENDIX A

List of Persons who Deponed Before the Select Committee and Date of Hearing

1. Sir Charles Gaëtan Duval, Q.C.—Leader of the Opposition—12th November 1982.
2. Sir Seewoosagur Ramgoolam, G.C.M.G. — 6th December 1982.
3. Sir Veerasamy Ringadoo, Kt. — 13th December 1982.
4. Mr Maurice Paturau, D.F.C., C.B.E. — 13th December 1982.
5. Sir Harold Walter, Kt. — 11th January 1983.
6. Sir Satcam Boolell, Kt. — 11th January 1983.
7. The Hon. Aneerood Jugnauth, Q.C. — Prime Minister of Mauritius — 1st February 1983.
8. Sir René Maingard de la Ville-es-Offrans, C.B.E. — 8th February 1983.

APPENDIX B

STATUTORY INSTRUMENTS

1965 No. 1920

Overseas Territories

The British Indian Ocean Territory Order 1965

Made 8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1965

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, 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 :—

1. This Order may be cited as the British Indian Ocean Territory Order 1965. Citation.

2. (1) In this Order— Interpretation.

" the Territory " means the British Indian Ocean Territory;

" the Chagos Archipelago " means the islands mentioned in schedule 2 to this Order;

" the Aldabra Group " means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948 and mentioned in schedule 3 to this Order.

(2) The Interpretation Act 1889 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.

3. As from the date of this Order— British Indian Ocean Territory to be a separate colony.

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

4. 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. Establishment of office of Commissioner.

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APPENDIX B—*continued*

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 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.

Oaths to be taken by Commissioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the forms set out in Schedule 1 to this Order.

Discharge of Commissioner's functions during vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such persons as Her Majesty may designate by instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section, he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section—

(a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and

(b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of Commissioner's functions by deputy.

8. (1) The Commissioner may, by instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

APPENDIX B—*continued*

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instruments under the Official Stamp of the Territory.

Official Stamp.

9. 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.

10. 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.

Power to make laws.

11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.

Annex 129

APPENDIX B—*continued*

Commissioner's powers of pardon, etc.

12. 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.

Concurrent appointments.

13. 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 atttaching to that office, be deemed to be the sole holder of that office.

Disposal of land.

14. 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.

Existing laws.

15. (1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section „ enactments " includes any instruments having the force of law.

Exercise of jurisdiction by courts.

16. (1) The Commissioner, with the concurrence of the Governor of any other colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other colony.

(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.

APPENDIX B—*continued*

Judicial proceedings.

17. (1) Notwithstanding any other provisions of this Order but subject to any law made under section 11 thereof,

(a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the islands comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;

(b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph *(a)* of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;

(c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph *(a)* or paragraph *(b)* of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section "judgment" includes decree, order, conviction, sentence and decision.

Amendment of Seychelles Letters Patent 1948 and Mauritius (Constitution) Order 1964, etc.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955 are amended as follows:—

(a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1(1);

(b) in the first schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964 is amended by the insertion of the following definition immediately before the definition of "the Gazette":—

"Dependencies" means the islands of Rodrigues and Agalega, and the St. Brandon Group of islands often called Cargados Carajos;",

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960 as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963 is further amended by the deletion from the definition of "the Colony" of the words "as defined in the Seychelles Letters Patent 1948".

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APPENDIX B—*continued*

19. 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). Power reserved to Her Majesty.

(sd) W. G. AGNEW

SCHEDULE 1

Section 6

OATH (OR AFFIRMATION) OF ALLEGIANCE

I,.....do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF COMMISSIONER

I,.....do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

SCHEDULE 2

Section 2(1)

Diego Garcia
Egmont or Six Islands
Péros Banhos
Salomon Islands
Trois Frères, including Danger Island and Eagle Island

SCHEDULE 3

West Island
Middle Island
South Island
Cocoanut Island
Euphratis and other small Islets.

Note: The British Indian Ocean Territory Order 1965 was amended, as follows, by the British Indian Ocean Territory (Amendment) Order 1968:—

(a) In the definition of " the Aldabra Group " in section 2(1) the words „ as specified in the First Schedule to the Seychelles Letters Patent 1948 and " were omitted;

(b) in schedule 2 for the words—
" Trois Frères, including Danger Island and Eagle Island. " there were substituted the words—
" Three Brothers Islands
Nelson or Legour Island
Eagle Islands
Danger Islands. "; and

(c) in schedule 3 the words " Polymnie Island " were inserted immediately after the words " Cocoanut Island ".

APPENDIX B—*continued*

OVERSEAS TERRITORIES

The British Indian Ocean Territory Royal Instructions 1965

Dated 8th November 1965 Elizabeth R.

Instructions to Our Commissioner for the British Indian Ocean Territory or other Officer for the time being performing the functions of his office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

Citation, commencement and revocation.

1. (1) These Instructions may be cited as the British Indian Ocean Territory Royal Instructions 1965.

(2) These Instructions shall come into operation on the same day as the British Indian Ocean Territory Order 1965 and thereupon the Instructions issued to Our Governor and Commander-in-Chief for Mauritius and dated the 26th February 1964, and the Instructions issued to Our Governor and Commander-in-Chief of the Colony of Seychelles and dated the 11th March 1948, and the Additional Instructions issued to the said Governor and Commander-in-Chief and dated the 2nd May 1960 and the 29th July 1963, shall, without prejudice to anything lawfully done thereunder, and in so far as they are, respectively, applicable to the islands comprised in the British Indian Ocean Territory as defined in the British Indian Ocean Territory Order 1965, cease to have effect in respect of those islands.

Interpretation.

2. — (1) In these Instructions " the Commissioner " means the Commissioner for the British Indian Ocean Territory and includes the person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of his office.

(2) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting these Instructions and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

Instructions to be observed by deputy.

3. — (1) These Instructions, so far as they are applicable to any functions of the office of Commissioner to be performed by such person as is mentioned in paragraph (1) of the preceding clause, shall be deemed to be addressed to, and shall be observed by, such person.

(2) Such person may, if he thinks fit, apply to Us through a Secretary of State for instructions in any matter; but he shall forthwith transmit to the Commissioner a copy of every despatch or other communication addressed to Us.

Rules for the enactment of laws.

4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:—

(1) All laws shall be styled Ordinances and the words of enactment shall be „ Enacted by the Commissioner for the British Indian Ocean Territory ".

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APPENDIX B—*continued*

(2) Matters having no proper relation to each other shall not be provided for by the same Ordinance; no Ordinance shall contain anything foreign to what the title of the Ordinance imports; and no provision having indefinite duration shall be included in any Ordinance expressed to have limited duration.

(3) All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.

(4) All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

Certain Ordinances not to be enacted without instructions.

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say—

(1) any Ordinance for the divorce of married persons;

(2) any Ordinance whereby any grant of land or money, or other donation or gratuity may be made to himself;

(3) any Ordinance affecting the currency of the British Indian Ocean Territory or relating to the issue of bank notes;

(4) any Ordinance imposing differential duties;

(5) any Ordinance the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty;

(6) any Ordinance affecting the discipline or control of Our Forces by land, sea or air;

(7) any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced;

(8) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;

APPENDIX B—*continued*

(9) any Ordinance containing provisions which have been disallowed by Us;

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except an Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to Us together with his reasons for so enacting the same.

Ordinances to be sent through Secretary of State.

6. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance duly authenticated under the Official Stamp of the British Indian Ocean Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance.

Ordinances to be published yearly.

7. As soon as practicable after the commencement of each year, the Commissioner shall cause a complete collection to be published, for general information, of all Ordinances enacted for the British Indian Ocean Territory during the preceding year.

Appointments to be during pleasure.

8. Every appointment by the Commissioner of any person to any office of employment shall, unless otherwise provided by law, be expressed to be during pleasure only.

Disposition of Crown lands.

9. (1) Before disposing of any lands to Us belonging in the British Indian Ocean Territory the Commissioner shall cause such reservations to be made therefrom as he may think necessary for any public purpose.

(2) The Commissioner shall not, directly or indirectly, purchase for himself any land or building in the British Indian Ocean Territory to Us belonging without Our special permission given through a Secretary of State.

Power of pardon in capital cases.

10. Whenever any offender has been condemned by the sentence of any court having jurisdiction in the matter to suffer death for any offence committed in the British Indian Ocean Territory, the Commissioner shall call for a written report of the case from the judge who tried it, and for such other information derived from the record of the case or elsewhere as he may require, and may call upon the judge to attend upon him and to produce his notes; and if he pardons or respites the offender, he shall as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reason for his decision.

Given at Our Court at St. James's this eighth day of November 1965 in the fourteenth year of Our Reign.

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APPENDIX C

1514 (XV)

Declaration on the granting of Independence to Colonial Countries and Peoples

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

APPENDIX C—*continued*

Welcoming the emergence in recent years of a large number of dependent territorie into freedom and independence, and recognizing the increasingly peaceful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares 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 cooperation.

2. 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.

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 or all other territories which have not yet attained independence, 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 and 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 of the United Nations.

7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.

14th December 1960.

948th plenary meeting

Annex 129

APPENDIX D

United Nations General Assembly Resolution 2066

QUESTION OF MAURITIUS

The General Assembly,

Having considered the question of Mauritius and other islands composing the Territory of Mauritius,

Having examined the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius,

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Regretting that the administering Power has not fully implemented Resolution 1514 (XV) with regard to that Territory,

Noting with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof,

1. *Approves* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius and endorses the conclusions and recommendations of the Special Committee contained therein;

2. *Reaffirms* the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance with General Assembly Resolution 1514(XV),

3. *Invites* the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV);

4. *Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity;

5. *Further invites* the administering Power to report to the Special Committee and to the General Assembly on the implementation of the present resolution;

6. *Requests* the Special Committee to keep the question of the Territory of Mauritius under review and to report thereon to the General Assembly at its twenty-first session.

1398th plenary meeting, 16 December 1965

APPENDIX E

AHG/Res. 99(XVII)

RESOLUTION ON THE DIEGO GARCIA

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July, 1980.

Pursuant to article 1, para. 2, of the Charter of the Organization of African Unity, which stipulates 'The Organization shall include the continental African States, Madagascar and other islands surrounding Africa',

Considering that one of the fundamental principles of the Organization is the "respect for the sovereignty and territorial integrity of each state",

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the Organization of African Unity,

Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realising that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of Peace,

Demands that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

Annex 129

DIEGO GARCIA — SALE OR HIRE — (No. A/33) — Mr J.R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the sale or hire of the Island of Diego Garcia to either the United Kingdom Government or to the Government of the United States of America or both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr. Forget on behalf of the Premier and Minister of Finance:—

I would refer the Honourable Member to the following communique issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(Communique)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME WEDNESDAY 10th NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:—

"With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north east of Mauritius, and Aldabra, Farquhar and Desroches in the western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate."

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations.

Annex 129

APPENDIX G

MAURITIUS CONSTITUTIONAL CONFERENCE — 1965

Mauritius Delegation

The Mauritius Labour Party ...	... Sir Seewoosagur Ramgoolam
	Hon. G. Forget
	Hon. V. Ringadoo
	Hon. S. Boolell
	Hon. H. Walter
	Hon. R. Jomadar
	Hon. R. Jaypal
	Dr the Hon. L. R. Chaperon
	Hon. V. Govinden, M.B.E.
	Hon. H. Ramnarain
	Hon. R. Modun
	Hon. S. Veerasamy
	Dr the Hon. J. M. Curé
The Parti Mauricien Social Démocrate ...	Hon. J. Kœnig, Q.C.
	Hon. L. R. Devienne
	Hon. C. G. Duval
	Hon. J. C. M. Lesage
	Hon. H. Rossenkhan
The Independent Forward Bloc ...	Hon. S. Bissoondoyal
	Hon. A. W. Foondun
	Hon. D. Basant Rai
	Hon. A. Jugnauth
	Hon. S. Bappoo
The Muslim Committee of Action ...	Hon. A. R. Mohamed
	Hon. A. H. Osman
	Hon. H. R. Abdool
Independent Members	Hon. J. M. Paturau, D.F.C.
	Hon. J. Ah-Chuen

Annex 129

APPENDIX H

Extract from Debates No. 23 of 10th November, 1964 — Adjournment

Mr. B. Ramlallah (Poudre d'Or) — *Anglo-American Military Base*

Sir, as we have been speaking of America and Americans, there is a very pertinent question which is in the air about the projected base in Mauritius or at Diego. I think if the Government is able to do so; if it is not going to reveal a secret, the sooner it makes a declaration about that projected base the better it will be. Even the British Press is writing about it. There is much wild talk going around it in Mauritius. In India, Pakistan, everywhere people are talking about it, and we do not know what is the foundation of the talk. I understand even Mrs Bandaranaike has said in a press interview that she is opposed to the base in this part of the world.

Anyway I think the sooner something is said about it, the better it will be for the Government because people think that Government is in a way connected with it. Probably £ 125m or £ 115m . . .

Mr Boolell: The Government is not aware of it.

Mr Ramlallah: The Minister has come to my rescue. If this Government is not aware of it, I hope the Premier will stand up and say that we have not been consulted, that something is being done behind our back. There is something in the air there is no doubt about it.

Prospection is going on; we know that a lot of experts have come to Mauritius and surprisingly enough the Government has not been made aware. It is time the Government makes a declaration and says bluntly to the Imperial Government „ We have heard of that. You should tell us what is in store. " We have heard something very painful — that America wants to have the base at Diego, which was supposed to be our colonial territory and which would then be cut off from us. They want to do it in order not to give us the £ 125m. or whatever it is. That is something which makes us think seriously and I hope Government will give it all the seriousness which it deserves.

APPENDIX I

No. 19085

14th December, 1964

On the adjournment of the Legislative Assembly on 10th November, you referred to speculation about defence installations.

The position is that a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius, has been in progress. The results of the survey are still being examined and no decisions have been taken either by the British or by the American Government as to their respective requirements. The Council of Ministers was notified of the survey in advance and will be consulted about further steps in due course.

I am circulating a copy of this letter to other members of the Assembly and releasing it to the Press in the usual way.

TOM VICKERS
Chief Secretary

The Hon. B. Ramlallah, M.L.A.
c/o Mauritius Times
Port Louis.

Annex 129

APPENDIX J

Extract from Debates No. 15 of 15th June, 1965

Acquisition of Dependencies of Mauritius by the U.S.A.

(No. A/30) Dr J. M. Curé (Nominated Member) asked the Chief Secretary whether the Government has been approached for the acquisition of our dependencies or part thereof by the United States of America for military purposes. If so, will he make a statement thereon and state whether the Government will

(a) express to the British Government the inadvisability of entering into an agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next; and

(b) ascertain the presence of oilfields in our dependencies before alienating them?

Mr Vickers: I have nothing to add to the information I conveyed to Hon. Members of the Legislative Assembly by the circulation of the copy of the letter which I addressed to the Hon. Member for Poudre d'Or on the 14th December, 1964, after he had raised the matter on the adjournment of the Legislative Assembly on the 10th November, 1964.

APPENDIX K

Extract from Record of Meeting held in Lancaster House on Thursday, 23 September, 1965, between the Colonial Secretary (Mr Greenwood) and Mauritian Ministers

Paragraphs 22 and 23

22. Summing up the discussion, the Secretary of State asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following :—

i. negotiations for a defence agreement between Britain and Mauritius;

ii. in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

iii. compensation totalling up to £3m, should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

iv. the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

v. that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

vi. the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

a. Navigational and Meteorological facilities;

b. Fishing Rights;

c. Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers;

vii. that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;

viii. that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. Sir S. Ramgoolam said that this was acceptable to him and Messrs Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

Annex 129

APPENDIX L

Colonial Office Despatch to Governor of Mauritius No. 423 dated 6 October, 1965

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of U.K./U.S. Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers. This record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)–(viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be negociated between the British and Mauritius Governments before Independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).

I have the honour to be,

etc.

C M (65) 183

APPENDIX M

4th November, 1965

COPY No. 19

COUNCIL OF MINISTERS

UK/US Defence Interests in the Indian Ocean

MEMORANDUM BY THE CHIEF SECRETARY

As Council is aware, the establishment of a communications centre and supporting defence facilities on Diego Garcia by the U.S. Government for joint UK/US use was further discussed in London in September by the Secretary of State for the Colonies with the Premier, the Minister of Social Security, the Minister of Industry, the Minister of Local Government and the Attorney-General. The Secretary of State explained that a lease would not be practicable from the point of view of the British and the American Governments. The Ministers were also informed of the difficulties in the way of obtaining a *quid pro quo* in the form of trading concessions, such as a bigger allocation of sugar in the American market, and on this point they had an interview with the Minister in charge of Economic Affairs in the American Embassy in London.

2. The proposals that eventually emerged from these discussions are as follows :—

(i) the Chagos Archipelago should be detached from Mauritius and placed under British sovereignty by Order in Council;

(ii) in the event of independence a defence agreement should be negociated between Britain and Mauritius and there should be an understanding between the two Governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) thec ompensation totalling up to £3 million should be paid to the Mauritius Government to be devoted to agreed development projects over and above direct compensation to land owners and the cost of resettlement of others affected in the Chagos Archipelago;

(iv) the British Government would also use their good offices with the U.S. Government in support of the request of Mauritius for concessions over sugar imports and the supply of wheat and other commodities;

(v) the British Government would do their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work in the Chagos Archipelago;

(vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;

(a) navigational and meteorological facilities;

(b) fishing rights;

(c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers;

Annex 129

APPENDIX M—*continued*

(vii) if the need for the facilities in the Chagos Archipelago disappeared, sovereignty would be returned to Mauritius;

(viii) the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Mauritius Government.

3. The Secretary of State has said that as regards point (iii) he is arranging for consultations to take place with the Mauritius Government with a view to working out the agreed projects to which the £3 m. compensation will be devoted (Ministers present at the discussions in London will recall that the possibility of land settlement schemes was raised). As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the U.S. Government and will keep the Mauritius Government fully informed of progress in the matter. The Chagos Archipelago will remain under British sovereignty and the British Government have taken careful notes of points (vii) and (viii).

4. The Secretary of State has now asked for early confirmation that the Mauritius Government is willing to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated in paragraph 2 above.

T. D. VICKERS

APPENDIX N

(65)45

Copy No. 23

Council of Ministers

Minutes of Proceedings of the 45th Meeting held on Friday the 5th November 1965.

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance (Dr. the Honourable Sir Seewoosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T.D. Vickers, C.M.G.)

The Minister of Works and Internal Communications (The Honourable J.G. Forget)

The Minister of Education and Cultural Affairs (The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A. R. Mohamed)

The Minister of Agriculture and Natural Resources (The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications (The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications (The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development (The Honourable S. Bissoondoyal)

The Attorney-General (The Honourable J. Kœnig, Q.C.)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Development) in the Ministry of Finance (The Honourable L. R. Devienne)

The Minister of Housing, Lands and Town & Country Planning (The Honourable C. G. Duval)

The Minister of State (Budget) in the Ministry of Finance (The Honourable K. Tirvengadum)

Annex 129

APPENDIX O

TELEGRAM No. 247 FROM MAURITIUS TO THE SECRETARY OF STATE FOR THE COLONIES SENT 5th NOVEMBER 1965

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

(1) statement in paragraph 6 of your despatch „ H.M.G. have taken careful note of points *(vii)* and *(viii)* " means H.M.G. have in fact agreed to them.

(2) As regards *(vii)* undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or

(b) any payment or financial obligation by Mauritius as condition of return.

(3) In *(viii)* " on or near " means within areas within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also undesrtand that if they feel obliged to withdraw from the Government they must let me have (resignations) in writing and consult with me about timing of the publication (which they accepted should not be before Friday 12th November).

3. (Within this) Ministers said they were not opposed in principle to the establishment of facilities and detachment of Chagos but considered compensation inadequate, especially the absence of additional (sugar) quota and negotiations should have been pursued and pressed more strongly. They were also dissatisfied with mere assurances about *(v)* and *(vi)*. They also raised the points (1), (2) and (3) in paragraph 1 above.

APPENDIX P

Extract from Minutes of Proceedings of the Meeting of the Council of Ministers held on 5th November 1965

UK/US Defence interest in the Indian Ocean.

No. 553 Council considered the Governor's Memorandum CM (65) 183 on UK/US Defence Interests in the Indian Ocean.*

Council decided that the Secretary of State should be informed of their agreement that the British Government should take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated on the understanding that the British Government has agreed to points (vii) and (viii) that as regards point (vii) there would be no question of sale or transfer to a third party nor of any payment or financial obligation on the part of Mauritius as a condition of return and that „ on or near " in point (viii) meant within the area within which Mauritius would be able to derive benefit but for the change of sovereignty.

The Attorney General, the Minister of State (Development) and the Minister of Housing said that, while they were agreeable to detachment of the Chagos Archipelago, they must reconsider their position as members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate, in particular the absence of any additional sugar quota, and the assurance given by the Secretary of State in regard to points (v) and (vi) unsatisfactory.

*reproduced as Appendix ' M '

Annex 129

APPENDIX Q

Extract from Minutes of Proceedings of the Meeting of the Council of Ministers held on 12th November 1965

C. M. (65) 46 COPY No. 23

COUNCIL OF MINISTERS

Minutes of Proceedings of the 46th Meeting held on Friday the 12th November 1965

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance
(Dr the Honourable Sir Seewoosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T. D. Vickers, C.M.G.)

The Minister of Works and Internal Communications)
(The Honourable J. G. Forget)

The Minister of Education and Cultural Affairs
(The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A.R. Mohamed)

The Minister of Agriculture and Natural Resources
(The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications
(The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications
(The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development
(The Honourable S. Bissoondoyal)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Budget) in the Ministry of Finance
(The Honourable K. Tirvengadum)

Council met at 10.20 a.m.

The Governor announced that the previous afternoon he had received from the Honourable J. Kœnig, M.L.A., the Honourable L.R. Devienne, M.L.A., and the Honourable C.G. Duval, M.L.A., their letters of resignations as appointed members of the Council of Ministers. These resignations took immediate effect, i.e. from Thursday the 11th November 1965.

Confirmation of Minutes

The Minutes of the 45th Meeting held on Friday the 5th November 1965 were corrected and confirmed.

APPENDIX R

TELEGRAM No. 313 TO MAURITIUS FROM SECRETARY OF STATE FOR THE COLONIES SENT 19th NOVEMBER 1965

Your telegram No. 254.

U.K./U.S. defence interests.

There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points *(iv)*, *(v)* and *(vi)* of paragraph 22 and as you know we cannot be at all hopeful for concessions oversugar imports and it would therefore seem unwise for anything to be saidr locally which would raise expectations on this point.

3. As regards point *(vii)* the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

(Passed to Ministry of Defence for transmission to Mauritius).

Annex 129

APPENDIX S

No. 1138

18th February 1971

In connection with the proposed construction of an austere naval communications facility on Diego Garcia under the terms of a bilateral agreement between the United Kingdom and the United States of America, I should be grateful if consideration could be given to the possibilities of employing Mauritian labour.

As you know, Mauritius is faced with a severe unemployment problem, and the Mauritius Government is exploring all the possibilities of relieving the situation. Favourable consideration of request made will undoubtedly help the Mauritius Government while, at the same time providing the British and the U.S. Governments with readily available labour.

S. RAMGOOLAM
Prime Minister

His Excellency Mr P. Carter
British High Commissioner,
Port Louis.

BRITISH HIGH COMMISSION
Chaussée, Port Louis, Mauritius
22 March 1971

32/1

Dr the Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House
Port Louis.

Dear Prime Minister,

1. You will remember that in my letter of 18 February replying to yours of the said date, I said that I would consult my Government regarding your enquiry about the possibility of employing Mauritian labour on Diego Garcia.

2. I have now heard from my Government. They have asked me to say that they are, of course, well aware of the undertaking that they gave on this subject to the Mauritius Government in 1965, namely that they would do their best to persuade the American Government to use labour from Mauritius for works of construction on the Islands. They are also well aware of the provisions of sub-paragraph (7)*(a)* of the Anglo-American exchange of notes of 1966 (Cmnd 3231) on the British Indian Ocean Territory. Indeed, Her Majesty's Government did tackle United States Government and urged this proposition on them. However, Her Majesty's Government have now heard from the United States Government that it will not be possible for them to employ any Mauritians on the Diego Garcia facility.

3. I understand that the United States Ambassador in Mauritius is informing your Government of this decision.

Kindest regards,

Yours very sincerely,

PETER A. CARTER

APPENDIX T

GOVERNMENT HOUSE MAURITIUS

10th November, 1965

My Dear Minister,

In the light of the decision by the Council of Ministers last Friday and a similar decision by the Government of the Seychelles an Order in Council has been made to introduce new arrangements for the administration of the Chagos Archipelago, Aldabra, Farquhar and Desroches as a new territory to be called the British Indian Ocean Territory. The Secretary of State will be making a statement in Parliament in reply to a Parliamentary Question later today and I intend to issue thereafter the enclosed statement.

The Secretary of State has confirmed that the Chagos Archipelago will remain under British sovereignty but is nevertheless giving further consideration to the points raised in the Council of Ministers on Friday and the U.S. Government has been warned that certain points will be raised with them.

Yours sincerely,

J. S. RENNIE

Note :—The text of the question and reply is reproduced at Appendix 'V'

Annex 129

APPENDIX U

Embargoed for release until 2000 hours local time Wednesday, 10th November

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th :—

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate.

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

Chief Secretary's Office
Port Louis
10th November, 1965

APPENDIX V

WRITTEN ANSWERS TO QUESTIONS

Wednesday, 10th November, 1965

MAURITIUS AND SEYCHELLES

Defence Facilities

Mr James Johnson asked the Secretary of State for the Colonies what further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

Mr Greenwood: With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by an Order in Council made on 8th November. The islands are the Chagos Archipelago some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either Government. Appropriate compensation will be paid.

Annex 129

APPENDIX W

British High Commission
Chaussée, Port Louis, Mauritius
32/1 26th June 1972

Dr the Rt Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House,
Port Louis.

My dear Prime Minister,

I refer to the meeting in London on 23 February, 1972, between yourself, Sir Harold Walter and Lord Lothian, and to your meeting with Baroness Tweedsmuir on 23 June, 1972, at which the Mauritius Government scheme for the resettlement of the persons displaced from the Chagos Archipelago was discussed.

2. The scheme has been fully appraised in London and I have been authorised to inform you that the British Government are prepared to pay £ 650,000 (the cost of the scheme) to the Mauritius Government provided that the Mauritius Government accept such payment in full and final discharge of my Government's undertaking, given at Lancaster House, London, on 23 September, 1965, to meet the cost of re-settlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Chagos Archipelago.

3. Accordingly, I should be most grateful if you would confirm that you are willing to accept the payment of £ 650,000 in full and final discharge of my Government's undertaking, and to agree that the British Government may state this in public, should the need arise.

4. When replying, perhaps you would indicate the date and manner in which the Mauritius Government wish payment to be made.

Yours very sincerely,
R. D. GIDDENS

4th September 1972

With reference to the communication No. 32/1 dated the 26th June, 1972, by the then Acting High Commissioner, I confirm that the Mauritius Government accepts payment of £ 650,000 from the Government of the United Kingdom (being the cost of the scheme for the resettlement of persons displaced from the Chagos Archipelago) in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago. Of course, this does not in any way affect the verbal agreement giving this country all sovereign rights relating to minerals, fishing, prospecting and other arrangements.

In regard to the date and manner of the payment to be made I presume it will be in British pounds sterling made to the Government of Mauritius at the earliest date convenient to your Government.

The Government of Mauritus has no objection to the Government of United Kingdom making a public statement to this effect, should the need arise.

With my warmest regards,
S. RAMGOOLAM
Prime Minister

APPENDIX X

Extract from the Political Declaration of Non-Aligned Movement's New Delhi Summit Meeting 1983

IX–MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO, INCLUDING DIEGO GARCIA

81. The Heads of State or Government expressed, in particular, their full support for Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in contravention of United Nations General Assembly resolutions 1514(XV) and 2066(XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

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APPENDIX Y

Debates No. 27 of 14th December 1965

Chagos Archipelago — Detachment from Mauritius

(B/245) Mr C. G. Duval (Curepipe) asked the Premier and Minister of Finance whether he will give an opportunity to the House to discuss the detachment of the Chagos Archipelago from Mauritius, and its inclusion in the British Indian Ocean Territory, especially in view of the stand taken by India and other Afro-Asian countries.

Mr Forget on behalf of the Premier and Minister of Finance :—

No, Sir, since I understand from the public statement made by the Leader of the Opposition on November 12th that there is no disagreement between the Opposition and the Government on the principle of the detachment and use for defence facilities of the Chagos Archipelago.

Mr Duval: Sir, in view of the reply of the hon. Minister replacing the Premier, and in view of the fact that there have been contradictory statements made by members of the Government at different moments about the conditions attached to the excision of the base, will the Minister say whether, at least, the correspondence exchanged between Her Majesty's Government and this Government will be released to the public?

Mr Speaker : This does not arise from the question.

APPENDIX Z

SPECIAL REPORT OF THE PUBLIC ACCOUNTS COMMITTEE FOR THE 1980 SESSION

Financial and other aspects of the " Sale " of Chagos Islands and the Re-settlement of the displaced Ilois

Introduction

Your Committee investigated into the Revenue received by Government in 1975 for the " *SALE* " of the Chagos Archipelago and in 1972, for the re-settlement of the displaced Ilois and also into all the disbursements effected in relation to this matter. In the course of our inquiry we came across some disturbing facts which we have felt should be brought to notice.

£ 3 m cash compensation from U.K. in 1965

Your Committee was informed that financial compensation for the " *SALE* " of Diego Garcia was effected in two stages. The sum of £ 3 m was paid by the British Government in financial year 1965/66 and was credited to Capital Revenue, item L IV/4 — " Sale of Chagos Islands ", as per the Accountant General's Financial Report for the financial year 1965/66. This item did not appear in the Estimates of 1965/66. Your Committee enquired whether the word " sale " had caused any problem at the time but was unfortunately unable to obtain any information on this matter. It has also not been possible to get any information on the basis on which the sum of £ 3 m was arrived at in the discussions with the British Government in 1965.

In an answer to a Parliamentary Question (PQ B/754 of 1979) the Prime Minister informed the House that the compensation of £ 3 m was meant for the implementation of development projects in Mauritius. The money was therefore credited to Capital Revenue and was not earmarked for any specific project.

Your Committee was also not able to ascertain whether any cash compensation was effected to the company exploiting the copra plantations in the Chagos at the time. We learned from the representative of the Prime Minister's Office that it was a Seychellois Company, namely Moulinié & Co.

£ 650,000 from U.K. in 1972 for Resettlement Scheme

The second payment of £ 650,000 by the British Government was effected on 28th October, 1972 and credited to Capital Revenue, item L 1/8 — " Financial Assistance for Resettlement Scheme " in the Financial Report of 1972/73. This item had not appeared in the Estimates for the year 1972/73. This figure was arrived at after discussions had taken place between the British and Mauritian Governments, on a special scheme " devised to build housing estates and establish pig-rearing co-operatives on land to be provided by the Government of Mauritius ", (Forward to the Prosser Report submitted to Government in 1976) for the resettlement of persons displaced from Diego Garcia. Land at Roche Bois and at Pointe aux Sables was duly acquired for this purpose.

Annex 129

No details on how and when this initial scheme was worked out, were provided to your Committee.

In the Foreword to the Prosser Report the Prime Minister's Office states the following:

"Not long after, it became clear that the displaced persons concerned were not happy with the proposed scheme. An official survey confirmed that the majority was in favour of the simple expediency of sharing the financial assistance received from Britain among the workers, irrespective of their need for proper housing and for a planned means of future livelihood".

Your Committee has not obtained any information on the survey mentioned above although there was an official request for the details of how and when the displaced persons showed dissatisfaction with that initial scheme.

The Prosser Report

For 5 years after funds had been made available by the U.K. Government for the resettlement of the displaced Ilois, the Government of Mauritius was unable to arrive at a satisfactory decision on the manner in which the funds should be utilised. In 1976, the Prime Minister discussed the problems affecting the displaced Ilois with the British Government and it was decidedt hat Mr A.R.G. Prosser, C.M.G., M.B.E., Adviser on Social Development in the Ministry of Overseas Development, would visit Mauritius in order to advise on an appropriate solution to the problem.

The major recommendations made by Mr Prosser were the following:

(a) The immediate setting up of a Resettlement Committee with a first-class administrative officer attached to it on a full time basis. The Government did implement this recommendation. Its composition was in fact reinforced by the inclusion of the Secretary to the Cabinet as its Chairman. It was unfortunate however, that the Committee was not provided with an administrative officer on a full time basis. The Principal Assistant Secretary of the Ministry for Rodrigues was assigned this duty on a part time basis. Your Committee appreciates the fact that his normal duties as P.A.S. in his own Ministry must not have left him much time to deal with the Ilois problem.

(b) Another important recommendation was an occupational training scheme for the unemployed. Mr Prosser even made the interesting suggestion that functional training could be combined with the building of houses necessary for the Resettlement Scheme. This scheme will be described later.

Mr. Prosser recommended that the sum of Rs 750,000 should be set aside for this purpose, immediately.

It is very unfortunate that Government never considered this interesting recommendation.

(c) Welfare services. Mr. Prosser suggested that the Resettlement Committee should allocate Rs 60,000.— to the Social Welfare Commissioner so that the present Social Worker could be funded for a period of 3 years. We were informed that a primary school teacher was seconded for duty to the Social Welfare Division to work with the Ilois on a full time basis. But we obtained no information on the length of time for which she was thus employed.

APPENDIX Z—*continued*

(d) The housing scheme proposed by Mr Prosser was in fact the most important recommendation in his report. As Mr Prosser rightly pointed out " the most intractable problem for the Ilois, has been housing ". (Prosser Report — para. 4). He worked out that after deducting the sum of Rs 750,000 for training purposes and Rs 60,000 for the service of the Social Worker, the sum of Rs 18,500 would be available for each individual household of the 426 families. He suggested a scheme whereby each household in need of a house could be provided with a 15,000 rupee house which would be of „ sound construction but.....slightly outside the high quality of building regulations which govern housing in Mauritius ". (Prosser Report, para. 22) the remaining Rs 3,500 would be distributed to each household for basic furnishing purposes. In the Foreword to the Prosser Report, the Prime Minister's Office did not accept this recommendation to provide the Ilois with sub-standard houses. The Government went very far, by undertaking to allocate the necessary additional funds in order that the houses constructed for the Ilois are not below standards acceptable in the country. In a general way, the Government felt that the Prosser recommendations as amended were in the long term interest of the Ilois community.

Your Committee was informed by representatives of the Prime Minister's Office that Mr Prosser's recommendations for a housing scheme had been rejected by the representatives of the Ilois on the Resettlement Committee and that the latter had opted for cash compensation.

However, your Committee was seriously concerned by some of the facts that came to light in the survey carried out in January 1977 in specific relation to the housing issue. It is true that representatives of the Ilois did formally request that the money available be distributed in cash to the Ilois, at a meeting of the Resettlement Committee held on 4th December 1976. However, the survey carried out in January 1977 revealed that of the 557 families who had registered, 341 had opted for a house and 213 for cash compensation. 3 had not expressed any option. Of the 38 families in Agalega, 6 had opted for a house in Mauritius and 32 for cash payment with the possibility of continued employment there. It should also be well noted that representatives of the Ilois did enquire, at a meeting of the Committee held on 19th February 1977, whether there was any possibility of satisfying both options. According to the minutes of proceedings of that meeting, the Resettlement Committee felt that this proposal would not be feasible. However, the Chairman added that the views of the Committee would be submitted to the Government and a decision would be taken at a later stage. In spite of the fact that a majority of households, over 60% opted for housing, one year later, in December 1977, Government decided to effect cash compensation to all Ilois, irrespective of their date of arrival.

Your Committee wanted to know in very concrete terms, the way in which the proposal for a housing scheme was presented to the Ilois. We wanted to know whether Government had worked out in detail the type of houses to be built, the length of time it would take to construct them etc., and whether such information had been made available to the representatives of the Ilois. Your Committee was unfortunately, not provided with this information.

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APPENDIX Z—*continued*

What your Committee found even more surprising was the fact that after it had been discovered in January 1977 that a majority had opted for housing and that the representatives of the Ilois had in February 1977, requested that both options, namely housing and cash compensation, be considered, the Prime Minister, in December 1977, stated the following in a reply to a Parliamentary Question (B/746 of 1977):

"The Government has finally given up hope to convince the families from Diego Garcia that it is in their best interests to have houses built for them rather than to have a cash compensation only. So steps are being taken to share the grant as well as the interest accrued thereon to the families".

Surveys of the Ilois

It has not been easy to establish the exact number of persons that were transferred from the Chagos Archipelago. In reply to a Parliamentary Question in the House of Commons in November 1965, in relation to defence facilities in the Indian Ocean, the Secretary of State referring to the Chagos Archipelago and Aldabra, Farquhar and Desroches islands said the following:

"Their population are approximately 1000, 100, 172 and 112 respectively". (See Annex I)

On 14 December 1965, in the Legislative Council, Mr Forget, on behalf of the Premier and Minister of Finance informed the House that:

"The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations". (See Annex I).

In Mauritius, two main surveys were carried out to establish the total number of Ilois families. The first survey was carried out by the Public Assistance Officers who collected relevant information from the displaced Ilois everytime a group landed in Mauritius. The survey revealed that 426 families had been transferred from the Chagos since 1965. This figure of 426 families was considered to be the correct one by Mr Prosser.

In 1976, when the possibility of the distribution of cash compensation to all Ilois, irrespective of their date of arrival, came up, the Resettlement Committee, set up in 1976, upon a recommendation made by Mr Prosser, decided that a registration of all Ilois settled in Mauritius should be carried out. This second major survey was carried out, in January 1977, by the Public Assistance Division of the Ministry of Social Security under the aegis of the Resettlement Committee. In this case, press and radio/Tv communiques were issued asking all displaced persons to register themselves. The figure arrived at in this second survey was 557 families.

Of these 557 families—

378 persons were under 5 years of age
543 persons were between 5–12 years of age
334 persons were between 12–18 years of age
1068 were adults
102 were above 60 years of age.

Over 150 persons had arrived before 1965. (See Annexures II & III)

The survey also indicated that there were 38 Ilois families in Agalega.

APPENDIX Z—*continued*

Although the Ilois were provided with facilities for their registration, a number of persons were left out for various reasons. The representatives of the Prime Minister's Office informed your Committee that there have been a certain number of complaints from those who claim not to have received any compensation; the Permanent Secretary of the Prime Minister's Office has even received letters from some Ilois in Rodrigues, Australia and South Africa. It should be noted that there was, in fact, no facilities provided for registration of the Ilois in Rodrigues, Agalega and St. Brandon, when the 1977 survey was carried out.

Government has now decided to proceed with a new survey of all those who had failed to register in 1977. Your Committee recommends that this facility should be extended to those Ilois residing in the Seychelles as well.

The Ilois in Agalega

Your Committee was informed that in the Resettlement Committee, a suggestion was made to the effect that a possibility existed for the families in Agalega to be given shares in the Agalega Corporation to the value of their allocation instead of being paid in cash. Your Committee was not provided with any information on the manner in which cash compensation was actually effected in Agalega.

Cash compensation

When Government finally decided to go ahead with cash compensation, payment was effected in March 1978 on the basis of the survey carried our in January 1977. The following payments were then made:

	Rs	*Total*
351 children under 5	1,000	351,000
459 children between 5 and 11	1,200	550,800
474 children between 11 and 18	1,500	711,000
1081 adults	7,590	8,204,790
109 old age pensioners (additional)	250	27,250
71 females with children (additional)	250	17,750
TOTAL ...		9,862,590
Amount available (including interest)		11,167,604
Amount paid		9,862,580
BALANCE ...		1,305,014

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APPENDIX Z—*continued*

Disbursements as from 1972

Various disbursements were effected as from 1972 when funds were made available by the British Government. The total amount disbursed from 1972 to 1977 was Rs 155,773.33 (Annex IV). Apart from the cash compensation of Rs 9,858,827 effected in 1977/78, there was a further disbursement of Rs 18,605 in 1978/79. Your Committee has, however, not been able to obtain any details on the nature of all the disbursements effected, apart from the cash compensation of Rs 9,858,827 effected in 1978. It should also be noted that interest was, of course, not credited on the disbursements. Interest on the account was paid at 6% per annum between 28th October 1972 and 31st December 1977 although the Bank Rate had risen to 7% from March 1977 to January 1978, and to 9% from January 1978 to October 1979 and has been 10½% since then.

Your Committee fails to understand why interest was not credited to the Fund after December 1977. If accounts had been properly kept, a higher sum would have accumulated in the form of interest.

Further financial assistance from U.K. Government

At a meeting of the Resettlement Committee held on 19th February 1977, a representative of the Ilois wanted to know whether there was any possibility of obtaining further assistance from the British Government. The Committee according to the Minutes of Proceeding of that Meeting "agreed that there was little, if any, likelihood of such assistance forthcoming".

However, representatives of the Prime Minister's Office informed your Committee that it had always been the wish of the Mauritian Government that such further assistance should be provided by the U.K. Government. Your Committee has however, not been informed whether such request has been made formally and officially by the Government since March 1978.

In a reply to a Parliamentary Question in June 1980, (B/766 of 1980) the Prime Minister informed the House that:

> "Regarding the additional compensation to be paid to the Ilois, the British Government has already offered a supplementary amount of £ 1.25 million for their resetttlement but is unable to pursue the matter because of a court action in the United Kingdom. The matter being *sub-judice*, we have to wait for the outcome".

Your Committee is aware of the fact that the Prime Minister is referring to the court action entered by certain members of the Ilois community presenting legal claims to the U.K. Government. They are being represented by Mr. B. Sheridan who during his visit in Mauritius in November 1979 tried to make the Ilois sign a document (a deed of acceptance and power of attorney) the terms and conditions of which are reproduced in Annexure V.

In reply to a Parliamentary Question in November 1979 (P.Q. B/1033 of 1979) the Prime Minister informed the House that Government had spent Rs 2,015 on Mr Sheridan during his visit in Mauritius. This would imply that he was in Mauritius in an official capacity, to a certain extent.

APPENDIX Z—*continued*

General Comments

1. Your Committee feels that this whole problem of displaced persons which arose since 1965 did not receive the serious attention it deserved on the part of government until 1976 when Mr Prosser visited Mauritius. The first serious survey to establish the exact number of persons involved was carried out as late as in January 1977.

2. The compensation of £650,000 was linked to a specific scheme when it was made available in 1972. The money was distributed 5 years later when conditions of life had become very difficult due to rapid inflation during that corresponding period. Mr Prosser himself made a very pertinent remark in that respect in specific relation to the housing scheme:

"Unfortunately, from the time of the signing of the agreement between the Mauritius Government and the British Government the cost of housing in Mauritius has risen approximately 500%". (Prosser Report. Para 19)

Mr Prosser made that remark in 1976 and the money was distributed in March 1978.

3. Throughout his Report, Mr Prosser placed emphasis on the necessity to find an urgent solution to the problem, because of the terrible conditions in which he found the Ilois when he visited Mauritius. In para 24 of the Report he says:

"The fact is that the Ilois are living in deplorable conditions which could be immediately alleviated if action is taken on the lines I have suggested".

Cash compensation was effected almost two years after Mr Prosser had written his Report.

4. Your Committee feels that it is very unfortunate that Government promised that additional funds would be made available in the Resettlement Scheme being proposed by Mr Prosser but no such additional financial assistance has been forthcoming.

5. There is a serious lack of information on the nature of disbursements that were effected since the grant became available in 1972. The Ilois do not seem to be at all aware of the details of these disbursements.

Your Committee was also not at all satisfied with the approximate way in which interest on the account was worked out. In our opinion total interest accrued on the account, should have been much higher.

6. The survey carried out in January 1977 was not comprehensive enough. A number of Ilois were left out for some reason or another.

7. Your Committee feels that the Ilois were not presented with a housing scheme worked out in concrete terms nor were the advantages of such a scheme over straight cash payment sufficiently stressed. It is normal that for persons, who have been living in deplorable conditions for such a long time cash compensation represented immediate relief. But as it was rightly pointed out by the Prime Minister's Office in the Foreword to the Prosser Report, the recommendations in the Report, especially the housing scheme would have been „ in the long term interest of the people concerned".

8. Finally, Your Committee is concerned that it has not been confirmed whether Government has so far made any *formal* and *official* request for further financial assistance despite the fact that the majority of the Ilois are still living in deplorable conditions.

V. NABABSING,
Chairwoman.

3rd October, 1980.

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ANNEX I

EXTRACT FROM DEBATES NO. 27 OF 14 DECEMBER 1965

DIEGO GARCIA — SALE OR HIRE (No. A/33) Mr J. R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the *sale or hire* of the Island of *Diego Garcia* to either the United Kingdom Government or to the Government of the United States of America or to both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr Forget on behalf of the Premier and Minister of Finance :—

I would refer the Honourable Member to the following communiqué issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(COMMUNIQUÉ)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME WEDNESDAY 10TH NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:

" With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate. "

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C. D. and W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependents, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

ANNEX II

SURVEY OF ILOIS

Year of Arrival

Locality	*No. of families*	*30's*	*40's*	*50's*	*60's*	*70's*	*Unknown*
1. Baie du Tombeau ...	5	—	—	4	1	—	—
2. Bois Marchand	2	—	—	—	2	—	—
3. Beau Bassin	9	—	4	3	1	1	—
4. Cassis	94	—	1	17	61	14	1
5. Cité La Cure	22	—	1	3	7	10	1
6. Docker's Flat	40	—	—	6	11	23	—
7. Grand River North West ...	5	—	—	2	3	—	—
8. Le Hochet	5	—	—	—	4	1	—
9. Les Salines	51	—	1	6	35	8	1
10. Pointe aux Sables ...	31	—	2	11	14	1	3
11. Pailles	16	—	2	—	10	4	—
12. Port Louis	4	—	—	—	2	2	—
13. Petite Rivière	26	—	—	9	12	3	2
14. Roche Bois	225	3	7	28	139	35	13
15. Ste. Croix	10	—	—	2	7	1	—
16. Other areas	12	—	1	—	10	1	—
TOTAL	557	3	19	91	319	104	21

Annex 129

ANNEX III

SURVEY OF ILOIS

Population according to Age-Group

Locality	*No. of families*	*Under 5*	*5–12*	*12–18*	*Adults*	*Over 60*
1. Baie du Tombeau	5	3	7	3	7	—
2. Bois Marchand	2	—	1	—	5	—
3. Beau Bassin	9	3	6	15	22	3
4. Cassis	94	67	82	49	181	17
5. Cité La Cure	22	24	27	14	64	3
6. Docker's Flat	40	31	48	30	107	4
7. Grand River North West	5	1	2	5	10	—
8. Le Hochet	5	1	6	8	10	—
9. Les Salines	51	43	44	19	94	10
10. Pointe aux Sables	31	24	38	22	72	7
11. Pailles	16	14	8	8	22	3
12. Port Louis	4	3	8	1	8	2
13. Petite Rivière	26	14	22	28	55	5
14. Roche Bois	225	130	210	117	370	45
15. Ste. Croix	10	11	16	6	13	1
16. Other Areas	12	9	18	9	28	1
TOTAL	557	378	543	334	1068	102

ANNEX IV

		Rs
Amount received on 28.10.72		8,666,666.67
Disbursed in 1972–73		83.33
Balance on 30.6.73		8,666,583.00
Disbursed in 1973–74		112,402.00
Balance on 30.6.74		8,554,181.00
Disbursed in 1974–75		15,175.00
Balance on 30.6.75		8,539,006.00
Balance on 30.6.76		8,539,006.00
Disbursed in 1976–77		24,103.00
Balance on 30.6.77		8,514,903.00
Disbursed July 77 to December 77		4,010.00
Balance on 31.12.77		8,510,893.00

Interest at 6% per annum		Rs
28.10.72 to 30.6.73 (246 days) — $\frac{246}{365} \times \frac{6}{100} \times$ Rs 8,666,583	=	350,462
1.7.73 to 30. 6.74= $\frac{6}{100} \times$ Rs 8,554,181	=	513,250
1.7.74 to 30. 6.75= $\frac{6}{100} \times$ Rs 8,539,006	=	512,340
1.7.75 to 30. 6.76= do	=	512,340
1.7.76 to 30. 6.77= $\frac{6}{100} \times$ Rs 8,514,903	=	510,894
1.7.77 to 31.12.77= $\frac{184}{365} \times \frac{6}{100} \times$ Rs 8,510,893	=	257,425
TOTAL ...		2,656,711

Amount received	...	8,510,893 (after disbursement)
Interest to 31.12.77	...	2,656,711
		11,167,604

M. NALLETAMBY
Accountant-General

31st December, 1977

Annex 129

ANNEX V

DEED OF ACCEPTANCE AND POWER OF ATTORNEY

This is the Deed of me (1).....
.....and the adult members of my family who have hereunto subscribed their names and seals.

I am an Ilois who left that part of British Indian Ocean Territory known as (2).....in the ship (3).....
.....on the.....day of.....19.....
never to return. My family who came with me then are (4).....
.....and the following children:—

Adult children's names	*Addresses*	*Dates of Birth*

Infant children's names	*Addresses*	*Dates of Birth*

We know that the United Kingdom Government has already paid the Mauritian Government £650,000 for the resettlement of the Ilois people who came to Mauritius following the setting up of British Indian Ocean Territory and has offered to make available a further £ 1,250,000 for the purpose provided it is accepted by the Ilois in full and final settlement of all claims whatsoever upon the United Kingdom Government by the Ilois arising out of the following events:—the creation of British Indian Ocean Territory, the closing of the plantations there, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their prohibition from ever returning to the Islands composing British Indian Ocean Territory (the events) and of all such claims arising out of any incidents or circumstances occuring in the course of the events or out of the consequences of the events, whether past, present or to come ("their incidents circumstances and consequences").

So that this money may be paid to help the Ilois.

ANNEX V—*continued*

1. We appoint Bernard Sheridan of 14 Red Lion Square, London WC 1 as our Attorney in accordance with S. 10 of the Powers of Attorney Act 1971 and in particular we authorize him to receive the £ 1,250,000 on behalf on the Ilois in such instalments and amounts and subject to such conditions as he in his absolute discretion and without need to make further reference to us, may agree with the United Kingdom Government.

2. We appoint him as our solicitor to act on our behalf in relation to all matters connected with the payment of the £ 1,250,000 and I, (5)..... authorize him to act on ehalf of my infant children named above as their next friend.

3. We accept the money already paid to the Mauritian Government and the money to be paid to Mr Sheridan as aforesaid in such instalments as he shall agree in full and final settlement and discharge of all our claims however arising upon the United Kingdom Government (both upon the Crown in right of the United Kingdom and the Crown in right of British Indian Ocean Territory) and upon its servants, agents and contractors in respect of the events, their incidents, circumstances and consequences and we further abandon all our claims and rights (if any) of whatsoever nature to British Indian Ocean Territory.

4. We understand accept and agree that by entering into this Deed we shall not be able to sue the United Kingdom Government in respect of the events, their incidents, circumstances and consequences and hereby covenant not to do so.

5. We agree that all questions concerning the validity and construction of this Deed and any disputes arising upon it shall be governed by English law and justifiable only in English Courts.

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(1) Insert name and address of head of family

(2) Insert name of Island

(3) Insert name of ship and date of leaving BIOT

(4) Insert name and address of wife

(5) Insert name of head of family

Annex 129

(APPENDIX 'A 1')

L'île Maurice base de la Réserve Stratégique Britannique

Au cours d'une interview qui a été diffusée, hier soir, dans le programme "London Calling Mauritius", M. David Windsor, de l'Institut des Etudes Stratégiques de Grande Bretagne a parlé de la possibilité pour Maurice de servir de base à une brigade de la Réserve Stratégique du Royaume-Uni.

Les récents troubles en Est-Afrique, au Bornéo, à Aden ont mis en relief l'impérieuse nécessité pour le Gouvernement britannique d'avoir des troupes disponible dans un rayon qui ne soit pas trop éloigné des foyers de troubles afin qu'elles puissent se porter le plus rapidement possible au secours des Gouvernements de ces territoires si ces derniers font appel à leur aide.

Il est difficile pour ces troupes de se rendre avec la rapidité voulue de la Grande Bretagne au Bornéo, par example. Si des bases peuvent être créées dans des régions assez rapprochées des centres possibles de troubles, la situation serait grandement améliorée.

Maurice est bien placé dans ce sens, située comme elle l'est, à un angle d'un triangle, dont les deux autres angles sont Aden et Singapour. Une brigade de la Réserve Stratégique, stationnée à Maurice, pourrait se rendre rapidement dans un pays membre de la Fédération de Grande Malaisie, à Aden ou dans les territoires est-africains. De plus, notre dépendance, Diego Garcia, possède un port naturel immense qui pourrait abriter des unités de la Marine Royale.

M. Windsor a dit que les autorités britanniques étudient attentivement cette possibilité. Le stationnement d'une brigade de la Réserve Stratégique à Maurice, de même que l'utilisation de la rade de Diego Garcia comme base pour la marine britannique, donnerait de l'emploi à un grand nombre de Mauriciens et aiderait à résoudre, du moins en partie, notre problème de chômage.

Advance — 22 February 1964.

(APPENDIX 'A 2')

The Economist—July 4, 1964

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So the search has properly been on for a well-situated, sparsely populated, politically unexplosive haven in the Indian Ocean. Eyes, logarithms and compasses have been turned to Mauritius and to the Seychelles; the pointers suggest that there is a good deal to be said for one of the island dependencies of Mauritius, one at least of which does have a natural harbour and was used during the second world war. Mauritius is politically calm: its party leaders have agreed to form an all-party government and to discuss internal self-government some time after October, 1965.

But even under these moderately propitious stars, is it up to Britain alone once again to set about the job of looking for a reasonably secure base east of Suez? There has been endless argument about what an Indian Ocean base is for: a stepping stone to south-east Asia; a mounting post for peace-keeping operations like the useful east African ones in January; a guard against Arab take-over bids like the Iraq-Kuwait incident in 1961; a warning eye on British oil interests. The point is not so much which of these functions survive scrutiny—the first and second look the sounder ones—but that Sir Alec Douglas Home, Mr Wilson and Mr McNamara all agree that collectively they justify a military effort.

Annex 129

(APPENDIX 'A 3')

L'île Maurice et la nécessité d'une base dans l'Océan Indien

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Les alliés occidentaux sont à la recherche d'une base, d'un marchepied entre l'Europe et l'Australie et l'Extrême Orient.

Cette nécessité a donné lieu à un marchandage dans les coulisses entre Washington et Whitehall au sujet de l'établissement d'une base importante, sur une île de l'Océan Indien.

Le choix semble devoir se porter sur l'île Maurice, située à 500 milles à l'est de Madagascar.

.....

Une des propositions britanniques serait à l'effet que les USA aident à établir une base importante dans l'Océan Indien dont le double but de servir de poste de relais aux Britanniques et de ravitailler une flotte américaine de porte-avions.

Les Américains, de leur côté, ont laissé entendre qu'un engagement américain dans l'Océan Indien pourrait être conditionnel à l'appui que la Grande Bretagne donnerait au plan américain pour une force nucléaire mixte au service de Nato.

L'île Maurice, ou l'une de ses dépendances est le choix le plus plausible —non seulement pour des raisons logiques et stratégiques: ce pays jouit d'une certaine stabilité politique. Il a une population de 550,000, faite en grande partie d'Indiens introduits par les Français et les Anglais, et qui a atteint un stade d'harmonie politique et multiraciale tel que l'indépendance pourrait lui être accordée demain n'étaient le manque de devises étrangères et un lourd problème de chômage. En fait, c'est exactement le genre de pays qui bénéficierait de l'argent et de l'emploi additionnels qu'une base militaire importante y déverserait.

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L'Express—6 August 1964.

(APPENDIX 'A 4')

London. (00.55) August 30. New American bases being sought on British islands in the Indian Ocean were "purely and simply to provide radio-communication link," official sources said here tonight.

"But," the sources added, "they could, of course, be extremely useful as forward staging points for troops."

High-level discussions are now taking place between the United States and British Governments to consider the usefulness of various islands which might be used. A British survey ship is in the Indian Ocean and experts are studying the possibilities.

The sources said they were looking for a small island on which to set up a small American relay station. This would provide better communications between United States forces in the.....

"If we find one big enough and if we could lay down a runway without spending millions on it, we could have a first-class base for troops," an authoritative source said.

Annex 129

(APPENDIX 'A 5')

London (08.33) Aug. 31 The Daily Telegraph stated here today that co-operation between Britain and America over the use of remote but, by modern requirements, stregically based islands as defence posts of various kinds, was long overdue.

This Conservative daily said it would be 'short-sighted' to limit the co-operation to the Mauritius dependency of Diego Garcia—"the use of which by the American Navy as a Polaris communications centre is under discussion between the two countries."

The Telegraph continued: "There are several reasons why America now needs these posts in parts of the world, such as the Indian Ocean, where at present she has none.

"Her Polaris fleet is expanding fast. She wants to be better equipped for getting forces and military aid very quickly to possible trouble spots.

"One contingency might be a renewed Chinese attack on India. Others might arise from increasing Russian and Chinese activities in Africa.

"Britain has the islands strewn about. America has the forces and the money. Britain is over extended and cannot take full responsibility for new commitments just because the only possible bases happen to be British islands. The case for co-operation in some form is overwhelming."

The Telegraph stated that no doubt a howl of indignation against "Anglo-American imperialism" would arise from the Communist countries at "any such precautionary measures."

It added: "This will be joined by most of the Afro-Asian countries, although perhaps with less conviction by those who are aware of Communist activities and their own need for disinterested help in a crisis.

"In fact the islands in question are inhospitable, with populations of a couple of hundred people, who would certainly welcome and benefit from an American presence."

(APPENDIX 'A 6')

The Economist

A Vacuum to fill

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The east African operations of last January, which saved the governments of Kenya, Tanganyika and Uganda from their mutinying armies, were models of what can be done. It does not take much imagination to think of three or four places in this rickety reach of the globe where the same call for help may be heard again. This may give offence, but is it not possible in Ceylon, or Persia, or somewhere in the Persian Gulf, or somewhere on the east coast of Africa again?

This is presumably the thought that lies behind the present Anglo-American search for a communications centre (and maybe something more) in the Seychelles or one of the Mauritius dependencies. The difficulty lies in winning Afro-Asian acceptance of the British share in this operation.

The Indian Ocean is the only large part of the world where the United States does not already bear the main burden of looking after western interests. It cannot be expected to bear the whole extra weight of trying to preserve stability between Nairobi and Singapore too; and British knowledge of the area, and the present deployment of British forces, make it common sense for Britain to help out. But Britain's surviving colonial entanglements—particularly the Aden entanglements in the north-west—still cause suspicion. This is why it is essential to explain as clearly as possible the distinction between the colonial period, which is now very near its inevitable end, and the quite different aims Britain and America hope to pursue together in the vastly changed conditions of the post-colonial period.

Annex 129

(APPENDIX 'A 7')

Des Mauriciens à Londres protestent

There are persistent reports in the London press that joint consultations are at present being held between the British and American Governments for the setting up of certain bases in the Indian Ocean. Allegedly the Government of Mauritius is being consulted on the question. We are being told that these bases will be used for a communications system,but the implication is so serious that Mrs Bandaranaike of Ceylon has felt it necessary to issue a statement expressing concern about the matter and the Indian Government has deftly proposed a nuclear-free zone in the Indian Ocean.

I feel sure that the Governments of India and Ceylon would not have been unduly worried if the discussions were merely for the installation of innocuous communication centres. I draw the conclusion, and voice the apprehension of hundreds of Mauritians in London, that the Anglo-American discussions are a conspiracy to find surreptitious ways for inaugurating a cluster of military bases on our soil and on other islands in the Indian Ocean with all the cold war concomitants that these entail.

The danger inherent in the presence of military bases in any part of the world cannot be ignored and there are too many glaring examples for us to be apathetic to the situation. The attitude of our leaders has not yet been made public but I have a strong suspicion that somehow the British Government will attempt to link this question of bases with the granting of Independence.

Let us make it clear to our elected representatives that we are not going to allow Mauritius to become a pawn on the Chessboard of the Big Powers. The presence of military bases on our soil will endanger our national security, for in the event of any war there is not one single military installation that will be immune from retaliatory measures. If it is true, as has been openly suggested in the London press, that in reality these bases will be used mainly for operations in Malaysia and South East Asia, then we shall find ourselves involved in an unholy alliance which tends to exacerbate an already tense situation fraught with unprecedented danger.

There will undoubtedly be sophisticated arguments in favour of allowing these bases to operate, on the grounds that they would bring employment and foreign capital to help us out of our present economic plight. These arguments would banish morality from the field of politics and must be rejected as despicable pragmatic logic in the most repulsive form of Machiavelism.

We are not prepared to pawn our lives for the benefit of a few crumbs of bread.

If our leaders consider that the affairs of our country can only be administered by leasing our land for doubtful military enterprises then they ought to say so to the people and in no uncertain terms. I trust our people will not be easily duped.

We do not wish to become a partner in the gigantic conflict between East and West. What we require from all the nations of the world is to be allowed to pursue our destiny in peace and friendship. Our internal problems are exacting enough and we will have to pool all the energy we can muster to bring about their solution.

I call upon all responsible citizens and particularly the intellectuals, writers, journalists and artists who have a special responsibility, being the guiding light of our nation, to do everything in their power to awaken and arouse the national consciousness to this dangerous threat.

Tell our political leaders that if it is their intention to mortgage our national security for questionable economic advantages, then we shall not rest at all until the danger is removed.

Le Mauricien — 29th September 1964.

Annex 129

(APPENDIX 'A 8')

The Economist—January 16, 1965

Strategies West and East

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Here the Indian Ocean has been a relative gap, and it happens that Britain still possesses in it and in the south Atlantic various islands which might be made into useful staging-posts. A joint Anglo-American survey has been made of a possible chain of such posts on Ascension Island, Aldabra or another island in the Seychelles, Diego Garcia in the Chagos Archipelago, and an island in the Cocos group, the administration of which was prudently transferred some years ago from Singapore to Australia. This scheme would give British and American forces convenient access to Singapore and Australia, either by way of Aden or across, or round, southern Africa, by a route relatively immune to political hazards. There are, however, one or two possible political hazards to be surmounted first. The islands are insignificant bits of sand or coral and barely inhabited; still Aldabra is administered from the Seychelles and Diego Garcia from Mauritius, and each would need to be detached by, presumably, an Order in Council and administered from London, to make the investment of putting runways and other installations on them seem a reasonable bet.

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(APPENDIX 'A 9')

London. 23.55 April 5. (1965) The Government was asked in the House of Commons today what approaches had been made to the Government of MAURITIUS regarding certain facilities for an Anglo-United States base in the Indian Ocean.

Mrs Eirene White, Colonial Under-Secretary, replied that the Premier of MAURITIUS (Dr S. Ramgoolam) was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin.

She added: "In November, the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before an announcement was made in London or in Washington."

MAURITIUS, an island in the Indian Ocean, was ceded to Britain by France in 1814.

Annex 129

(APPENDIX 'A 10')

THE WASHINGTON POST

Sunday, May 9, 1965

ENGLAND, U.S. PLAN BASES IN INDIAN OCEAN

by Robert Eastabrook
Washington Post Foreign Service

London, May 8. Plans for developing a series of joint Anglo-American military facilities on largely uninhabited islands in the Indian Ocean have received preliminary approval by Britain's Labor Government.

The initial outlay for acquiring necessary real estate in remote island dependencies of the British Colonies of Mauritius and the Seychelles has been estimated at $28 million.

This would include the cost of buying out and moving the few indigenous inhabitants.

Discussions have been under way for a year about a chain of communications and staging sites, relatively invulnerable to anticolonial agitation, to assist peacekeeping operations in South and Southeast Asia as well as Africa if necessary.

In January the United States relayed a list of six to eight recommended locations based upon a survey made by an American team aboard a British ship last summer.

Navy Seeks Site

First on the priority list is Diego Garcia, a Mauritius dependency in the Chagos Archipelago 1000 miles south-west of Ceylon. Funds are already assured for a Navy communications relay station on Diego Garcia. The American request, however, is that the entire Chagos Archipelago be acquired.

Before plans can be carried further, Britain must approach local authorities in Mauritius and the Seychelles in order to transfer administrative responsibility to London for the Chagos and other faraway dependencies.

Some urgency attaches to this step because constitutional talks looking to possible early independence for Mauritius are scheduled for this fall, and it will be necessary to complete the transfer beforehand.

Any fears that the British Labour Government might not be enthusiastic about the Indian Ocean scheme have been delayed by the enthusiasm with which new ministers have taken up the idea. It dovetails with the "East of Suez" defence concept of Prime Minister Wilson.

Foreign Secretary Michael Stewart, Defence Secretary Denis Healey and Navy Minister Christopher Mayhew are particularly impressed with the possibilities. The government is under heavy pressure, however, to economise on military expenditures.

No precise arrangement has been made for sharing the initial cost, but Britain reportedly expects the United States to bear the larger portion. How much Britain can devote to development of the actual military facilities will be determined in part by a broad defence review now under way.

Inadequate Water

Such development may be relatively expensive in some instances because some of the islands lack adequate water or are surrounded by coral. But whatever the eventual American share, many diplomats as well as military men consider the cost well warranted because the opportunity to obtain such secure sites may never recur.

In addition to the Chagos Archipelago, other sites under consideration include the Aldabra islands, a dependency of the Seychelles 300 miles northwest of Madagascar, where Britain wants an air field; the Farquhar Islands, also a Seychelles dependency 150 miles north-east of Madagascar; the Agalega Islands, a Mauritius dependency 500 miles north-east of Madagascar, and the Australian-owned Cocos Islands 500 miles south of Sumatra.

American officials emphasize that the Indian ocean facilities would be primarily logistical and would not be intended as full-scale bases with garrisons. They could nevertheless be used for servicing or staging conventional air , sea and ground forces.

In response to a recent question in Parliament, Wilson denied that any submarine basis are contemplated in the area. Even though the Indian Ocean facilities would not be large, however, their presence would be potential reassurance to governments that might be intimidated by Chinese nuclear weapons.

Annex 129

Although no one likes to talk about abandonment of the big British base at Aden, some planners are thinking about an alternative. The official position is that the question of the future of the Aden base will be negotiated when the Federation of South Arabia becomes independent in 1968.

Present thinking is that either Britain or the United States would assume individual responsibility for the operation of each particular site, but that all such facilities would be available for use by both countries.

No Formal Request

No formal request for transfer of the dependencies has yet been made to the governments of Mauritius or the Seychelles, although officials were advised of the military survey.

Similarly the Australian government has not yet been approached for facilities in the Cocos Islands, but no difficulty is anticipated in view of the extensive Australian cooperation with Britain and the United States.

In the case of Mauritius the situation becomes delicate because of internal political disagreement over whether the 720 square mile territory with a population of 700,000 should opt for full independence or some lesser status in the Commonwealth.

Transfer of the dependencies could become a bone of contention, although some Mauritians believe that the military facilities would benefit the area.

Actually the far-removed dependencies are atached to Mauritius only for convenience of administration. The total population of all such lesser dependencies is under 2000.

With the Seychelles there is less of a problem because the 45,000 people are not so far advanced towards independence. This colony (where Archbishop Makarios of Cyprus spent a period in exile during the mid-1950s) lacks air connections.

Officials here suggest that agreement to build an airport as an aid to communications and tourism might ease the transfer of the dependencies.

APPENDIX 'A 10'—*continued*

The idea of American planners has been wherever possible to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere. British or American nationals would then be brought in to staff the facilities.

In the case of Diego Garcia it would be necessary to purchase one foreign-owned coconut plantation. Transfer of the 664 residents of the Cocos Islands is not contemplated, however. Cocos already has a civil airport that is a stop on the route between South Africa and Australia.

Perhaps because of cost, British authorities have regarded the transfer of population as less important. Although they acknowledge that military facilities on the Indian Ocean islands might stimulate new "colonialism" propaganda charges, they believe that it probably would be possible to operate them with the local production remaining.

Annex 129

(APPENDIX 'A 11')

Les U.S.A. proposent Rs 135 m pour militariser les dépendances de Maurice et des Seychelles

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Les Etats Unis sont fin prêts pour l'installation de bases militaires dans les dépendances de l'Ile Maurice et les Seychelles. Des fonds ont déjà été votés pour une station de relais télégraphiques destinée à la marine. La station serait située à Diego Garcia. Des experts sont arrivés à une estimation précise: Rs 135 millions, pour le coût initial de l'acquisition des terres nécessaires et le déplacement (avec dédommagement) des habitants de ces terres. Ils sont au nombre de 2000.

Toutefois, les Etats Unis ne peuvent aller de l'avant. Il faut d'abord obtenir des gouvernements mauricien et seychellois le transfert du contrôle administratif des territoires convoités au gouvernement de Londres. Dans les milieux américains on pousse à la roue pour que le transfert ait lieu avant la conférence constitutionnelle de septembre prochain.

Londres d'accord

Le gouvernement travailliste britannique a donné son accord préliminaire au projet de création d'une chaine d'installations militaires anglo-américaines dans des îles de l'ocean Indien. C'est Robert H. Estabrook du Washington Post Foreign Service qui l'a affirmé récemment.

Il déclare par ailleurs que le nouveau gouvernement a accepté cette idée avec enthousiasme et que Michael Stewart (Affaires Etrangères), Denis Healey (Défence) et Christopher Mayhew (Marine) ont été impressionnés par les perspectives du plan. Il précise que le gouvernement britannique, sous la pression de difficultés économiques, voudrait économiser sur le budget militaire et s'attend à ce que les U.S.A. financent en grande partie le projet.

Un chapelet de stations

1. La première priorité militaire est Diégo Garcia, dépendance mauricienne de l'archipel des Chagos à 1,000 milles au sud-ouest de Ceylan. Mais les conseillers U.S. voudraient que l'archipel entier soit acquis. Les autres possibilités sont: 2. les îles Aldabra, dépendances des Seychelles, à 300 milles au nord-ouest de Madagascar, où la Grande Bretagne voudrait créer un aérodrome. 3. les îles Farquhar, dépendances des Seychelles, à 150 milles au nord-est de Madagascar, 4. les îles Agaléga (Maurice) à 500 milles au nord-est de Madagascar et 5. les îles Cocos, possession australienne à 500 milles au sud de Sumatra.

La menace chinoise

Robert Eastabrook rapporte que les bases ne seraient pas dotées de garnisons mais serviraient au transit et au déploiement des forces de l'air, de mer et de terre. Même des installations de deuxième ordre seraient une garantie tangible de protection pour les pays qui pourraient être intimidés par la force nucléaire chinoise.

Aden abandonné en 1968

Personne ne parle ouvertement de l'abandon de la grosse base britannique à Aden mais certains conseillers en statégie pensent à une alternative. Ce n'est qu'en 1968, lorsque la fédération de l'Arabie du Sud deviendra indépendante, que l'Angleterre négociera l'avenir de la base d'Aden.

La tactique américaine

A en juger par ce que rapporte ce correspondant américain, la tactique américaine consiste à minimiser la nature des liens entre Maurice et ses dépendances. Ainsi, il est allégué que ces îles dépeuplées ne représentent rien. Les U.S.A. ont évidemment intérêt à sous-estimer la valeur de nos dépendances.

La procédure préconisée par les "cerveaux" américains est d'acheter les droits des habitants d'îles choisies pour leur valeur militaire et les transférer ailleurs pour faire du repeuplement anglo-saxon.

Une base en deux temps

Par ailleurs, de source britannique, on croit savoir que M. Robert Mc Namara, Secrétaire d'Etat américain à la defense, est tombé d'accord pour commencer la construction des installations à Diégo. Celle-ci, d'abord une station de communications américaine, pourrait devenir éventuellement une base d'arrière-garde anglo-américaine, si la base d'Aden est perdue.

L'Express—3 June 1965.

Annex 129

(APPENDIX 'A 12')

Un gros morceau à la conférence du Commonwealth: le dilemme des bases.

Wilson décidera-t-il sans Ramgoolam?

La question de l'installation de bases dans l'Océan Indien (à Diego Garcia notamment) sera soulevée à la conférence des Premiers ministres du Commonwealth qui se réunit actuellement.

L'installation d'une base militaire dans une de nos dépendances touche de près notre pays. Or, Sir Seewoosagur Ramgoolam, Premier, n'assiste pas à la conférence des Premiers ministres du Commonwealth. L'île Maurice, colonie, n'a pas été invitée par le gouvernement britannique.

Toutefois, nous pensons que Sir Seewoosagur ou un délégué averti de notre gouvernement comme M. Maurice Paturau devrait, pour une fois, être à Londres afin de pouvoir discuter à l'échelon individuel de cette importante question avec les représentants des gouvernements du Commonwealth qui participent à la conférence.

Notre correspondant particulier à Londres rapporte dans une dépêche en date du 17 juin, date de l'ouverture de la conférence des Premiers Ministres du Commonwealth:

> "La Grande Bretagne discutera avec ses partenaires du Commonwealth de la possibilité de l'installation de bases militaires dans les îles de l'Ocean Indien".

Il poursuit et dit que la presse britannique de dimanche dernier a fait mention de consultations que M. Harold Wilson, Premier Ministre britanique, a eues ce jour-là avec ses *senior ministers* à Chequers, pour préparer la voie.

> "For straight talking later this week to Prime Ministers Conference on Britain defence dilemma".

La Grande Bretagne demandera à l'Australie et à la Nouvelle-Zélande de l'aider dans sa tâche de défendre le monde libre. Ces deux pays ont intérêt à la défense de l'Extrême Orient et de l'Asie en raison de la menace nucléaire chinoise.

Les points suivants seront soulevés avec les membres qui participeront à la conférence du Commonwealth et qui ont été mis en avant par M. Denis Healey, ministre de la Défense de Grande Bretagne.

(1) La défense du Sud Est asiatique et de l'Inde peut être assurée par une force mobile dépendant d'avions de transport ou par une chaine de bases militaires dans l'Ocean Indien. Les bases sont-elles moins chères et meilleures?

APPENDIX 'A 12'—*continued*

(ii) Un avion de transport coûte £ 60 millions et un investissement de £ 25 millions est nécessaire tous les 5 ans, pour lui permettre d'être opérationnel.

(iii) Pour les bases militaires dans les îles, les avions F 111 seraient choisis.

(iv) Le nombre de soldats nécessaires pour maintenir une base.

Notre correspondant particulier précise qu'une des inquiétudes exprimées par la presse britannique est la suivante:

> "Can Island bases in Indian Ocean cover the oil rich Sheikdoms of the Persian Gulf and enable Britain to close the costly and politically difficult base at Aden?

Il faut toutefois préciser ici que la question militaire sera traitée "as a side line issue" avec les ministres du Commonwealth.

Le progrès des territoires britaniques vers l'indépendance et leur admission dans le Commonwealth est un des sujets qui sera discuté au cours de la 14e réunion des chefs de gouvernements du Commonwealth, qui a commencé à Londres avant-hier (jeudi 17 juin 1965).

Cette question ainsi que certaines autres sont inscrites sur l'agenda. Elles furent toutes acceptées par les représentants des 21 pays membres, après qu'ils aient été reçus par le Premier ministre britanique, M. Harold Wilson.

Les autres sujets à l'ordre du jour consistent en une revue de la situation politique et économique dans le monde et la création du secretariat du Commonwealth. La question de l'immigration sera aussi soulevée.

L'Express—19 June 1965.

Annex 129

(APPENDIX 'A 13')

BASE BRITANNIQUE DANS L'ARCHIPEL DES CHAGOS

La Grande Bretagne veut retrancher les Chagos de l'administration de Maurice

Opposition de Sir Seewoosagur Ramgoolam qui propose une location La défense à l'Est d'Aden

Pour ceux qui ont suivi de près l'évolution de la situation politique et militaire en Arabie du Sud, la déclaration faite à Londres par le Secrétaire d'État aux colonies, M. Anthony Greenwood, annonçant que l'Arabie du Sud doit être indépendante avant la fin de 1966, n'a pas été une surprise.

La presse britannique avait fait état de l'évolution de cette situation. Un journal britannique, l'ECONOMIST, avait même conclu que, pour pouvoir contenir la Chine en profondeur à l'Est d'Aden, la métropole pourrait être amenée à porter son choix sur "une île de l'Ocean Indien".

Nous sommes en mesure d'annoncer, aujourd'hui, que ce projet britannique a pris corps.

Le gouvernement de Maurice a été mis en présence, tout récemment, d'une proposition formelle de Londres à ce sujet.

Cette proposition est la suivante:

La métropole offre de faire acquisition de l'Archipel des Chagos pour y établir des bases aériennes. Nos dépendances deviendraient ainsi une zone d'atterrissage.

Une condition importante est attachée à cette proposition: l'île Maurice accepterait que l'Archipel des Chagos soit retranché de sa dépendance.

Londres a offert de déplacer à ses frais les habitants de ces îles—trois cents ou quatre cents familles—pour les replacer, en les dédommageant, à Agaléga.

Le gouvernement britannique n'a encore présenté aucun prix ferme de dédommagement au gouvernement mauricien. On en ignore le montant exact.

APPENDIX 'A 13'—*continued*

Ramgoolam: pas de retranchement

A ces propositions, Sir Seewoosagur Ramgoolam a objecté que l'archipel des Chagos soit retranché de la dépendance de Maurice. Le Premier, leader du Parti Travailliste, veut plutôt d'un bail, condition qui, à ses yeux, viendrait grossir les revenus de Maurice.

A cette objection de Sir Seewoosagur, Londres opposerait, croyons-nous savoir, une objection de taille pleine d'enseignement: non retranché de la dépendance de Maurice, l'archipel des Chagos, devenu base aérienne britannique, continuerait à dépendre des aléas d'un gouvernement mauricien.

La métropole pourrait donc être bientôt placée devant une alternative fort embarrassante pour elle: *(a)* ou bien imposer sa décision en la déguisant, comme il convient en pareille circonstance, d'une procédure *ad hoc; (b)* ou bien céder à l'objection de Sir Seewoosagur et reviser toute la question.

Sir Seewoosagur se trouve, de ce fait, dans une situation clé. Il est peu probable qu'il puisse abandonner ainsi des dépendances mauriciennes et ses objections, il faut l'en féliciter, sont, cette fois, celles d'un esprit avisé dont la circonspection est pleine de sagesse. Aucun Mauricien ne pourrait lui donner tort en la conjoncture.

Le Mauricien—27 July 1965.

3892/6/83—340

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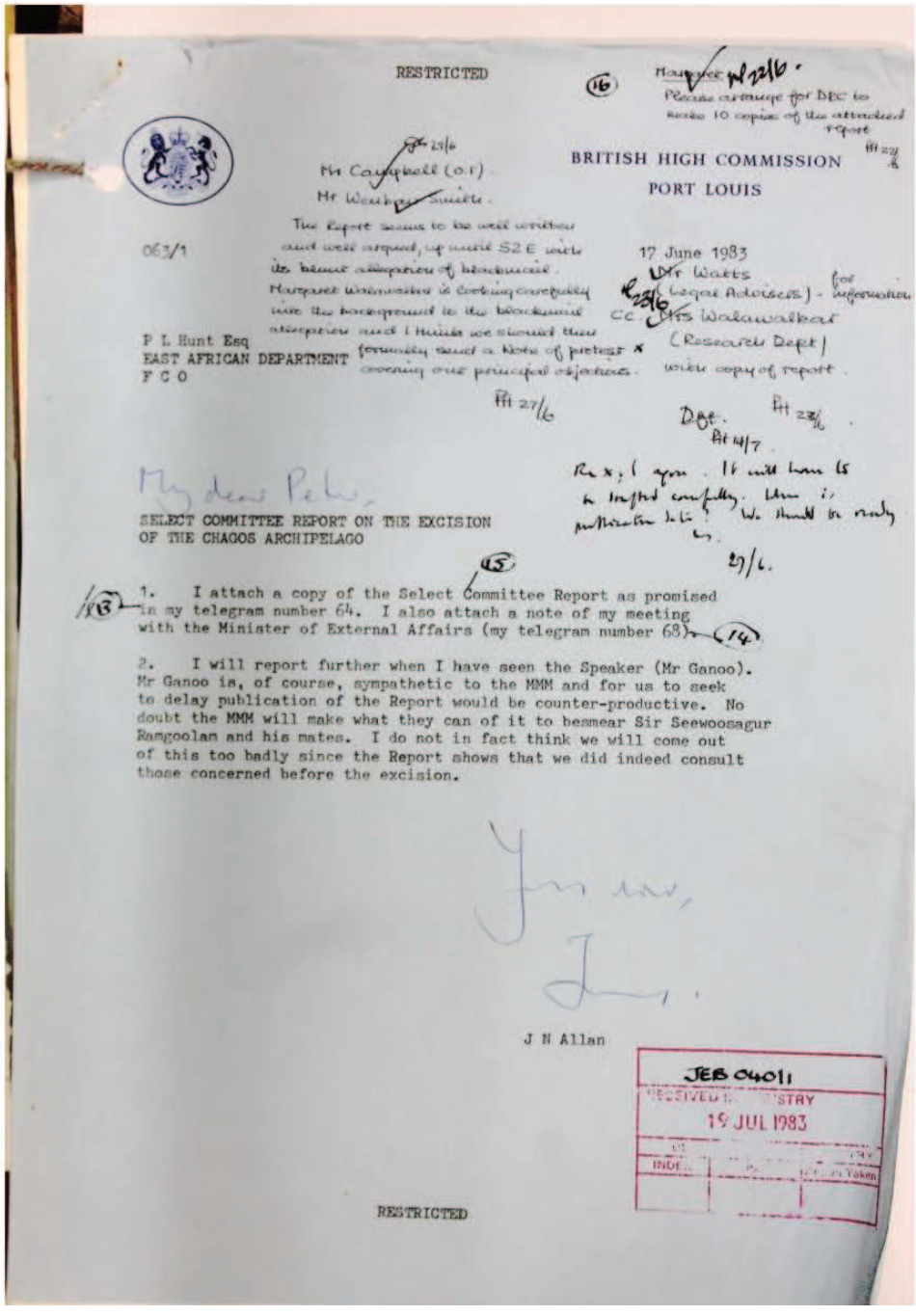
Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (17 June 1983)



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BRITISH HIGH COMMISSION
PORT LOUIS

063/1

17 June 1983

P L Hunt Esq
EAST AFRICAN DEPARTMENT
F C O

My dear Peter,

SELECT COMMITTEE REPORT ON THE EXCISION OF THE CHAGOS ARCHIPELAGO

1. I attach a copy of the Select Committee Report as promised in my telegram number 64. I also attach a note of my meeting with the Minister of External Affairs (my telegram number 68).

2. I will report further when I have seen the Speaker (Mr Ganoo). Mr Ganoo is, of course, sympathetic to the MMM and for us to seek to delay publication of the Report would be counter-productive. No doubt the MMM will make what they can of it to besmear Sir Seewoosagur Ramgoolam and his mates. I do not in fact think we will come out of this too badly since the Report shows that we did indeed consult those concerned before the excision.

Yours ever,

J N Allan

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Letter from P. Hunt of the East African Department to J. N. Allan of the British High Commission in Port Louis, FCO 31/3834 (14 July 1983)

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Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01- 233 8696

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DESK
INDEX

Your reference

Our reference

Date 14 July 1983

J N Allan Esq CBE

PORT LOUIS

Dft to Mr Watts, Deputy Legal Adviser. PA Pt 15/7

Dear James,

SELECT COMMITTEE REPORT ON THE EXCISION OF THE CHAGOS ARCHIPELAGO

Thank you for your letter 063/1 of 17 June enclosing a copy of the Select Committee Report and a note of your meeting with the Minister of External Affairs.

2. We think that you struck just the right note with Gayan and picked out all the points which are objectionable to us. Our view here is that the Report is reasonably well written and well argued, at least until paragraph 52E with its rather blunt and emotional allegation of blackmail. We would wish however to put in a formal Note listing our principal objections. We are putting a draft to our Legal Advisers and hope to let you have it shortly.

3. We look forward to hearing what sort of impact the Report makes locally when it is circulated.

Yours ever,

Peter.

P L Hunt
East African Department

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African Section Research Department, *Detachment of the Chagos Archipelago: Negotiations with the Mauritians (1965)* (15 July 1983)

SECRET

1965

DETACHMENT OF THE CHAGOS ARCHIPELAGO: NEGOTIATIONS WITH THE MAURITIANS (1965)

Negotiations in Mauritius

1. A joint Anglo-US survey of a number of Indian Ocean islands with a view to their suitability for defence use was carried out from June to August 1964. The Premier of Mauritius, Dr Seewoosagu Ramgoolam, and the Executive Council of Seychelles, were consulted first, and raised no objection. An approach was also made to Dr Ramgoolam about the possibility of detaching the Chagos Archipelago from Mauritius, but his reaction to this was guarded.

2. The Governor of Mauritius was instructed on 19 July 1965 (CO Secret and personal telegram number 198) to open discussions with Mauritius Ministers on the detachment of Chagos and on compensation:

"In putting the matter to your unofficials you should indicat that as regards Diego Garcia there is a firm requirement for the establishment of a Communications Station and supporting facilitie including an airstrip. As regards the remainder of the islands (incl. the remainder of the Chagos Archipelago) you should indicate that the requirement for these is in the nature of an insurance for the future, that no firm plans exist for early defence developments on them but that it is possible that air and/or naval facilities may be required in future years.... "

He was further instructed that:

"You should explain that it would be intended that the island in question should be constitutionally separated from Mauritius and Seychelles and established, by Order in Council as a separate British Administration. The Americans would not be prepared to go ahead on any other basis. Any suggestion of the islands required being made available on the basis of either leases or defence agreements with Mauritius or Seychelles must therefore be ruled out."

3. On 23 July the Governor informed Ministers of what was proposed and found that whilst not ill-disposed to the idea of a defence facility in Chagos they asked for time to consider the idea further. Both Ramgoolam (Labour Party) and Gaetan Duval (of the Parti Mauricien Social Democrat - PMSD) expressed dislike of detachment and the Governor commented that it was clear that any attempt to detach without agreement would evoke strong protest Ramgoolam raised the question of mineral or other rights that might arise in the future and referred to the reversion of the islands to Mauritius if their use for defence purposes was abandoned. Ministers also mentioned the possibility of an increased US sugar quota for Mauritius but were told that this would raise difficult problems, and that HMG would favour the payment of lump sum compensation.

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4. A week later, the Council of Ministers, with Ramgoolam speaking for the Ministers as a whole, gave the Governor their response: they were sympathetically disposed to providing the Chagos Archipelago for Anglo-US use and prepared to play their part in the defence of the Commonwealth and the free world. They would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius. Ministers objected however to detachment, which would be unacceptable to public opinion in Mauritius. They asked therefore that consideration might be given to how UK/US requirements might be reconciled with a long term lease, eg for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius. As regards compensation, they suggested that the United States might purchase annually from Mauritius 300,000 to 400,000 tons of sugar at the Commonwealth negotiated price against the purchase by Mauritius from the United States of 75,000 tons of rice and 50,000 tons of wheat; an American market for up to 20,000 tons of frozen tuna would also be of interest. The United States might also be helpful about immigration. In addition there should be a capital sum towards development. They also hoped that some use might be made of Mauritius labour in construction work. Ramgoolam suggested discussions with representatives of the British and American Governments either on the occasion of, or before, the Constitutional Conference to be held in London in September.

5. Speaking on instructions, the Governor explained to the Mauritian Ministers on 13 August that the United States Government was firm that the islands chosen for the development of defence facilities must be made available directly by HMG and that a leasehold arrangement therefore would not do: if on reconsideratio Ministers were prepared to accept detachment, HMG would do their utmost in negotiations with the US Government to secure the various trade and other benefits requested, but Ministers were warned that chances of success were limited by the fact that some of their suggestions involved difficult issues of domestic politics in the US (eg the sugar quota, which was controlled by Congress). The Governor invited them to discuss other elements of compensation within the direct power of HMG to grant. The Ministers responded by renewing their call for discussion in London between representatives of the Governments concerned, and both Ramgoolam and Duval said that they were sure that agreement could be reached in this way.

Negotiations in London

6. The Defence and Overseas Policy Committee (OPD) considered the detachment of the Chagos islands and also a defence agreement with an independent Mauritius, on 31 August 1965. (Independence for Mauritius appears to have been the constitutional solution at the forefront of Ministerial thinking here, although the final decision between a referendum on independence and some form of special association with Britain - claimed by the PMSD - and for

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elections followed by full independence - claimed by the Labour Party - rested with the Mauritius Constitutional Conference due to take place in September.*) The Deputy Secretary of State for Defence, supported by the Foreign Secretary, Mr Stewart, urged that "The Agreement of the Mauritius Ministers to the transfer should be obtained if possible but in any event the decision to detach the islands should be taken before the end of the Mauritius Constitutional Conference. In response to the request of Mauritius Ministers we might accept responsibility for the external defence of Mauritius, but there was strong objection to our similarly accepting a continued responsibility for internal security after Mauritius became independent, since this might embroil us with opposing racial groups on the Island. If agreement on the detachment of the Chagos group could not be obtained, we should nevertheless transfer them to direct United Kingdom sovereignty by Order in Council." The Colonial Secretary, Mr Greenwood, said however that he "was not in agrement with these proposals. The Mauritius Constitutional Conference would in any case be difficult. When the Committee had last discussed detaching the islands, they had agreed that the proposed compensation should be increased and that the agreement of the Mauritius Government was essential. Their Ministers would be very disappointed at our not agreeing to accept a 99 year lease and also if the United States did not accept their proposals on sugar. The offer to accept responsibility for their external defence would be useful in negotiations. However, our acceptance of responsibility for internal defence would be the main issue. Minority guarantees would be a most important part of the Conference and could probably only be satisfactorily resolved by an assurance that we would provide forces for internal security at the request of the Mauritius Government. At least we should therefore agree that a request from the Mauritius Government after independence for assistance in internal security would be sympathetically considered. Mauritius Ministers would, on this basis, probably accept the detachment of the islands but to threaten to go ahead with this by Order in Council regardless of their agreement would undoubtedly wreck the Conference." Summing up the discussion, the Prime Minister (Mr Wilson) said "that at the forthcoming Conference we might if necessary agree to "consider sympathetically" the provision of United Kingdom forces for purposes of internal security at the request of the Mauritius Government after independence ..... A decision on whether or not we should detach the islands in question by Order

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* The main objects of the Conference were described in FO Guidance telno.401 as being: "to decide whether full independence or some form of special association with Britain should be the ultimate goal towards which Mauritius should move; to settle the timing of the transition to this goal and to decide what (if any) prior population consultation should be stipulated; and to secure the maximum possible measure of agreement between the Mauritian political parties on the provisions of the new Constitution."

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in Council if the agreement of Mauritius Ministers could not be obtained to this course need not be taken at this stage, and until we could see how the forthcoming Conference progressed. It was, however, essential that our position on the detachment of the islands should in no way be prejudiced during its course and the Colonial Secretary should bring the matter back to the Committee in good time for a decision to be reached on this issue before the Conference reached any conclusion."

7. The Constitutional Conference took place in London from 7 - 24 September 1965. Completely separate side-meetings attended by the Colonial Secretary and Mauritian Ministers and Party leaders dealt with the question of the Chagos Archipelago. The records of the Constitution Conference and the records of the meetings on Chagos both show that there was no confusion between the issues discussed in the two fora, and no "carry-over" of subject matter - except inasmuch as a possible Anglo-Mauritian Defence Agreement was mentioned in both.

8. As the Colonial Secretary's initial, exploratory, talk on Monday 13th September with Ramgoolam (now Sir Seewoosagur) revealed, the Mauritians had come to London with their sights still firmly fixed on a lease arrangement for Chagos and a trade agreement with the US. At a meeting immediately afterwards attended also by Koenig of the PMSD, Mohammed (Committee of Muslim Action - CAM), Bissoondoyal (Independent Forward Bloc - IFB), and Paturau, an Independent Minister, the Colonial Secretary stressed that the subject of their discussions was quite separate from that of the Conference proper. He pointed out the objections to the terms proposed by the Mauritians, (ie the lease, increased sugar quota and immigration to the US) and emphasised the link between the existence of defence facilities in the Chagos islands built by the US but available for joint UK-US use and Britain's ability to give defence help to Mauritius. Having, however, failed to shake Mauritian hopes of extracting some form of continuing advantageous financial deal with the Americans, Mr Greenwood undertook to arrange for them to meet with an appropriate official at the US Embassy in London. At the meeting, which took place on Wednesday, 15th September, Mr Armstrong (US Embassy Minister-Economics) did his best to persuade the Mauritian Ministers that there was no chance of the US increasing Mauritius' sugar or immigration quotas.

9. The Colonial Secretary reported to the OPD on Thursday 16th September that:

" ... he had discussed with the Mauritian leaders the detachment of the islands in the Chagos Archipelago. They were disappointed that the United States Government was not prepared to consider the lease of the islands or to meet their requests over sugar purchases and emigration. They had however had discussions with the United States Embassy and the latter had agreed to consider their suggestions as regards trade. They had also discussed with the Colonial Development Corporation the possibility of a land settlement scheme. It had been previously envisaged that we might offer a maximum of £3 million as

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compensation for the detachment of the islands. He had made an initial offer of £1 million and this had not been badly received. If it would help to secure agreement we might consider making available a further £1 million to finance development schemes over a period of years. We might also consider a provision that after, say, 99 years, the islands would revert to Mauritius if they were no longer required by the United Kingdom and United States. There had been some discussion about a continuing British responsibility for internal security, but this had been in the context of future constitutional development rather than of the detachment of the islands. Of the two main Mauritius Parties one favoured independence while the other preferred a form of association with the United Kingdom. Both would want some assurance of continued British assistance in maintaining internal security but it might not be necessary for us to go beyond an agreement to consult at the request of the Mauritius Government .... There had been no detailed discussion as yet about a defence agreement. The Constitutional Conference should end by the middle of the following week and he was hopeful that by then agreement on the detachment of the islands would have been secured. He had not pressed for an immediate decision both because this might prejudice agreement on the constitutional issues and because the Mauritian leaders were aware of the strength of their bargaining position and undue pressure might only induce them to put up their price."

In discussion it was pointed out that an urgent and satisfactory decision for the detachment of the islands was necessary both in HMG's own defence interests and in order to maintain good political and military relations with the US. Summing up, the Prime Minister said that the Committee would wish to take note of the Colonial Secretary's statement and to express the hope that agreement would be reached urgently, and in any case by the end of the Constitutional Conference. A decision on whether or not HMG should detach the islands in question by Order in Council if the agreement of Mauritius Ministers could not be obtained should still be deferred.

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10. The next meeting between the Colonial Secretary and Mauritius Ministers on the excision of the islands took place on Monday 20th September. Once again, Mr Greenwood emphasised his desire to keep the discussion of the proposal to establish defence facilities in the Mauritius dependencies separate from the Constitutional Conference. At this point all Ministers present (Ramgoolam, Koenig, Mohamed, Bissoondoyal and Paturau) were still pushing for a lease and some form of continuing aid from the Americans. Indeed, Ramgoolam told the Colonial Secretary that "the sort of compensation that had been suggested was of no real interest to the Mauritius Government. The United States was spending vast sums of money elsewhere in the world on bases that were not secure. Admittedly Diego Garcia was not being used at present; but in future it might be of great strategic significance. Mauritius must obtain some significant benefit from making it available. He did not pretend to know the military significance of Diego Garcia but, in considering compensation for Mauritius,

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the scale on which the United States has accepted expenditure on bases elsewhere had to be borne in mind." On this occasion Ramgoolam did, however, admit for the first time, in an oblique manner, of the possibility of the detachment of Chagos, whilst continuing to envisage some agreement with the Americans (" ... an alternative arrangement might be to calculate what benefit Mauritius would have derived from the sort of sugar quota and other trade arrangements that they had been suggesting and for the United States Government to make yearly payments to Mauritius of that amount .... He was talking in this connection in terms of a lease but if the islands were detached then different figures could easily be calculated;[it should in any case be provided that if the islands were detached then different figures could easily be calculated;]it should in any case be provided that if the islands ceased to be needed for defence purposes they would revert to Mauritius.")

11. Meanwhile, the Constitutional Conference was reaching deadlock on the issue of Mauritius' future status. At a meeting between the UK delegation and PMSD representatives on the morning of 23rd September it became clear to PMSD leader Koening that HMG were not going to accept his Party's proposal for a referendum on independence and he withdrew the Party from the Conference. This withdrawal was unconnected with the Chagos issue, but Koenig also stayed away from the meeting on the afternoon of 23 September at which Ministers gave agreement, in principle, to detachment (para.13) and later the PMSD used the pretext of inadequate compensation secured in the negotiations to withdraw from the all-party Government in Mauritius (para.17).

E

12. At 10 a.m. a l s o on 23rd September the Prime Minister, Mr Wilson, held a private meeting with Ramgoolam. He emphasised that the question of the detachment of Chagos was a completely separate matter from the question of Mauritius' constitutional future. He warned that because of American interest, the Mauritians might be raising their bids too high and went on to say that: "On the Defence point, Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point."

13. At 2.30 p.m. on that afternoon the Colonial Secretary met Ramgoolam and other Ministers (minus Koenig) and a tentative agreement was reached. Early in the discussion the Colonial Secretary said: "This [ie compensation, the offer of a defence agreement etc] was the furthest the British Government could go. They were anxious to settle the matter by agreement but the other British Ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council."

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14. Some days after the meeting on 23rd September, and prior to departure overseas, the Secretary of State asked officials in the Colonial Office to get the final record of the meeting agreed with the Mauritian Ministers before they left London. One Minister (Paturau) had already left for Mauritius. Ramgoolam was due to visit the Colonial Office on 30th September, and the opportunity was taken to clear the minutes with him and see if he could clear the record with Mr Mohamed and Mr Bissandoyal. Ramgoolam took away the draft and after consulting Mr Mohamed wrote a letter dated 1st October agreeing the draft record with certain amendments. On 4th October, Sir Hilton Poynton and Mr Trafford Smith saw Ramgoolam and Ringadoo to clear up various matters, including the final draft. Puzzled by Ramgoolam's reference to "two islands" in his letter of 1st October, they sought clarification from him. Trafford-Smith later minuted: "It turned out that the 'two islands' point was probably due to a misunderstanding - at least he did not press it, and I wonder whether, confronted with a map showing the islands in the Chagos group, he had in fact previously realised that there were so many."

As regards the other points, the two Ministers agreed to our revised presentation which effectively said that we would do our best to negotiate these facilities with the Americans."

15. The amendments were incorporated into the final agreed record of the 23rd September meeting, the relevant paragraphs of which read:

"22. Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

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(vi) the British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

(a) Navigational and Meteorological facilities;

(b) Fishing Rights;

(c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius

(vii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government."

23. SIR S RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministeral colleagues."

16. At the same time it had been agreed within the C.O. on the advice of the Governor (Sir John Rennie) that the right way to proceed was to send a secret despatch (in the non-personal series) which could be shown to the Mauritian Ministers asking for formal confirmation of the revised record as finally agreed by Sir S Ramgoolam and Mr Ringadoo, and effectively by Mr Mohamed, whose consent Ramgoolam had secured. This despatch was sent on 6th October (no.423).

17. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5th November 1965. (The provisos mentioned above were acknowledged by CO secret telno.298 of 8th November, which made clear that the Chagos Archipelago would remain under British sovereignty, and that the islands were required for defence purposes, and that there was no intention of permitting prospecting on or near them). PMSD Ministers dissented however; Paturau (Independent) supported the agreement on defence grounds, but expressed sharp dissatisfacti with the amount of compensation. On 11 November Koenig, Duval and Devienne (PMSD) resigned from the Government. The following day they gave a press conference at which they gave as their reason for this action the inadequacy of compensation for the loss of Chagos and the insufficiency of efforts to improve it, especially in regard to sugar exports and immigration to the United States; however the PMSD also publicly declared that the Party had no objection in principle to detachment or to defence facilities.

African Section
Research Department

15 July 1983

SECRET

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Letter from D. A. Gore-Booth to W. N. Wenban-Smith of the East African Department, FCO 58/3286 (15 July 1983)

CONFIDENTIAL

Mr. Campbell

Mr Duff

For advice Draft letter please by 1 Sept at latest. WS

United Kingdom Mission to the United Nations
845 Third Avenue New York NY 10022

re Diego Garcia 22/7

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Your reference 14/W 22/1 WS. FS

W N Wenban-Smith Esq
East African Department
FCO

Our reference 063/1

Date 15 July 1983

Pl. also cop WUNS.

My dear Nigel,

MAURITIUS' CLAIM TO BIOT

1. In part 5 of his letter of 26 April about Diego Garcia and the NAM Summit, Mig Goulding promised a further letter on what we say about relinquishing Diego Garcia when we no longer require it for defence purposes. Mig's departure, my arrival and the fact that the papers have languished in assorted trays in the interim have conspired to delay our doing so. My apologies. However, with Mauritius in the middle of an election campaign and a new government taking office in August, now is probably a good time to focus once again on what, in UN terms at least, could become a very tricky subject if not handled properly.

2. Your letter of 25 March to Martin Williams in New Delhi implied that, depending on the circumstances, all three terms, "return", "cede", "revert", are all acceptable. While this may be true as far as Parliament is concerned, it would be a mistake for us to rely on such loose definitions at the UN where precise terminology has been elevated to the status of a high art form and where any sovereignty battles over Diego Garcia are likely to be fought. Moreover you will have seen (Mike Maclay's letter of 8 April to Peter Hunt) that the Mauritian Permanent Representative here was sufficiently sensitive to the question to comment to the Ambassador that he found it difficult to believe Mrs Thatcher had told Ramgoolam that we would "return" Diego Garcia to Mauritius when we no longer needed it.

3. What is required I think is a new locus classicus on Diego Garcia, perhaps in reply to an inspired PQ to the Secretary of State or the Prime Minister, made in such a way as to expunge the ambiguities and inconsistencies that have appeared in previous Ministerial pronouncements. These simply do not square with the policy we are under instructions to defend (Mr Ennals' 1975 statement and the Prime Minister's answer in July 1980 are I think particularly unfortunate examples). Once made we should stick to whatever term has been agreed and draw on it as necessary in explanation of our position. Failure to get this right would store up no end of trouble for us at the General Assembly (Diego Garcia is not at present inscribed on the agenda, but IOPZ is and could well provide a forum for raising the sovereignty question).

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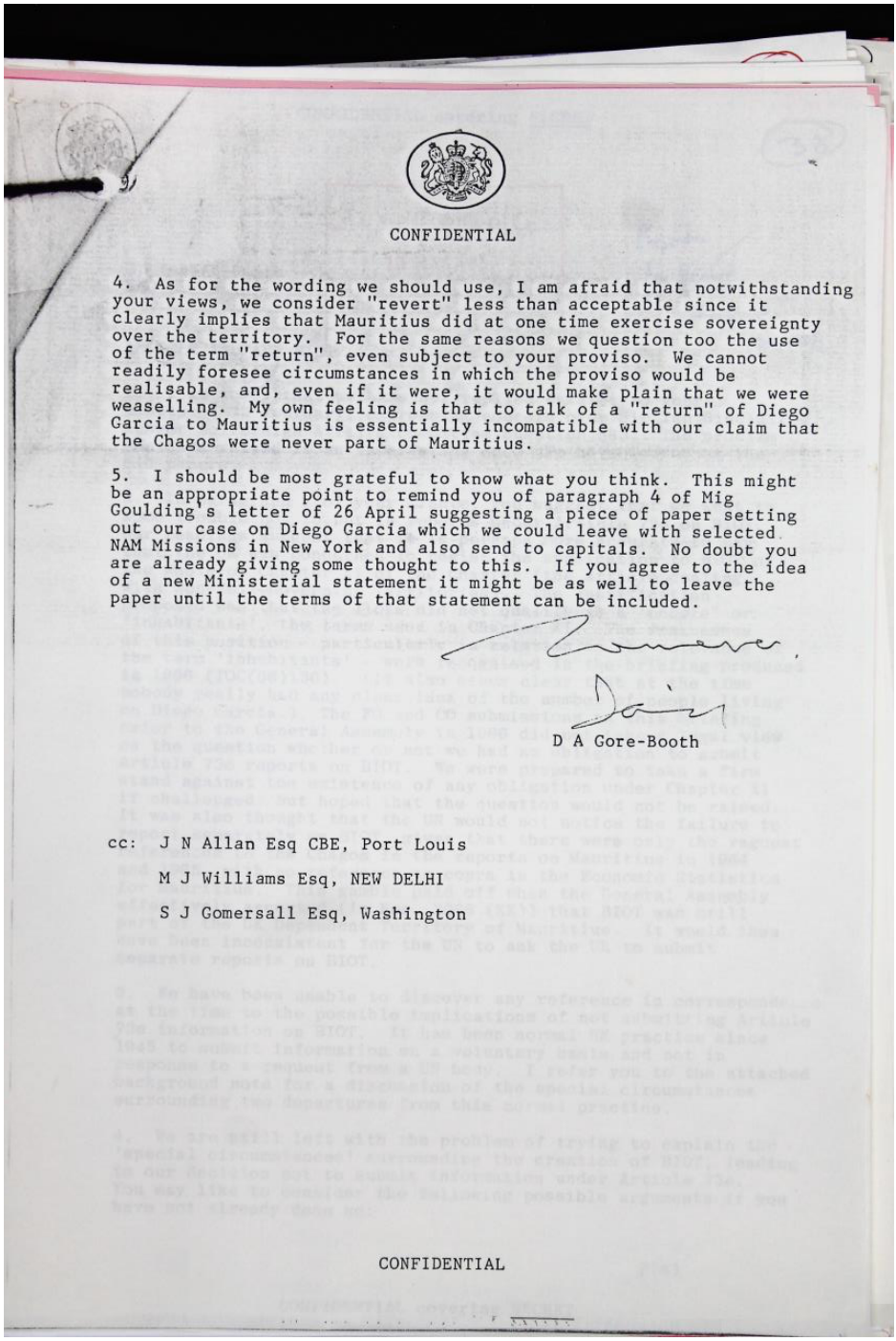

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4. As for the wording we should use, I am afraid that notwithstanding your views, we consider "revert" less than acceptable since it clearly implies that Mauritius did at one time exercise sovereignty over the territory. For the same reasons we question too the use of the term "return", even subject to your proviso. We cannot readily foresee circumstances in which the proviso would be realisable, and, even if it were, it would make plain that we were weaselling. My own feeling is that to talk of a "return" of Diego Garcia to Mauritius is essentially incompatible with our claim that the Chagos were never part of Mauritius.

5. I should be most grateful to know what you think. This might be an appropriate point to remind you of paragraph 4 of Mig Goulding's letter of 26 April suggesting a piece of paper setting out our case on Diego Garcia which we could leave with selected NAM Missions in New York and also send to capitals. No doubt you are already giving some thought to this. If you agree to the idea of a new Ministerial statement it might be as well to leave the paper until the terms of that statement can be included.

D A Gore-Booth

cc: J N Allan Esq CBE, Port Louis

M J Williams Esq, NEW DELHI

S J Gomersall Esq, Washington

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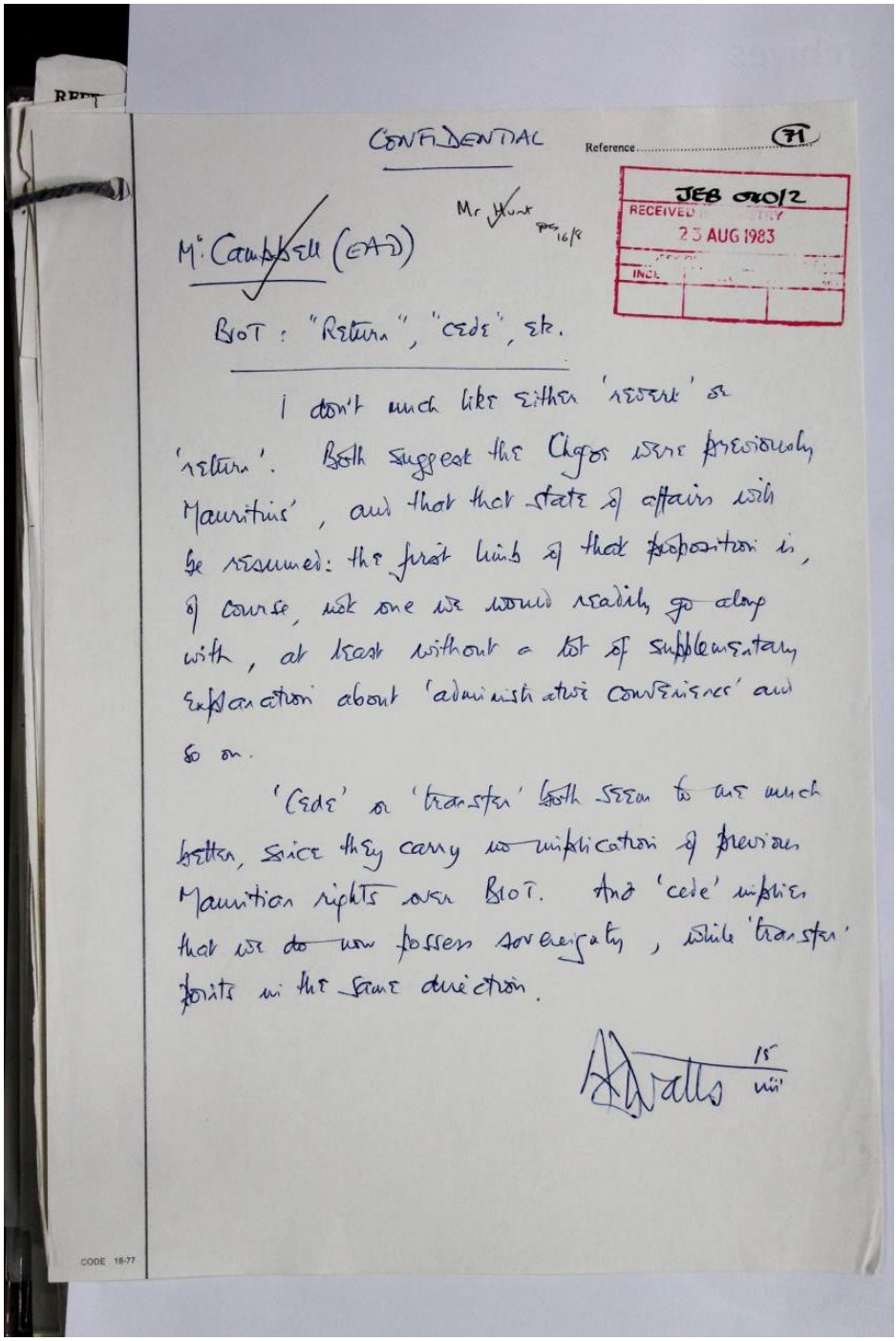
Note from A. Watts to Mr Campbell, FCO 31/3836 (received 23 Aug. 1983)



CONFIDENTIAL Reference 71

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Mr Hunt 16/8

M. Campbell (EAD)

BIOT: "Return", "cede", etc.

I don't much like either 'resort' or 'return'. Both suggest the Chagos were previously Mauritius', and that that state of affairs will be resumed: the first limb of that proposition is, of course, not one we would readily go along with, at least without a lot of supplementary explanation about 'administrative convenience' and so on.

'Cede' or 'transfer' both seem to me much better, since they carry no implication of previous Mauritian rights over BIOT. And 'cede' implies that we do now possess sovereignty, while 'transfer' points in the same direction.

A Walls 15 VIII

CODE 18-77

Annex 135

Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (13 Mar. 1986)

TITLE TO TERRITORY IN AFRICA

International Legal Issues

MALCOLM SHAW

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raises the question of the authoritativeness of such interpretations. Whereas an amendment by subsequent practice will be binding, whether a particular interpretation of a Charter provision contained in one or more resolutions of the General Assembly possesses a persuasive quality, and to what extent, will be determined on the basis of the numbers and identity of States voting for the proposed interpretation. Thus, Charter interpretation in this narrow sense constitutes one element of Charter modification by practice and is subsumed under the generally recognized heading of Charter interpretation. The advantage of this latter process is that it enables the majority of States to modify the Charter to accord with contemporary conditions, while imposing certain limitations as to the quantity of States proposing the change, and thus providing some protection to minorities. It is also necessary for the proposed modification to be directly referable to a particular provision of the Charter.

Such changes may be, and generally will be, accomplished by Assembly resolutions, which may either be related to a specific situation or be more generally framed. Thus, Charter interpretations may occur other than as responses to particular disputes. Not all such resolutions will be of the same persuasive nature and a series of resolutions over a period of time will usually be required.

(b) Self-Determination

1. *General Approach*

At this point we shall turn to examine the question of whether the right of self-determination can be regarded as established through the medium of Charter interpretation as a result of practice subsequent to the creation of the UN Organization. As an introduction, one should note the Universal Declaration of Human Rights. This was adopted on 10 December 1948, in the form of an Assembly resolution by 48 votes to 0, with 8 abstentions. It built upon Charter provisions regarding human rights (for example, Articles 1, 55, 56, 62, and 76) and enumerated a list of human rights and fundamental freedoms 'as a common standard of achievement for all peoples and all nations'.[104] Although the principle of self-determination was not referred to in this Declaration, which concentrated upon the elucidation of individual rights, its path forward was cleared in the same way in that democratic rights seemed to lead inevitably in international society to consideration of the rights of peoples to define their own cultural and national status.[105]

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The Declaration was not legally binding as such in view of the terms in which it is expressed and the circumstances surrounding its adoption,[106] but has come to have a significant effect within the international community. Some of its provisions might be taken as reflecting general principles of law, others as relatively new international stipulations. However, it can be regarded in essence as an influential interpretation by the General Assembly of the relevant Charter provisions upon human rights and fundamental freedoms, and as such of legal value as part of the law of the United Nations.[107]

There have been a number of resolutions dealing with self-determination both generally and with regard to particular situations, and it is possible to point here to what appears to be a significant distinction. Resolutions and declarations that posit principles of law may be regarded as valid interpretations of the Charter if the necessary requirements of unanimity (or near-unanimity) and referral have been met. However, resolutions and other UN and State practice referable to the specific situations are often limited by two factors. Firstly, such practice in concentrating upon a particular situation is of restrictive value since it deals only with one aspect of the principle under discussion which may be modified or even distorted by virtue of other principles, deemed relevant in that particular situation,[108] and secondly by the greater likelihood of opposing votes and behaviour that will rob the practice of its claim to universality.[109] However, it is possible for such defects to be remedied by a consideration of the temporal element. In other words, a series of resolutions, for example calling for self-determination in different colonial territories, may be regarded as subsequent practice relevant to the interpretation of the particular Charter provisions in question. Examples of such practice will be noted in the following section,[110] but it will be useful in this context to recall the views of the ICJ regarding Article 27 of the Charter. The court declared that 'the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the position taken by members of the Council . . . have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions . . . . This procedure followed by the Security Council . . . has been generally accepted by members of the United Nations and evidences a general practice of that Organization.'[111]

A similar process can be seen with regard to Article 2(7) of the Charter, concerning domestic jurisdiction, which has over the years been increasingly restrictively interpreted[112] while the General Assembly has

progressively widened the scope of its jurisdiction under Chapter XI of the Charter by asserting its competence both to request political information on non-self-governing territories under Article 73(e) and to decide which territories may be regarded as non-self-governing.[113] The Assembly has also proclaimed its authority to decide between competing aspirations of the right to self-determination and to declare whether territories have exercised or should exercise the right to self-determination.[114]

In all of these instances State practice over a period of time has been consolidated into Charter interpretation. Whether such practice can be treated as a valid interpretation will depend on all the circumstances of the case, but the presumption would be that the larger the number of resolutions, for instance applying the principle of self-determination to different territories, and the longer the period during which such practice has been operating, the greater would be the likelihood that a persuasive or even binding view of the Charter term has been expressed.

Resolution 421 (v) of 4 December 1950 embodied the request of the General Assembly for a study of the ways and means 'which would ensure the right of peoples and nations to self-determination', and this was taken further by resolution 545 (vi), which stated that the proposed article on self-determination in the International Covenants on Human Rights should be expressed in the terms that all peoples have the right to self-determination. It also noted that the article should stipulate that all States should promote the realization of the right in conformity with the principles and purposes of the United Nations. Resolution 637 (vii) proclaimed that self-determination was a fundamental human right.[115] This resolution also declared that UN member States 'shall recognise and promote the realization of the right' with regard to the peoples of trust and non-self-governing territories under their administration 'according to the principles and spirit of the Charter of the United Nations'.[116] The Commission on Human Rights considered the concept of self-determination over a number of sessions[117] and submitted recommendations to the UN Economic and Social Council, including a suggestion for the establishment of a Special Commission to examine situations resulting from alleged denials or inadequate realizations of the right to self-determination in certain circumstances.[118] This was, however, opposed and the matter was referred back to the Commission on Human Rights for reconsideration.[119] During the reconsideration a number of representatives pointed out that self-determination was only a principle and not a right. It was declared that the Charter had not granted

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the General Assembly competence to implement self-determination, although by way of contrast, implementation of Article 1(1) was provided for by Article 11 and that of Article 1(3) by Article 13.

Such objections were overridden, as was the view that the realization of self-determination fell essentially within the domestic jurisdiction of States, and the Commission reaffirmed its previous recommendation which was sent to the General Assembly.[120] The General Assembly at its eighth session asked the Commission to give priority to recommendations regarding international respect for the right of self-determination,[121] and by the next session the Assembly already had before it the draft International Covenants on Human Rights prepared by the Commission and transmitted by the Economic and Social Council.[122]

The Commission suggested that both International Covenants should have an identical first article[123] and this article, according to the draft of the Third Committee of the Assembly, read as follows:

> 1. All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development . . . .
>
> 3. All States parties to the Covenant including those having responsibilities 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 UN Charter.[124]

At the Twelfth Session, the Assembly declared in resolution 1188 (XII) that member States were to give due respect to the right of self-determination. From this point, the proposed Covenants became enmeshed in UN discussions from which they were only to emerge nine years later.

At this point we shall turn to two General Assembly declarations that might be treated as authoritative interpretations of the Charter.[125]

The Declaration on the Granting of Independence to Colonial Countries and Peoples (the Colonial Declaration) was adopted by the General Assembly of 14 December 1960 in resolution 1514 (XI) by 89 votes to 0 with 9 abstentions. This has had a profound impact upon international affairs and has been treated with particular reverence by the States of the Third World. It has been regarded by many as the 'second Charter' of the United Nations drawn up for the subjugated peoples of Africa and Asia.[126] Indeed, Parry has written that the Declaration by itself has had the effect of modifying that part of international law that deals with territorial sovereignty.[127]

The Declaration emerged after a debate in the Assembly initiated by the Soviet premier[128] and was drafted by forty-three States.[129] The preamble noted that 'all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory' and proclaimed the necessity of 'bringing to a speedy and unconditional end colonialism in all its forms and manifestations'. The Declaration laid down seven principles, stressing 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'. Inadequacy of political, economic, social, or educational preparedness was not to serve as a pretext for delaying independence. Immediate steps were to be taken to transfer power to the peoples of non-independent countries, but attempts aimed at the partial or total disruption of the national unit and territorial integrity of a country were deemed incompatible with the purposes and principles of the UN Charter.

The Declaration has been treated by a number of countries as constituting a binding interpretation of the Charter, or a restatement of principles enshrined in the Charter,[130] and it has been similarly regarded by some writers.[131] However, there are others who dispute this. One view already discussed is that any action by the General Assembly could only be recommendatory in such circumstances and that therefore the Declaration could be nothing more than a general statement of objectives.[132]

But the most significant criticism of the Declaration as an authoritative interpretation of the Charter is concerned with the inconsistencies that are noticeable between the two instruments. Paragraph 1 of the Declaration proclaimed that 'the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations'. However, this is not too clear in the Charter itself, for Chapters XI and XII legitimize certain relationships of dependence regarding non-self-governing and trust territories,[133] subject to defined conditions.

The Declaration in paragraph 3 notes that 'inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence', while Article 73(b) declares that States administering non-self-governing territories must 'assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement' and Article 76(b) underlines that among

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the basic objectives of the trusteeship system is the 'progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples'.

Paragraph 5 of the Declaration emphasizes that 'immediate steps' should be taken in all non-independent territories to transfer power to the people, and this seems inconsistent with Articles 73 and 76. However, the call by the USSR, in particular, for immediate independence or the proclamation of a date at the end of 1961 for this to be achieved was not accepted[134] and this provision should perhaps be regarded rather as a change of pace than as a change of essence. The Declaration also blurs the distinction between trust and non-self-governing territories by positing the same provisions for all territories that have not yet attained independence. In addition, the Declaration in paragraph 5 appears to regard independence as the only legitimate goal of the whole process. This latter provision runs counter to a number of UN resolutions, for example those recognizing the exercise of self-determination involved in the relationship of dependence between the USA and the Commonwealth of Puerto Rico,[135] and between New Zealand and The Cook Islands[136] and Niue[137] after elections had been held in the respective dependent territories. In fact, the UN Secretary-General noted in 1963 that 'the emergence of dependent territories by a process of self-determination to the status of self-government either as independent sovereign States or as autonomous components of larger units has always been one of the purposes of the Charter and one of the objectives of the United Nations'.[138]

Such inconsistencies have led Bokor-Szego[139] and Martine,[140] for example, to deny that the Colonial Declaration is an authoritative interpretation since it appears actually to amend the Charter, the argument turning on where the line between interpretation and amendment should be drawn. Fifteen years of State practice in the process of decolonization formed the background to the Colonial Declaration and enabled it to bring up to date the relevant Charter provisions in a way marking contemporary consensus views as to, for example, the effect of inadequacy of political, social, economic, or educational preparedness. All interpretations refine and develop the concept under consideration, in a manner acceptable to those concerned, and may be no less influential or binding because of that.[141]

However, it does not follow that everything contained in the Declaration (or in similar resolutions, for that matter) constitutes a

binding obligation. Some elements would remain upon a purely hortatory level, for example the solemn proclamation in the preamble to the Declaration stressing 'the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations'. On the other hand, there may be statements which are inconsistent with instruments interpreting the Charter—for instance, the apparent acceptance in the Declaration that independence is the sole object of self-determination. This contrasts with UN practice, as noted above, recognizing other relationships, and with the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (resolution 2625 (XXV)), which noted that 'the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people'.[142]

It would therefore seem that where one is faced by conflicting interpretations of equal standing, resort must be had to the intentions of the members of the United Nations, as revealed in their practice, and upon this basis it would seem that the stipulation in the 1960 Declaration restricting self-determination to the attainment of independence must be regarded as only a suggestion and not an authoritative interpretation of the Charter. Nevertheless the core of the Declaration does constitute an interpretation of the Charter and one that has underpinned the end of colonialism.[143]

Higgins has noted that it 'must be taken to represent the wishes and beliefs of the full membership of the United Nations'.[144] As to the juridical character of the Declaration, Higgins stresses that in it the right of self-determination is regarded 'as a legal right enforceable here and now'.[145]

This approach is underlined by the action taken by the United Nations to implement the Declaration. On 27 November 1961 the General Assembly created a subsidiary organ entitled the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence,[146] which was enlarged from seventeen to twenty-four member States the following year.[147] It has gradually widened its sphere of activity so that, apart from the Trusteeship Council (which is only concerned now with the trust territory of the Pacific Islands), it is the only organ responsible for issues dealing with dependent territories. The Committee has been very active and has done much to

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pressure the colonial powers and the administering powers.[148] It has also stressed the position that the United Nations intended the Colonial Declaration to act as a juridical signpost to complete decolonization and not merely as a solely hortatory pronouncement.

Virtually all UN resolutions proclaiming the right to self-determination of particular peoples expressly refer to the 1960 Declaration.[149] Judge De Castro particularly noted in the *Western Sahara* case how the African group at the United Nations that prepared a draft resolution on the Sahara problems for discussion in the Fourth Committee was at pains to refer four times to resolution 1514 (XV) in reaffirming the right of the people of Western Sahara to self-determination.[150] The International Court has specifically referred to the Colonial Declaration as an 'important stage' in the development of international law regarding non-self-governing territories,[151] and as 'the basis for the process of decolonization'.[152]

On 16 December 1966 the General Assembly adopted the International Covenants on Human Rights, which consisted of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the latter. Both Covenants have an identical first article which declares *inter alia* 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' and that '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'.

The inclusion of the right to self-determination in the International Covenants occurred because the General Assembly in resolution 545 (VII) recommended that the proposed Covenants should incorporate such a provision and in resolution 637 (VII) declared that the right to self-determination was a 'fundamental human right'. It is to be noted that the preambles to both the Covenants refer to the 'obligation of states under the Charter of the United Nations to promote universal respect for and observance of human rights and freedom'.[153]

The International Covenants came into force in 1976[154] and are thus binding as between the parties, but it would seem that they are of legal value over and above that, not only as practice leading to or reflecting a customary rule, but also as a persuasive interpretation of the notion of human rights as embodied in the Charter.[155]

status of the Declaration since it was effected at the merely organic or institutional level rather than on a formal, legally binding inter-State level[158] and concludes that 'there can hardly be any doubt . . . that the Declaration embodied in Resolution 2625 (XXV) . . . is to be considered from a legal point of view as an instrument of a purely hortatory value'.[159] This approach, however, cannot be supported. The Declaration was intended to act as an elucidation of certain important Charter provisions, although not as an actual amendment of the Charter, and was adopted by member States on that basis.[160]

State practice within and outside the United Nations also supports the view that the right to self-determination exists in international law. State practice, other than resolutions and declarations purporting to express principles of law, can be important in the process of Charter interpretation provided it is linked to particular Charter stipulations and provided over a period of time sufficient practice has accumulated for it to be treated as a valid and general interpretation rather than as strictly limited conduct specifically related to a particular situation.

It is realized that this formulation may fail to provide an adequate guide as to whether a proposition can be accepted as an authoritative Charter interpretation in a number of instances, but it is clearly impossible to lay down firm conditions as to the time that should be encompassed or the number of relevant resolutions that must be adopted. In each case much will depend upon acceptance and acquiescence by an increasing number of States regarding the propositions involved in particular situations constituting general principles interpreting the Charter.

One must be careful not to deny the members of an organization the capacity to harmonize its constitution with contemporary needs by means of their subsequent practice. After all, the aim of interpretation is to enable the overwhelming majority to determine the nature and extent of the obligations and rights they have agreed to in circumstances minimizing adverse effects upon dissentient members.[161]

State practice that does not fall within the categories mentioned may nevertheless be relevant in the process of Charter interpretation as evidence of recognized interpretations, and thus may be of value in emphasizing the form and content of a particular interpretation. It may also play a vital role in pointing out which interpretations are to be regarded as valid, binding ones, much as State practice may also constitute evidence of particular rules of customary law. State practice, of course, may also lead to a new customary law. One should note that those member States that abstain with regard to such interpreting resolutions as

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the 1960 and 1970 Declarations discussed above may well still be bound by them.[162]

2. *Specific Approach*

State practice, particularly as manifested in the United Nations, concerning the status and application of self-determination in specific situations exceeds the abstract, general expression of self-determination as a right, in terms of both frequency and diversity, and accordingly must be considered as a significant factor.

General Assembly resolutions proclaiming that specific territories should be entitled to the exercise of the right of self-determination are ultimately founded upon the established competence of the Assembly to determine which territories are non-self-governing. This is partly because self-determination has been deemed non-applicable to independent territories and partly to side-step the doctrine of domestic jurisdiction.

Article 2(7) of the Charter declares that 'nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State' and the history of the first decade and a half of the UN Organization largely centres around attempts to establish a balance between this provision and the perceived need to end colonialism. This latter aim was achieved, at least as far as the United Nations was concerned, through establishing a clear divison between the administering State and its administered territories, contrary to the wishes of a number of colonial powers, particularly France with regard to Algeria and Portugal with regard to its African possessions. Having instituted this division and provided an exception to Article 2(7), the Assembly proceeded to make recommendations regarding the future of these non-self-governing territories.[163] Based upon its recognized competence to decide which territories were non-self-governing territories, the General Assembly successfully asserted its competence to determine whether or not a non-self-governing territory had attained a full measure of self-government as referred to in Chapter XI of the Charter, and to this end a series of resolutions were adopted expressing the Assembly's views as regards specific cases.[164] Despite the objections of the colonial powers, the doctrine of domestic jurisdiction as declared in Article 2(7) has been interpreted by the subsequent practice of the UN Organization and its members so that the affairs of non-self-governing territories may be discussed within the Organization and rendered subject to UN resolutions and declarations as to their political status.

The competence of the Assembly was initially founded upon Chapter XI of the Charter, but later resolutions disregarded this Chapter and concentrated instead on the concept of self-determination as the basic relevant principle.

The large number of Assembly resolutions calling for self-determination in specific cases represents international practice regarding the existence and scope of a rule of self-determination in customary law. They also constitute subsequent practice relevant to the interpretation of particular Charter provisions. For example, resolutions proclaiming that an obligation exists under Article 73(e) of the Charter to transmit information in a particular case may be regarded as a binding interpretation of the Charter provision in that specific instance since the competence of the General Assembly to determine such matters has been clearly recognized.[165] The change from Chapter XI to self-determination with the Colonial Declaration as the juridical basis for the process marks the stronger line taken by the Assembly as a whole but the effect remains broadly similar—that is, the determination by the General Assembly of a factual situation within which the declared norm will be deemed to operate. By such methods, of course, the outlines of the norm itself will be elucidated, and to that extent factual determinations by the Assembly will be juridically relevant.

However, unlike Assembly resolutions of a general nature, they cannot themselves authoritatively interpret a principle as a legally binding norm; their function in this sphere rests rather upon delimitation,[166] though such determinations may also provide for the application of non-legal principles to a particular situation.

The Algerian problem[167] was first included on the agenda of the assembly in 1955, and it was claimed that France had broken the provisions of the Charter on self-determination.[168] The Assembly, however, decided not to pursue the matter[169] and the Security Council did not place it upon its agenda.[170] In succeeding sessions, resolutions proclaiming the right of the Algerian people to self-determination failed to be adopted although support for the proposition was growing.[171] In fact, it was only in 1960 that a resolution was adopted which referred to the right of the Algerian people to self-determination.[172] Despite this hesitant start, and in view of the changed climate of opinion in France itself, the Assembly passed without opposition in the following session resolution 1724 (XVI) which called for the implementation of 'the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria'.

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This resolution, which significantly referred to the Colonial Declaration of 1960, also asserted that the United Nations had a part to play in the fulfilment of this right.

A large role has been performed in this process by the Special Committee established after the adoption of the Colonial Declaration.[173] For example, the Special Committee was requested to study the situation in Southern Rhodesia by General Assembly resolution 1745 (XVI) and its report formed the basis of an Assembly resolution criticizing the failure of the United Kingdom to carry out the Colonial Declaration, and affirming that Southern Rhodesia was a non-self-governing territory.[174] The Assembly adopted resolution 1755 (XVII) proclaiming the right of the people of Southern Rhodesia to self-determination, and the problem has been discussed at the United Nations at great length.[175] The claim of the United Kingdom that the problem was an internal matter and that therefore the United Nations could not consider it, was clearly rejected, and resolution 1747 (XVI) affirmed that 'the territory of Southern Rhodesia is a non-self-governing territory within the meaning of Chapter XI of the Charter of the United Nations'.[176] This situation was altered, at least as far as the United Kingdom was concerned, by the unilateral declaration of independence by the government of Southern Rhodesia, but the General Assembly vigorously attacked 'any agreement reached between the administering power and the illegal racist minority regime which will not recognise the inalienable rights of the people of Zimbabwe to self-determination and independence in accordance with General Assembly resolution 1514 (XV)'[177]

In its first six years, the Special Committee considered some seventy territories,[178] and in 1974, for example, it discussed thirty-nine territories, the majority being Pacific or Atlantic islands.[179] In virtually all cases the Special Committee has recommended that the territory become independent in the light of its right to self-determination, although in some instances association with another State was accepted, for example, Niue and the Cook Islands.

Throughout the years of the existence of the UN Organization a great number of resolutions have been adopted calling for self-determination in particular situations and these constitute State practice and international practice of overwhelming importance. The majority of such resolutions have referred specifically to the 1960 Colonial Declaration, thus strengthening its claim to be the fount of legality as far as the right to self-determination is concerned. It has been noted that 'if this right [of self-determination] is still not recognized as a juridical norm in the practice of

a few rare States or the writings of certain even rarer theoreticians, the attitude of the former is explained by their concern for their traditional interests, and that of the latter by a kind of extreme respect for certain long-entrenched postulates of classical international law'.[180]

It is submitted in conclusion that the right to self-determination has been accepted by the United Nations by virtue of the process of Charter interpretation as a basic principle in the law of the United Nations, and that from this proposition certain legal effects flow with regard to, for example, the definition of the determining unit, the capacity of the people of the territory in question to decide its political, economic and social status, the role of force in the process, and the *locus standi* of the colonial power.[181] Some of these notions will be examined in later chapters.[182]

III. CUSTOMARY INTERNATIONAL LAW

The practice supporting the right of self-determination as emanating from Charter interpretation may also be of relevance in establishing the existence of a right to self-determination as a rule of customary law. Custom differs from treaty interpretation in a number of vital ways. It is founded on State practice, whereas treaty interpretation relates to practice construed with reference to a treaty provision, and it is dependent upon the *opinio juris*, the belief or expression of an accepted legal obligation. This, as we have seen, is not necessarily the case with respect to the interpretation of treaty-charters, for practice not amounting to custom may have the effect of interpreting a particular stipulation.

The International Court of Justice is directed by Article 38(1) of its statute to apply 'international custom as evidence of a general practice accepted as law' and Brierly emphasized this in terms of a 'usage felt by those who follow it to be an obligatory one'.[183] Oppenheim notes that 'whenever and as soon as a line of international conduct frequently adopted by States is considered legally obligatory or legally right, the rule which may be abstracted from such conduct is a rule of customary international law'.[184]

Precisely how one is to interpret and balance the two factors of State practice and *opinio juris* is subject to conflicting analyses,[185] but it is commonly recognized that both elements are required. Usage is needed as the source material delineating the content and scope of the proposed rule, while the *opinio juris* is essential in differentiating norms of customary international law from State behaviour embarked upon for

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existed, it avoided the necessity.[45] On the other hand, the tenor of the court's opinion appeared to favour the supremacy of self-determination and therefore the rejection of the Moroccan thesis concerning territorial integrity.[46]

The principle of self-determination itself was defined by the court as 'the need to pay regard to the freely expressed will of peoples'[47] and this was clearly accepted as the crucial point, although consultation could be dispensed with in limited instances.[48] Judge Nagendra Singh regarded consultation on the decolonization process as 'an inescapable imperative',[49] while Judge Dillard referred to the 'cardinal restraint which the legal right of self-determination imposes . . . it is for the people to determine the destiny of the territory and not the territory the destiny of the people'.[50]

II. THE NATURE OF THE 'SELF' AND TERRITORY

The relevant instruments of the United Nations have consistently referred to the application of self-determination to 'all peoples'. Accordingly, some discussion of a 'people' is merited. Sociological dicussions of the nature of a people centre around certain common characteristics, which are reinforced by an awareness of a distinct consciousness. Deutsch writes that by 'peoples' one means groups of individuals bound together by certain complementary habits and characteristics, including language, customs, and history.[51] Scelle noted that the term indicated that legal rights 'may be exercised collectively by any group of nationals of a State without further prerequisites as regards such group than that of the common wish of the individuals of which it is composed',[52] while Cobban held that 'any territorial community, the members of which are conscious of themselves *as* members of a community and wish to maintain the identity of their community, is a nation'.[53] Although this may be acceptable as a guide-line in socio-political theory, it does not necessarily follow that the same concepts should govern the legal definition of a people, since the additional perspective of an international community founded upon the basis of a finite number of territorially based entities called States is involved. This extra factor argues for certainty and stability in the process of State formation as in the protection of the integrity of existing States.

Part of the problem lies in the confusion for terminology apparent in Article 1(2) of the UN Charter. This called for 'friendly relations among

nations based on . . . self-determination of peoples', and the question arose as to whether these terms were interchangeable. Certain delegates to the Commission on Human Rights replied in the affirmative,[54] but others emphasized that 'peoples' was wider than 'nations' since it could comprise all or part of the population of a State or indeed the inhabitants of several States.[55] However, by referring to 'nations' in Article 1(2), the Charter is in essence concerned with States, since this would provide the only likely explanation of Article 1(4), whereby the United Nations was to be 'a centre for harmonizing the actions of nations in the attainment of . . . common ends'.

A trend emerged in later discussions in favour of restricting the notion of 'peoples' to the inhabitants of a particular State or colony, that is, to clearly defined political units.[56] Johnson regarded the use of the term as signifying the desire to ensure that a narrow application of 'nations' would not prevent the extension of the principle of self-determination to peoples who might not yet qualify as nations.[57] However, such discussions failed to reach a clear conclusion and one must turn to State practice to determine the juridical definition of a people.

In Europe, the principle of self-determination centred around recognized nations such as the Magyars, Germans, Poles, and Italians, the aim being to create a sophisticated political structure upon the basis of the nation and thus to ensure the emergence of the national-State and the demise of the multinational empires. As Cobban noted, 'the history of self-determination is a history of the making of nations and the breaking of States'.[58] In actual fact, very few of the colonial borders in Africa coincided with ethnic lines. Each territory tended to contain a multitude of different tribal groupings and each border to split tribes amongst different administrative authorities. For example, the frontiers of Ghana cut through the areas of seventeen major tribes.[59] The Bakongo Kingdom was partitioned between the Belgian Congo, the French Congo, and Portuguese Angola, while the Ewes were to be found in the British Gold Coast, British Togoland, and French Togoland. On the other hand, Kenya included over 200 tribes and Nigeria comprised hundreds of separate groups.[60] All this has meant that in Africa, with few exceptions, one could not establish a newly independent State emerging from within colonially drawn frontiers upon the basis of a unified ethnic self.

Mazrui has attempted to get around this problem by stressing the notion of 'pigmentational self-determination' as the basis for sovereignty in Africa. He has written that 'the right to sovereignty was not merely for nation-States recognizable as such in a Western sense, but for "peoples"

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recognizable as such in a racial sense, particularly where differences of colour were manifest'.[61] This approach leads to the notion of 'racial sovereignty' rather than national sovereignty in discussions of self-determination problems in the States of Africa and Asia. However, it confuses more than it elucidates, for it appears to ignore questions of domination by one people over another of the same race and the dilemma of secession. It has also been contradicted in State practice, in cases of the alleged denial of self-determination to a minority racial group within an independent State, as for example in Southern Sudan.[62] Mazrui's thesis can also lead to severe definitional problems with respect to 'pigment' and 'race'. In any event, it is far too simplistic as a legal tool for analysing the nature of self-determination in Africa.

Umozurike defines the concept of 'people' for the purposes of self-determination in very wide terms indeed. He notes that 'the legitimate "self" . . . is a collection of individuals having a legitimate interest which is primarily political, but may also be economic, cultural or of any other kind'[63] and continues by stating that 'individuals, as peoples, are entitled to exercise rights and enjoy a commensurate share in determining their political, cultural and economic future'.[64] To reconcile this broad approach with reality, he is impelled on the one hand to extend the concept of self-determination to include self-government, local autonomy, merger, association and other forms of participation in government[65] and on the other to declare that the mere assertion of a right to self-determination does not *ipso facto* make the claim a question of self-determination in international law.[66] It is a matter of degree depending upon all the circumstances of the case, particularly the seriousness of the 'abuse of sovereign power, to the detriment of a section of the population'.[67] In other words, whether the claim is one of international law appears to be dependent upon a prior contravention of the principle by the government complained of, i.e. the legal right of self-determination arises upon the abuse of the political principle of self-determination. It is clear that this approach confuses the political and legal principles and appears also to misunderstand the nature of self-determination as developed through international practice. Part of the problem may have occurred because of the linking of self-determination of peoples with individual human rights in the world community, something which tended to downgrade the importance of human rights by the focus upon self-determination as a fundamental human right.

In determining the nature of the 'self' in self-determination, it must be realized that the relevant definition of 'peoples' is not the sociological one

but the legal one. There is a difference, and upon that difference the legal concept of self-determination is predicated. The International Court has pointed to this by noting that the fact that the General Assembly has not consulted the inhabitants of a particular territory in relation to self-determination may be due to the consideration that 'a certain population did not constitute a "people" entitled to self-determination'.[68] International instruments have consistently maintained that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the UN Charter[69] and this would appear to rule out the right of secession from an independent State. In addition, practice reveals that not every 'people' is deemed to have the right in law of self-determination. The legal concept of self-determination is founded upon a particular definition of the 'self' that has emerged in doctrine and in practice this definition is centred upon the non-self-governing territories (and the mandated and trust territories as well). Whether or not the political concept has been infringed may be relevant in a broad political sense, but it has no bearing upon the legal issue. The concept of self-determination has been the legal instrument in the process of ending colonialism.[70]

An early attempt to extend the doctrine of self-determination in international law to all countries occurred in the so-called 'Belgian thesis'. This was a move spearheaded by the Belgians to widen the obligations under Chapter XI of the Charter to include 'colonial situations' within independent States. As was noted, many States oppress groups within their own frontiers by a variety of discriminatory measures, and there seemed to be no reason, it was argued, why such groups could not count as 'peoples [who] have not yet attained a full measure of self-government'.[71] However, this proposition was strongly rejected by the non-colonial powers, who argued that the term 'non-self-governing territories' clearly referred to entities distinct from the metropolitan State.[72]

The terms in which UN resolutions have been expressed have also manifested the rejection of the Belgian thesis. Resoluton 1514 (XV), the Colonial Declaration, emphasized the necessity to end colonialism and called for immediate steps to be taken in non-independent territories to transfer power to the people, while resolution 1541 (XV) noted that 'the authors of the Charter . . . had in mind that Chapter XI should be applicable to territories which were then known to be of colonial type'[73] and declared that 'prima facie' there is an obligation to transmit information in respect of a territory which is geographically separate and

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is distinct ethnically and/or culturally from the country administering it'. Once this has been established, then under Principle V other elements may be brought into consideration. These elements 'may be *inter alia* of an administrative, political, judicial, 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 73(e) of the Charter.' To make the point even clearer, the 1970 Declaration on Principles of International Law (resolution 2625 (XXV)) stipulated that '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.'[74]

The provisions of Article 1 of the International Covenants on Human Rights are, however, more problematic. It is noted that 'all peoples have the right of self-determination'. There exist here a number of possibilities. It may be argued indeed that every group that regards itself as a 'people' may be entitled under international law to 'freely determine their political status and freely pursue their economic, social and cultural development'. But in the sense of permitting such groups to secede from independent States, such an interpretation is not acceptable under international law. If it is understood to mean that such groups are entitled to play a part within the internal structures of States to resolve their own domestic status, this may be acceptable even if in practice grave doubts must exist as to the efficiency of such a principle, particularly where a number of groups exist within any one State. It could be argued that the phraseology of Article 1 is intended to relate only to non-self-governing territories in the sense that 'peoples' could only be interpreted in such a context. The Indonesian representative, for example, noted that it was perfectly clear that in a discussion of the right of self-determination 'the peoples concerned were the inhabitants of colonies administered by foreign peoples, absolutely different in race, culture and geographical habitat. Academic discussions of the definition of such peoples were therefore superfluous, since everyone, especially the administering Powers, knew perfectly well which peoples were aspiring towards self-government.'[75]

Within the context of his study on the historical and current development of self-determination for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN

Commission on Human Rights, Cristescu notes that it would be premature and even presumptuous to provide a definition that would be comprehensive. However, one could point to certain elements of a definition that have been emerging in UN discussions.

These elements are:

(1) that the term 'people' denotes a social entity possessing a clear identity and its own characteritics;

(2) the term implies a relationship with a territory, even if the people in question have been wrongfully expelled from it and artifically replaced, for example by another population;

(3) a people should not be confused with ethnic, religious, or linguistic minorities, whose existence and rights are recognized in Article 27 of the International Covenant on Civil and Political Rights.[76]

These elements, however, raise many questions. In particular, the lack of guide-lines by which to measure a 'social entity', a 'clear identity', and 'its own characteristics'; the lack of any kind of restriction of time or circumstances with regard to the wrongful expulsion of a people from a territory and artificial replacement, a factor which, if taken seriously, could have momentous consequences; and the lack of a proper analysis of the concept of minorities. With respect to the latter point, it may be pointed out that in some cases whether or not a 'people' is a 'minority' depends upon where one draws the territorial line and this is at the heart of many self-determination claims, for example the Somali situation. The problems associated with this may be illustrated by noting the definition given by Capotorti in his 1979 Study on the *Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.[77] He analysed the issue in terms of groups

> numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

While the minority issue has been clearly differentiated from the self-determination issue in UN practice, the difficulty remains of drawing the line firmly between the two and in many cases it is not really possible. Certainly, many claims to self-determination are met with the response

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that the group in question constitutes only a minority and thus is entitled only to this lower-level right.

UN practice on a number of occasions has discussed the right to self-determination in the context of 'colonial domination', 'alien occupation', and 'racist regimes',[78] and it could be argued that the right itself is to be so qualified, but this again raises many definitional problems, particularly relating to the concepts of 'alien occupation' and 'racist regimes'. The confusion inherent here is taken a step further by Gros-Espiel's view in his Report that if 'beneath the guise of ostensible national unity, colonial and alien domination does in fact exist, whatever legal formulation may be used in an attempt to conceal it, the right of the subject people concerned cannot be disregarded without international law being violated'.[79]

This appears to require a probing behind the veil of State independence and sovereignty that would not appear to be acceptable in the current situation of international law.

The current situation would appear to be that, as a legal right, self-determination as leading to modifications in the international status of a territory applies only to an accepted non-self-governing territorial situation. All groups may be entitled to self-determination in the sense of fully participating within the internal constitutional structure of a particular State, but they will not thereby acquire a right under international law to self-determination in the former sense.[80] The possibility exists of developments in the interpretation of self-determination, both in the twilight areas of territories occupied by foreign powers where a basic sovereignty dispute exists and of States where a minority oppresses a majority of a different 'people', and generally with regard to all States, but certainly in the latter case one must pay heed to international practice and accept that that is clearly not the situation at the moment. The people–territory dialectic may open the way in the future for modifications of the basic principle, but that is yet to come.[81]

The problem of defining a 'people', which so engrossed UN delegates in the 1950's in particular, has currently resolved itself for legal purposes, therefore, in a territorial sense. A people in a sociological sense would only be accepted as a people in legal terms for the purposes of self-determination if it inhabited a particular type of territory. The distinction between trust and non-self-governing territories was fundamental in the UN Charter, with differing provisions for each and emphasis upon the former, but it has been of decreasing importance in practice. The call for self-determination has been made regarding both types of territory and the right has been accepted as being equally applicable to both. State

practice reveals that the clarification of the 'self' has been made in clear territorial terms and within a particular temporal framework, i.e. in terms of pre-independent territories. The former proposition will be examined in the light of practice relating to Africa in the following section, and the latter in Chapter 5.

III. THE SPATIAL FACTOR—STATE PRACTICE

The determination of the self in terms of a defined territorial framework raises the question also as to inviolability of the territorial unit as colonially determined prior to independence, since the date at which the territorial 'self' crystallized is of crucial importance, and thus the relationship between self-determination and territorial integrity in the pre-independence situation.

(a) Namibia (South-West Africa)

South-West Africa was awarded to the Union of South Africa as a mandated territory after the First World War under the League of Nations system.[82] In 1946 the League adopted a resolution recommending the termination of its functions as regards mandated territories and noting that Chapters XI, XII, and XIII of the United Nations Charter corresponded to Article 22 of the Covenant of the League, which had dealt with the creation of the mandate system.[83] Following this recommendation and the dissolution of the League, the United Nations requested in resolution 61 (I) that South-West Africa be placed under the trusteeship system and rejected in resolution 65 (I) South African proposals to incorporate the territory into the Union of South Africa. The issue was eventually referred to the International Court which held that South Africa alone was not competent to modify the international status of the territory. That competence rested with South Africa acting with the consent of the United Nations.[84] Liberia and Ethiopia as the two black African member-States of the League sought a declaration from the court that South Africa had broken the terms of the mandate and was thus in breach of international law.[85] The Court decided in 1962 that it had jurisdiction to decide the case on its merits, but in 1966 it held that individual League members had no *locus standi* to sue the mandatory power in respect of its treatment of the inhabitants of the mandated territory and dismissed the case.[86] The problem then reverted to the political organs of the United Nations.

One of the primary objectives of the United Nations in this situation

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has been to preserve the territorial integrity of South-West Africa and prevent South Africa annexing or partitioning it. Assembly resolution 65 (I) firmly rejected any attempt at annexation and this was reinforced by the stand of the International Court in 1950, when the principle of non-annexation was declared to be of paramount importance. However, over the years, South Africa has sought to divide the territory on racial and tribal grounds on a number of occasions. In 1958 the Good Offices Committee, established by the Assembly the previous year in resolution 1143 (XII), issued its Report in which it suggested that some form of partition of the territory involving annexation of part by South Africa and the establishment of a trusteeship over the remainder might provide the basis for an agreement with South Africa.[87]

This was quickly rejected by the General Assembly, which called for full discussion for an agreement 'which would continue to accord to the mandated territory of South-West Africa *as a whole* an international status'.[88] In 1961 the Assembly proclaimed 'the inalienable right of the people of South-West Africa to independence and national sovereignty' and established a UN Special Committee for South-West Africa.[89] However, the government of South Africa proceeded with preparations to divide the territory. The report of the Odendaal Commission was tabled early in 1964 and advocated a series of ten separate homelands for the Africans, three coloured townships, and a white area. However, the bulk of the industrial and mineral wealth would be situated within the European areas.[90] In discussions before the UN Special Committee against Apartheid, it was reported that the objective of the plan 'was seen to be to divide the territory on tribal lines, create Bantustans with small populations and integrate the territory more closely with the Republic (of South Africa)'.[91] The South Africa government in a White Paper of April 1964 accepted the report and endorsed the view that 'it should be the aim as far as practicable to develop for each population group its own homeland in which it can attain self-determination and self-realisation'.[92]

This view was not accepted by the United Nations, which strove to emphasize the territorial integrity of South-West Africa. The Odendaal Report was criticized by the Special Committee on Decolonization as a device to prolong the control of the South African authorities[93] and condemned by the General Assembly in 1965.[94] In 1966, following the decision of the International Court, the Assembly adopted a resolution reaffirming the inalienable right of the people of South-West Africa to self-determination, freedom, and independence and proclaiming that the territory had an international status which it would retain until

independence.[95] The resolution reaffirmed the applicability of resolution 1514 (XV) and terminated the mandate. The intention was that thenceforth South-West Africa would come under the direct responsiblity of the United Nations, and to this end an *ad hoc* Committee for South-West Africa was established.

In resolution 2248 (XXII) the Assembly re-emphasized the 'territorial integrity of South-West Africa' and the right of its people to freedom and independence in accordance with the UN Charter, resolution 1514 (XV), and all other resolutions concerning the territory. A UN Council for South-West Africa of eleven members was established to exercise various powers and functions.[96] The Assembly declared in resolution 2325 (XXII) that South Africa's continued presence in the territory was a 'flagrant violation of its territorial integrity and international status as determined by General Assembly resolution 2145 (XXI)'. However, in 1968 the South African parliament adopted the Development of Self-Government for Native Nations in South-West Africa Act, which was intended to implement the Odendaal Report,[97] and accordingly the Act established certain areas for the different nations and provided for various administrative machinery in each homeland. In pursuance of this policy, legislative and executive councils were created between 1969 and 1972 for the Ovambos, Kavangos, and the inhabitants of the Eastern Caprivi.[98] In April 1968 the Assembly resolved to change the name of the territory to Namibia and condemned the Pretoria government for consolidating its illegal control and destroying the unity of the people and the territorial integrity of the country. Following the Development of Self-Government Act, the Assembly adopted resolution 2403 (XXIII) attacking South Africa for destroying the territorial integrity of Namibia. At this point, the Security Council by resolution 264 (1969) recognized the termination of the mandate by the General Assembly and declared that the actions of the South African government 'designed to destroy the national unity and territorial integrity of Namibia through the establishment of Bantustans are contrary to the provisions of the United Nations Charter'. By resolution 269 (1969), the Council declared that the continued occupation of Namibia by South African authorities constituted an 'aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia'. It also called upon South Africa to withdraw its administration from the territory immediately.[99] By resolution 284 (1970), the Council requested an advisory opinion from the International Court on the legal consequences for States of the continued presence of

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South Africa in Namibia. In its opinion, the court emphasized that the principle of self-determination was applicable to all non-self-governing territories[100] by virtue of the 'subsequent development of international law', in particular resolution 1514 (XV), and the subsequent independence of all but two of the trust territories. The opinion of the court was that the continued presence of South Africa in the territory was illegal and should be terminated. UN members were obliged to recognize this illegality and refrain from actions and declarations implying recognition or lending support to such presence and administration.[101] The opinion was approved by the Security Council in resolution 301 (1971), which also reaffirmed the national unit and territorial integrity of Namibia and condemned all measures by the government of South Africa to destroy that unity and integrity, including the establishment of Bantustans.

South Africa, however, continued to maintain its policy of separate development with the proposed partition of the territory into separate black and white States.[102] In 1973 the South African Foreign Minister appeared to suggest that Namibia might beome independent in about ten years,[103] while the United Nations continued to adopt resolutions proclaiming the right of the people of the territory to self-determination and independence and reaffirming the national unity and territorial integrity of Namibia, as well as criticizing the Bantustan proposals.[104]

In 1975 a Constitutional Conference opened in Windhoek in Namibia with delegates from eleven ethnic groups, but without the participation of SWAPO, the UN-recognized national liberation movement.[105] The aim was to establish a multiracial government to run the territory until independence, which was intended to be the end of 1978, according to a committee of the conference.[106] The conference ended in the spring of 1977, with proposals for a draft constitution with a three-tier system based on ethnicity, not on separate Bantustans. The principle of the territorial integrity of Namibia was thus accepted by the South African-supported conference.[107] However, the ethnically based proposals were rejected by the UN Council for Namibia, which reiterated its support for the struggle of the people under SWAPO's leadership to achieve self-determination and independence and called upon the Security Council to take action.[108] In resolution 31/146, the General Assembly criticized the convening of the conference as an attempt by South Africa to 'perpetuate its colonial exploitation of the people' and impose upon the people a 'bogus constitutional structure aimed at subverting the territorial integrity and unity of Namibia'. This resolution also expressed support for the

armed struggle of the people, led by SWAPO, to achieve self-determination, freedom, and independence in a united Namibia. The International Conference in Support of the Peoples of Zimbabwe and Namibia held in Maputo, Mozambique, in May 1977 rejected all attempts by South Africa to dismember the territory of Namibia.[109] The plan for an interim administration on multi-ethnic lines as envisaged by the Windhoek conference was, however, abandoned by South Africa, and Judge Steyn was appointed instead as Administrator-General for Namibia during the transition period.[110] Assembly resolution 32/9D reaffirmed the terms of resolution 31/146, in particular as regards the need for maintaining the territorial integrity of Namibia.[111]

In the spring of 1978 South Africa announced its acceptance of Western proposals[112] for a settlement in Namibia involving a UN peace-keeping force. However, concern for the territorial integrity of Namibia was evident in the Ninth Special Session of the General Assembly,[113] and in resolution S-9/2, containing the Declaration on Namibia and a Programme of Action, South Africa was urged to respect the integrity of the territory. Namibia was declared to be the direct responsibility of the United Nations until genuine self-determination and independence, and the mandate given to the Council for Namibia as the legal Administering Authority until independence was reaffirmed.

Since 1978 negotiations have continued between the five-nation Western contact group, South Africa, and SWAPO. A variety of proposals have been discussed, with some problems eliminated and other problems, for example the Cuban presence in Angola, appearing.[114] In April 1981 the security Council failed to adopt four draft resolutions which would have imposed comprehensive and mandatory sanctions against South Africa because of its actions regarding Namibia, on account of negative votes cast by the USA, United Kingdom and France.[115] The UN Council for Namibia, however, in June 1981 issued the Panama Declaration, condemning South Africa for its attempts to impose an 'internal settlement', reaffirming free support for SWAPO as the sole and authentic representative of the Namibian people, and stating that Namibia's accession to independence must be with its territorial integrity intact, including Walvis Bay and the offshore islands.[116].

It has been accepted by all parties that the territorial integrity of Namibia prior to independence is to be maintained and that the appropriate 'self' for the exercise of self-determination is to be defined in terms of a united territory of Namibia. It could be argued that Namibia as

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a mandated territory was a special case in this respect, but practice seems to show that the same principle operates with respect to other non-governing territories.

(b) Pre-Independent Kenya and Somali Claims for Self-Determination[117]

Any examination of the Kenya colony and protectorate in relation to its minority Somali population must centre on the strong desire to maintain the territorial integrity of the colony that was clearly manifested both by the British administration and by the colony's emerging African rulers.[118]

The Northern Frontier District (NFD) of Kenya consisted in 1962 of some 102,000 sq. miles in six administrative areas and a population of 388,000, including approximately 240,000 Somalis. These people had gradually migrated southwards over the years and displaced the majority of the Galla tribes, themselves representatives of an earlier Hamitic invasion. In the years preceding 1939 there were many disputes between those of Somali origin and the non-Muslim Gallas which necessitated much stricter military control than was exercised in southern Kenya. After the Second World War there were increasing signs of Somali nationalism, and with the creation of the Somali Republic in July 1960, the Somalis of the NFD began demanding the right to secede from the Kenyan colony and join their brethren.[119] The British Prime Minister, however, declared in April 1960 that 'Her Majesty's Government does not and will not encourage or support any claim affecting the territorial integrity of French Somaliland, Kenya or Ethiopia. This is a matter which could only be considered if that were the will of the Governments and peoples concerned.'[120] This clearly appeared to define such 'governments and peoples' in terms of the whole of the territories involved and not parts of them.

Nevertheless, a delegation from the NFD consisting of pro-secessionist members was invited to the Kenyan Constitutional Conference in London in 1962. They requested autonomous status for the area so that upon Kenya's independence it could join the Somali Republic.[121] A UN plebiscite in the area was suggested, but the idea was rejected. However, a commission was appointed to discover the views of the area's population to various constitutional proposals. This commission reported that the majority of the population supported the secessionist approach.[122] But at the same time, the Regional Boundaries Commission visited the area and a new system of regions was proposed for Kenya, which would split the NFD into three regions: the north-eastern region and parts of the eastern and coast regions. The commission declared that they would have

recognized the SADR and that this constituted admittance by virtue of simple majority. Nineteen States walked out of the conference and the stability of the OAU was gravely threatened.[283]

(m) The British Indian Ocean Territory

The issue of the territorial integrity of the colonial unit in the period prior to independence was also raised with regard to the creation of the British Indian Ocean Territory in 1965. The arrangements were introduced by Order in Council made on 8 November 1965. The territory was to consist of the Chagos archipelago, formerly administered by the government of Mauritius, and the islands of Aldabra, Farquhar, and Desroches, formerly governed by the Seychelles authorities. The aim of the creation of the new colony was the establishment of defence facilities by the UK and USA governments and an Exchange of Notes between the two governments on this subject occurred in December 1966.[284]

Compensation was to be paid to the Mauritius and Seychelles governments, and the figure mentioned with respect to the former was in the region of £3 million. The issue of the level of compensation and the problem of the deportation to Mauritius of the one thousand or so inhabitants of the Chagos archipelago caused considerable controversy, as did the construction of a large American base on the island of Diego Garcia in the archipelago,[285] but the problem to be considered here revolves around the territorial integrity of colonial units prior to independence.[286]

In 1965 the UN General Assembly considered the Mauritius situation and several States emphasized that the proposed arrangement with regard to the Chagos archipelago would be contrary to the 1960 Colonial Declaration and the principle of self-determination. The suggested creation of military bases in particularly aroused opposition. The UK representative denied that any question of splitting up national territorial units was involved since the islands concerned had been uninhabited when acquired and had been attached to the Mauritius and Seychelles administrations as a matter of administrative convenience.[287] However, this argument misses the point about the evolution of territorial units as colonially determined and the consequent right of the inhabitants of that entity as it has developed over time to concretize its existing political status and proceed to self-determination and independence.[288] To disrupt the territorial integrity of colonial units at the pre-independence stage on the basis of the haphazard nature of their original constitution

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would be to undermine the viability and meaning of the principles of territorial integrity and self-determination as they have developed. The General Assembly ultimately adopted resolution 2066 (XX), without opposition, in which it noted that 'any step taken by the administering power to detach certain islands from the territory of Mauritius for the purpose of establishing a military base' would contravene the Colonial Declaration and in particular paragraph 6 thereof. This provision stipulates that any attempt aimed at the partial or total disruption of the national unit and territorial integrity of a country is incompatible with the UN Charter.

The resolution also invited the United Kingdom not to dismember the territory of Mauritius and violate its territoral integrity. A number of succeeding General Assembly resolutions reiterated the proposition that any attempt aimed at the partial or total disruption of the national unit and territorial integrity of colonial territories and the establishment of military bases in such territories was incompatible with the UN Charter and the Colonial Declaration of 1960.[289]

The issue resurfaced in 1980 in response, it would seem, to the growth of the American military presence on the Chagos islands. On 26 June 1980, forty-eight of the seventy-member parliament of Mauritius called for the return of Diego Garcia and this prompted the Mauritius government to take up the issue.[290] At the OAU summit of July 1980 a resolution on the issue, unanimously adopted, declared that Diego Garcia 'had always been an integral part of Mauritius, a member State of the OAU' and that the island be unconditionally returned to Mauritius and its peaceful character be maintainted.[291] The British attitude has been that the Chagos islands were under British sovereignty and that once they were not required for defence purposes they should revert to Mauritius.[292]

On 7 July 1982 an agreement relating to compensation for families moved to Mauritius from the Chagos archipelago was signed by the United Kingdom and Mauritius, in which both sides maintained their respective positions on the sovereignty issue.[293]

The issue raised within the context of decolonization and self-determination is whether the colonial power may alter the territorial composition of the unit concerned prior to independence. It is clear that historically States have been regarded as having sovereignty over their colonial territories and that this would include the competence to modify the extent of the territory of a given unit. Many colonial rearrangements attest to this. However, the development of the right of self-determination clearly introduced constraints upon the authority and capacity of the

colonial power. To permit the administering authority to alter the territorial composition of the colonial entity upon independence would be to undermine the concept of self-determination and would allow the colonial power to affect the choice to be made by a process of territorial severance, irrespective of the potential economic consequences of such a policy.

The Chagos case raises the temporal factor, since the episode took place some three years prior to independence. However, it is clear that the event was part of the process leading to Mauritian independence. Madeley claims that Mauritian independence was made conditional upon agreement to the Chagos archipelago removal from the territorial framework concerned.[294] It could, therefore, be argued that, in the light of the evolution and status of the principle of self-determination by the mid 1960s, the United Kingdom was under an obligation to maintain the existing territorial framework of the colonial unit until independence and that any defence arrangements with regard to Diego Garcia should have been made after Mauritian independence. The one mitigating factor in this case to be noted relates to the apparent acceptance of the arrangement by the Mauritian government from independence and until 1980. A map of Mauritius was prepared during 1980, with the help of an expert from the British Ministry of Defence, which excluded the Chagos archipelago, and an opposition amendment to include the islands was rejected in the Legislative Assembly. Indeed, the Minister for Foreign Affairs was reported as arguing that 'Diego is legally British. There is no getting away from it. This is a fact that cannot be denied.'[295] Following talks with the British Prime Minister on 17 July 1980, the Mauritian Prime Minister in a press conference acknowledged British sovereignty over Diego Garcia (and thus presumably over the whole of the Chagos archipelago) at present.[296]

These factors, coupled with the apparent lack of protest prior to 1980, weaken to some extent the Mauritian case, since they would suggest that they had adopted the 1965 arrangement and might therefore be stopped from subsequently denying the legality of the transaction. Although this would appear to lay a heavy burden upon a poor, newly independent State, it is an important factor to be considered.[297]

(n) The Malagasy Islands

Issues similar in essence to those involved in the Chagos archipelago dispute and in the same geographical region have been raised with regard to the Malagasy Islands of Glorieuses, Juan de Nova, Europa, and Bassas

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da India. These islands are situated in the Indian Ocean between Madagascar and Mozambique.[298]

The Glorieuses islands were acquired by France in 1892 and were administered at first in conjunction with the colony of Mayotte and then together with the Comoros archipelago (including Mayotte) as part of Madagascar. Ultimately the Comoros archipelago was removed from Madagascar in 1946, leaving the Glorieuses islands as a dependence of the latter.[299] The other islands constituting the Malagasy islands complex were acquired in 1897 and were regarded as dependencies of the colony of Madagascar from that time.[300]

On 14 October 1958 the overseas territory of Madagascar became an autonomous State within the French community and on 26 June 1960 it became a fully independent State. However, on 1 April 1960, during the course of independence negotiations, France issued a decree in which it placed the Malagasy Islands (and the island of Tromelin)[301] under the authority of the Minister dealing with overseas *départements* and territories and thereby revoked all earlier and contrary dispositions.[302] In other words, the territorial integrity of the colonial unit was altered and at a very late stage indeed. Since 1960, the islands have not comprised part of an overseas territory or *département* of France, although they have been administered by the Prefect of the Département of Reunion.[303]

France has argued in addition that Madagascar has, since 1960, acquiesced in French sovereignty over the islands, and particularly noted the transmission to it by Madagascar in 1962 of various administrative documents or 'dossiers domaniaux' relating to the islands, Bardonnet's opinion is that the transmission amounted to an implicit recognition of French sovereignty[304] and certainly such a presumption would appear to be raised, particularly since Madagascar did not raise the issue until after a change in government in 1972.

From the mid 1970s, Madagascar began to assert its claim and a telegram in such terms was sent to the UN Secretary-General on 10 February 1976. Recourse was had to both the OAU and the United Nations. In July 1979 the OAU Assembly discussed the issue and called for the return of the islands to Madagascar.[305] In December 1979 the General Assembly of the United Nations adopted resolution 34/91 inviting France to initiate negotiations with Madagascar without delay for the reintegration of the islands in question arbitrarily separated from Madagascar. The Assembly also called upon the French government to repeal the measures which infringed upon the sovereignty and territorial integrity of Madagascar. This resolution was adopted by 93 votes to 7,

with 36 abstentions. The following year, resolution 35/123 was adopted, by 81 votes to 13, with 37 abstentions, calling upon France as a matter of urgency to initiate the negotiations envisaged in resolution 34/91. France refused to recognize the competence of the General Assembly in the matter, stating that the Assembly did not have the power to distribute territories or remodel existing boundaries. The islands had never had an indigenous population and had been acquired during the last century at a time when they were *res nullius*. For Madagascar, the issue was one of incomplete decolonization as well as one of sovereignty, national unity, and territorial integrity.[306]

Thus, a similar question to the Chagos archipelago matter is posed, although the time factor was more drastic in this case. Islands of relatively tiny populations were detached from the colonial units within which they had been administered in the period leading up to independence and after a short period of silence the independent state concerned asserted a claim based essentially on self-determination. As a rule, the need to maintain the colonial unit during the period leading up to independence is clearly a crucial element in the viability of the concept of self-determination, and the arguments based on separate acquisition in the colonial era cannot be permitted to override the territorial integrity of the entity as established in the practice of the colonial State. Further factors may be introduced to modify this and they will be considered briefly in the 'Conclusions' section of this Chapter.

IV. COLONIAL ENCLAVES

One important exception to the proposition that the inhabitants of a non-self-governing or trust territory should have the right to determine their own political structure and future within the colonially defined borders is afforded by that category of small territories known as colonial enclaves. The normal definition of an enclave refers to an area totally surrounded by the territory of other States or the territory of one other State.[307] However, in the case of colonial enclaves, the framework for discussion relates to a relatively small area totally surrounded on the landward side by the territory of one other State, thus allowing for a stretch of coast. This type of enclave is a territory detached by a colonial power from the surrounding territory and placed under the administration of a separate party from that governing the dismembered State. In such cases, the United Nations has adopted the doctrine that the country

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Richard Edis, *Peak of Limuria: The Story of Diego Garcia* (1993)

PEAK OF LIMURIA

The Story of Diego Garcia

Foreword by
HRH the Duke of York

Richard Edis

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Annex 136

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BUCKINGHAM PALACE

I was delighted to be given the opportunity to read this excellent book about Diego Garcia by Richard Edis who was Commissioner for the British Indian Ocean Territory from 1988 until 1991. It makes fascinating reading for anyone who has sailed the Indian Ocean and especially for those who have been fortunate enough to visit the island, as I was when I was serving in HMS Edinburgh in 1988.

I can testify to the remoteness of the Chagos Archipelago and to the low profile of its coast line. When bound for Diego Garcia and after a few days at sea it is a testing moment for a young navigation officer of a warship when confirmation of the accuracy of his work is received barely an hour before the established time of arrival. The low lying terrain is never quite able to express itself as an island paradise but there are rich compensations in the abundance of marine and birdlife. And I am glad to say that the expansion of the military facilities, while adding immeasurably to the strategic role and economy of the island, has not been allowed to interfere with the precious balance of nature.

The sea and maritime affairs have always been and always will be the prime factors in shaping the island's destiny. It is now over twenty five years since the birth of the British Indian Ocean Territory and Richard Edis' eloquent account of the history of Diego Garcia is a timely and informed contribution to the island's records.

the sea, maritime expansion and naval power which have shaped the island's story, as this book will show.

Originally I had in mind only a short booklet but I soon became absorbed in the surprisingly rich amount of original material available about this small island, especially in the archives of the Foreign and Commonwealth Office and the India Office Library, and decided to produce a more comprehensive work. Essential for anyone who wants to go deeply into the history of the area as a whole is Sir Robert Scott's beautifully written book *Limuria*, which was published in 1961 in Britain and reprinted in the USA in 1974. Sadly it is now out of print but should be available in good reference libraries.

Although my book touches only briefly on natural history, the bibliography mentions several works on this subject, an appreciation of which can considerably enhance enjoyment of the island. The most comprehensive of these is *The Geography and Ecology of Diego Garcia* by Stoddart and Taylor. Although not specifically about Diego Garcia, David Bellamy's *Half of Paradise* about two scientific expeditions to other islands in the Chagos Archipelago is very readable.

This study is dedicated to all those whose lives have been touched in some way by this wonderful island. The proceeds from the sale of this book will go to the protection and promotion of Diego Garcia's natural and historical heritage.

RICHARD EDIS

June 1993

Preface

The idea for this book came to me when I was out for a run, a practice I have pursued with pleasure along jungle paths on my frequent visits to Diego Garcia. During such visits I found among the people who were working there an appetite for knowledge about the island's past, which I hope that this modest study will help to satisfy. I hope it will also serve as a souvenir of time spent there for the thousands of men and women who have lived on or visited the island. Now that the name Diego Garcia has become known internationally because of the present military facility, there may be wider interest too.

It might be assumed that, apart from the area developed as a naval facility in recent years, the Chagos Archipelago is a paradise largely untouched by human hand. While it is true that the reef and marine life surrounding the islands is uniquely rich and unspoiled, the land itself and the wildlife on it have been altered drastically by human agency over several centuries. From the dawn of the modern age the islands, and Diego Garcia in particular, have been washed by the tide of world events and touched by the ebb and flow of empires. Not surprisingly in view of their location it has been

the sea, maritime expansion and naval power which have shaped the island's story, as this book will show.

Originally I had in mind only a short booklet but I soon became absorbed in the surprisingly rich amount of original material available about this small island, especially in the archives of the Foreign and Commonwealth Office and the India Office Library, and decided to produce a more comprehensive work. Essential for anyone who wants to go deeply into the history of the area as a whole is Sir Robert Scott's beautifully written book *Limuria*, which was published in 1961 in Britain and reprinted in the USA in 1974. Sadly it is now out of print but should be available in good reference libraries.

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RICHARD EDIS

June 1993

I

A Laurel on the Sea

Diego Garcia is the largest of more than 50 islands that make up the Chagos Archipelago, which constitutes the present extent of the British Indian Ocean Territory (BIOT). The Territory is the sole remaining dependency of the Crown in the region and is situated near the geographical centre of the Ocean from which it takes its name.

The Chagos Archipelago is one of the most far-flung areas of the globe outside the polar regions. Diego Garcia lies roughly 7 degrees south of the Equator and 72 degrees east of Greenwich. The Chagos are separated from the nearest land by huge expanses of ocean, 'utterly lost in the great water wastes: star land in sea space', as the writer Alan Thompson poetically described them.[1] The southernmost Maldives lie 400 miles to the north, the Cocos-Keeling islands 1500 miles to the east, the Seychelles 1000 miles to the west and Mauritius 1200 miles to the south-west. Over 2000 miles to the south lie the bleak windswept islands of Amsterdam and St Paul. All these islands are themselves outposts in the immensity of the Indian Ocean.

The remoteness of the Chagos is best appreciated when the approach is made by sea. Yachtsmen, fishermen and the crews of warships and supply vessels still make the trip.

Whether by sail or steam this involves a voyage of many days with nothing but ocean and only seabirds, dolphins and flying fish for occasional company. Another vessel is a rare sight indeed. Otherwise, there is only the long swell, the approaching squall and the theatre of sunset and sunrise to break the monotony.

A dozen or so miles from Diego Garcia a low line is scarcely discernible which gradually comes into focus as a fringe of coconut trees and a white line of breakers on the reef. From the north, the only entrance to the lagoon, Diego looks like a string of small islets, each with its crown of high trees. The scene has scarcely changed today from the sketches made by eighteenth-century naval officers to guide future mariners making their landfall. As a vessel approaches the Main Pass, it becomes apparent that there are three small islands masking the mouth of the lagoon and that what appear to be two other islands are the embracing arms of a huge atoll. The air is full of frigate birds, boobies and terns. The vast lagoon, 13 miles long by $4^1/_2$ miles across, stretches far away into the distance, forming a small inland sea, a little world turned in on itself.

Describing the scene in 1885 in terms that remain true to this day, the naturalist Gilbert Bourne said:

> On a fine day, the varied colours of the still waters of the lagoon, the low-lying strip of land covered with vegetation of a vivid green, the dazzling strip of white sand which borders the shore and the clear sunny sky, will afford a picture which will not easily be forgotten.[2]

The sea was the traditional way to approach Diego Garcia. Nowadays the more usual way is by air from the Gulf, Singapore or Mauritius. Although crossed infinitely more swiftly, the vastness and emptiness of the ocean still impress and intimidate through the aeroplane window. Massive, towering clouds make stately progress like the billowing sails of galleons. The sea below is an opaque dark blue. Suddenly there is the excitement of sighting land after many hours over

nothing but water. 'A laurel on the sea, a circle of bursting, startling green', a Second World War soldier-poet described it.[3]

Indeed what the traveller notices at once from the air is the dramatic shape of the thin necklace of land, which appears little more than an outline of a pencil mark on the ocean. Of all the atolls in the Chagos Archipelago, Diego Garcia is the most perfect, forming a shaky V-shape extending about 15 miles from north to south and with a distance of about 35 miles around the circumference from tip to tip. Visitors have called forth various images to describe its shape. The early nineteenth-century Mauritian historian, Charles Grant, the Viscount of Vaux, described it as being 'in the form of a serpent bent double'.[4] The eighteenth-century French cartographer, Abbé Rochon, said more prosaically that it 'resembled a horseshoe'.[5] Its more recent, late twentieth-century American residents have likened it to the outline of a footprint in the sand, with the islets at the mouth of the lagoon forming the toe-marks.

From the air, the vivid contrast between the varying blues of the lagoon, lighter, and with more green, than the dark blue indigo of the surrounding ocean, is apparent. It is also possible to make out on the upper western arm of the island the wide apron of the airfield, neatly arranged low-lying buildings, antennae in extensive aerial farms, ships at anchor in the lagoon and, as the plane makes its final approach, the roofs of the old plantation buildings peeping out of the vegetation on the eastern side.

Travellers arriving today in Diego Garcia, whether by air or by sea, must first be processed by British India Ocean Territory Customs, in their smart and functional sand-coloured uniform of desert boots, long socks, shorts, shirt and beret with the Crown and palm tree badge. The red telephone box at the airport entrance is a further reminder that this is British territory. However, the drive along the fine road leading from the airport or the fleet landing jetty to the Downtown area on the north-west tip of the island is

reminiscent of the Florida Keys and a reminder that the present residents are predominantly American.

The road runs through immaculately groomed grass verges, past the civilian workers' accommodation, the British Club, the sports fields and other recreational facilities, the fire station and the Cable and Wireless building with its satellite dish, to the impressive, white, headquarters building overlooking the lagoon, outside which the Union Jack and the Stars and Stripes fly side by side. Not far away stands the BIOT police station with its traditional blue British police lamp and the distinctive wavy blue and white BIOT flag flying outside.

The Downtown area, containing the quarters of the military personnel, has all the facilities of a small town, including an interdominational place of worship, shops, eating-places, a swimming pool, a bowling alley and a bus service. Everything is beautifully laid out with ample lawns and carefully planted decorative trees and shrubs. Incongruously, broods of wild chickens peck their way nonchalantly between the buildings, and the occasional feral cat is to be seen padding about. Madagascar fodies flit from tree to tree, red-capped if in mating plumage. The human residents, American, British, Filipino and Mauritian, military and civilian, male and female, make their way about on buses, bicycles and on foot, in the last case often in jogging kit. Near the northern tip is Cannon Point, where two 6-inch guns still point out to sea, as they have done since 1942.

As you drive south down the island beyond the airfield, the buildings and facilities begin to thin out. A poignant reminder of the past is the well-maintained cemetery near the old settlement of Point Marianne, containing the resting place of earlier islanders as well as graves from the Second World War. It now contains a monument to those who fell in a more recent conflict, that of the Gulf in 1991. The thick vegetation that lines the road on either side conceals the narrowness of the land and lends a deceptive air of spaciousness as the ribbon of the road unfolds. There are only occasional glimpses of the calm waters of the lagoon on the

one side and the breakers on the reef on the ocean side, even though these are at some points separated by only 100 yards. Large land crabs scuttle across the road, which is scattered with the shells of those who lost the game of chicken with vehicles.

Half way down the western side, beyond the Donkey Gate, which is designed to keep the animals clear of the runway, wild donkeys, alone or in groups, begin to appear. They are especially numerous in the extensive grassland areas around the transmitter antennae near the southern bend of the island, looking for all the world like game on the African plains. Near the transmitter site is Turtle Cove, where small lemon sharks and turtles can be seen swimming in the clear water of the narrow channel leading from the lagoon to a large, enclosed, swampy area known as Barochois Sylvaine.

The road becomes unpaved coral as it leaves the area set aside for military purposes near the bottom of the eastern arm. It passes at first through fairly open coconut groves but the vegetation thickens markedly as it approaches the old plantation area at East Point.

East Point is a completely different world from the Downtown Area. Here are the remains, which the British authorities are trying hard to preserve, of a plantation society which lasted for two centuries. The manager's elegant *château*, recently restored, dominates the plantation square and faces the old jetty, cross and flagstaff by the lagoon shore. Around it stand the plantation chapel, itself also recently restored, the jail, the blacksmith's shop, the store, the hospital, copra mills and the remains of the copra drying sheds. The orange blossoms of a flame tree and pink and white ground flowers add colour to the scene. On the shore lies the remarkably intact wreck of a Second World War Catalina flying boat, still shining silvery in the sun. Farther up there is the morgue and behind it a macabre 'bleeding stone' where corpses were drained of their blood, around which the moss seems to grow with especial luxuriance. Nearby is the old graveyard with tombs from far back into the nineteenth century. The last

burial, that of a small child, dates from 1971 just before the evacuation of the plantation.

Beyond East Point the road becomes no more than a track, heavily encroached on by the vegetation. After the brooding remains of the old settlement of Minni Minni, now almost lost in heavy vegetation and thick with moss and ferns, the track reaches Barton Point. This is the extreme north-east tip of the island and is a distance of about 37 miles by road from the north-west tip at Simpson Point. There is a fine beach of white sand between Barton Point and Observatory Point, studded with shells of all shapes and sizes, many of them occupied by small hermit crabs, and pieces of white, pink, green and blue coral. In the waters offshore, the coral heads of the reef are host to a myriad of fish.

Opposite Barton Point lies East Island, the largest of the islets at the mouth of the lagoon. It is designated as a nature reserve and is the home of large numbers of red-footed boobies which roost in the vegetation, and ferocious-looking giant crabs, which lurk in holes in the interior. The remains of buildings and machinery from the coaling station era are also in evidence there. Middle Island has a small interior lagoon of murky water from which you half expect some sea monster to erupt as a tidal surge makes itself felt.

Beyond the extensive reef around Middle Island, known as Spurs Reef, lies the deep-water channel of the Main Pass, on the other side of which is the small scrap of West Island and so back to Eclipse Point. There are few finer places to be on a clear, balmy night under the palm trees, the dark-blue velvet sky alight with stars, and the waves breaking translucent white in the moonlight on the reef.

II

Takamakas, Turtles, Corals, Coconut Crabs, Shearwaters and Sharks

Diego Garcia is a low-lying tropical atoll with an average elevation of only 6 feet above sea level. The maximum natural elevation is around 25 feet in dunes near Point Marianne. If the greenhouse theory of atmospheric warming with a consequent rise in sea level is valid, the Chagos group, like the neighbouring Maldives, must be one of the places in the world most vulnerable to its impact. So far, however, there is no sign of significant encroachment by the sea and indeed the land area has shown considerable stability since it was first mapped accurately more than 200 years ago.

The surface area of Diego Garcia is not much more than 10 square miles. The island is composed entirely of coral rock. Some pumice rock found near Barton Point is likely to be debris from the explosion of the Mount Krakatoa volcano in the East Indies (now Indonesia) in 1889. There is a layer

of poor soil which in places barely covers the underlying coral but in more heavily vegetated areas has a depth of a couple of feet of peaty earth. The typical profile across the island starts on the ocean-side reef with a wide, eroded, sea-washed platform of dangerously sharp rock, a scattering of boulders and a narrow, sandy beach. There is a steep ridge at the edge of the land which then slopes gently downward to a less pronounced ridge and another sandy beach on the lagoon-side. In places the land is indented on the inside rim by depressed areas with narrow entrances which flood and drain on each tide and are known as 'barochois'. Particularly extensive barochois are found in the south and south-east, such as Barochois Maurice and Barochois Sylvaine.

Diego Garcia is the wettest tropical atoll in the Indian Ocean and experiences average rainfall of over 100 inches a year. Gilbert Bourne, visiting in 1886 observed: 'it would be scarcely beside the truth to say that rain may be expected every day; that at least was my experience.'[1] If not quite true, it is rare for there to be periods of more than a few days without rain, which comes in short, intense downpours, which race as squalls across the lagoon. There is consequently a high water-table of surprisingly unbrackish water, taking into account the proximity of the sea on every hand. The explanation, which was discovered quite recently, is that there are extensive 'water lenses' in Diego Garcia, caused by fresh water, with its lower specific gravity, floating on top of the sea water which permeates the ground at a lower level. These fresh-water lenses are readily tapped by shallow wells. There are few natural bodies of standing fresh water above ground but rainwater gathers sufficiently after the frequent down-pours to provide adequate drinking water for wildlife.

The climate of Diego Garcia was described by an early visitor Charles Pridham, in 1846, in the following terms: 'there is almost continually a delightful freshness and softness in the atmosphere, and although very hot in the sun, the air where there exists any shade is cool and the nights invariably very pleasant.'[2] Temperatures generally range between the upper seventies and the mid-eighties Fahrenheit (25°–28°C).

There is a high level of humidity but it is ameliorated by frequent breezes and is less stifling and enervating than elsewhere in comparable latitudes. The island is also mercifully free of unpleasant tropical manifestations such as malaria.

There are distinct if marginal variations of season in Diego Garcia which are governed by changes in the predominant winds, which in turn govern the direction of the currents. From December to March the wind blows mainly from the north-west under the influence of the monsoon, which brings hotter temperatures (an average of 85°F/28°C) and heavier rainfall (a mean of over 12 inches in January). In April and May there is a transition in the prevailing wind from the west to the south-east. From June to September the south-east trade winds blow and the weather is cooler (79°F/26°C) and relatively drier (6 inches of rain in June). October and November is another period of transition, with variable wind directions. Diego Garcia is fortunate to lie between the northern and southern cyclone belts in the Indian Ocean, so avoiding the storms which periodically devastate Mauritius, Reunion and Rodrigues to the south and the coast of the Indian sub-continent to the north. However, the tail of a cyclone will occasionally clip the island, usually during the period of the south-east trades.

Behind the rhododendron-like 'scavvy' thicket (*Scaevola tacada*) which fringes the shores, the vegetation of the island is now dominated by coconut trees, either of self-sown 'cocos bon dieu' (God's coconuts) or the cultivated variety established in the plantation era. Early historical accounts suggest that this was not always so and that much larger areas were covered by broadleaf trees. Impressive varieties of the latter which survive individually or in clumps around the island are the white wood tree (*Hernandia sonora*), the rose or mapou tree (*Barringtonia asiatica*) and the takamaka tree (*Calophyllum inophyllum*). The white wood tree can grow to a height of 60 feet and has small, cream-coloured flowers. The rose tree is even taller and has a massive girth. It has leaves 18 inches long and its flower of four white petals, with a mass of slender pink stamens protruding from the centre, gives

off a heavy scent. The flowers last only from dusk to dawn of a single night but when fallen they spread a fragrant carpet round the tree. The seed husk of the rose tree has a characteristic square shape, designed, like a coconut, to be waterborne. The takamaka grows slowly into a giant oak-shaped tree and is supported by a widespread network of roots above ground. It has shiny leaves with fine parallel veins, a small, delicate flower with a clump of yellow stamens at the centre and fruit like a large gooseberry. The wood of the takamaka is excellent for boat-building and has been used as such around the islands of the Indian Ocean to construct traditional craft such as pirogues.

A number of other impressive trees were introduced in the old plantation areas, such as the giant fig trees at Point Marianne and Minni Minni and the breadfruit trees at East Point. It is not clear when the ironwood tree (*Casuarina*), with its needle-like leaves and pine-like appearance, was introduced. Its seeds are very resistant to sea-water and it is possible that they arrived originally on drifting branches. However, it is now spreading widely in the areas where construction has taken place because of its liking for disturbed soil. Its ability to extract and fix nitrate from the soil gives it an advantage over other vegetation. Numerous other exotic flora – fruit trees, shrubs, flowers, vegetables and grasses – were introduced in the plantation era and more recently for decorative and dietary purposes. Both the amateur and professional botanist will find Diego Garcia a happy hunting ground.

Diego Garcia also holds delights for the ornithologist. At least 35 species of bird have been identified. The bird population has been subject to vicissitudes over the years. Before the arrival of man there were probably enormous colonies of seabirds and also possibly some native species of landbird. Human activity had a devastating effect on the bird life. The vegetation was, as we have seen, transformed by the cutting down of much of the natural broadleaf woodland and its replacement by coconut trees. Worse still, predators were introduced in the form of rats, cats, dogs and, of course,

man himself, for whom birds were a source of meat, eggs and feathers.

The closing of the plantations and the rigorous conservation policy of the BIOT administration may well have led to a revival of a number of species which had become rare or disappeared from the island altogether. Today, long-standing winged inhabitants of Diego Garcia which can be termed indigenous include various sorts of terns, noddies, boobies, frigates and green herons. The island is also a staging post for migratory birds such as shearwaters, turnstones, plovers, sandpipers, whimbrels and perhaps storm-petrels on their way between breeding areas and wintering areas around the Indian Ocean. Land birds introduced from Madagascar, Mauritius, Seychelles and India since the nineteenth century include fodies, Madagascar turtle doves, cattle egrets, barred ground doves, mynahs and the domestic fowl which now run wild. Many of the birds of Diego Garcia are beautifully portrayed on the 1990 definitive set of British Indian Ocean Territory postage stamps.

There are no indigenous mammals in Diego Garcia and no sign that any ever existed. Of those introduced in the plantation era, which included horses, cattle, sheep, pigs and dogs, only donkeys, cats and rats have survived and thrived. The wild donkeys could perhaps in due course evolve into a distinctive breed, the Diego donkey. An imaginative proposal to introduce the endangered Rodrigues fruit bat to the island has, for the moment at least, been abandoned.

If Diego Garcia has a native 'king' species it should surely be the giant coconut or robber crabs. Their Creole name is *cipaye* or *sipaille*. The coconut crab has a mottled purplish appearance and can grow to 3 feet across. Their enormous pincers can rip open a coconut husk. They are nocturnal creatures but can be found in the day skulking in holes in the ground or under fallen vegetation. They should be treated with great respect – a writer in 1802 noted that their pincers could snap off the iron tips of walking sticks – but if approached from the right direction (the rear), can be picked up. This, however, requires strong nerve. Other crabs,

the land crab and the fiddler crab, energetically excavate sandy areas, including in the barochois. On the beach, most shells on examination are found to be occupied by hermit crabs and immature coconut crabs.

There are a couple of types of lizard or, more accurately, geckos on the island, at least one species of toad, but no snakes. Despite the presence of African bees, hornets, several variety of spider and one of scorpion, the main hazard when walking or jogging in the jungle of Diego Garcia is not creepy-crawlies but being hit on the head by a falling coconut. Five per cent of the identified insect specimens, including a butterfly, are unique to the island and there are doubtless more still to be discovered.

If land fauna on Diego Garcia is admittedly fairly limited, marine life is exceptionally rich. As Gilbert Bourne wrote in 1886, 'to describe the immense and varied marine fauna that abounds around this island requires a paper on natural history'.[3] Spectacular visitors to the shore are two varieties of large marine turtle, the green and the hawksbill. Their life span is 150 years and they only start breeding when they are 50. After mating at sea the females come ashore on the high tide in different seasons according to species, the hawksbill during the north-west monsoon and the green during the south-east trades, and lay their numerous eggs, which look like table-tennis balls, in the sand. The turtles were formerly hunted for their flesh and their shells by the islanders but they are now protected by law and it seems likely that these endangered species are increasing in numbers around the Chagos. Appropriately, the green and hawksbill turtles are supporters on the BIOT coat of arms. Smaller species of turtle live permanently in the lagoon, especially at the southern end.

The deep ocean beyond the reef supports dozens of species of fish. There are 14 types of shark alone, including the white, grey, tiger, hammerhead, white tip, black tip, nurse and sand shark. Tuna, especially the big eye, yellowfin and skipjack varieties are present in huge quantities. Prized game fish such as the wahoo, marlin, swordfish, kingfish, sunfish,

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mahi mahi, bonito, dorado and barracuda are commonly found. The BIOT administration took steps in 1991 to conserve fish stocks in what is probably the least exploited area of the Indian Ocean by introducing a licensing regime in a 200 mile zone around the Chagos. Sperm whales, which breed to the west of the islands, and dolphins receive specific protection.

Richest of all from an ecological point of view is the reef, which teems with a vast variety of life. The living coral itself is Diego Garcia's chief natural glory and indeed the cause of its very existence. The Chagos Archipelago constitutes one of the great reef systems of the world and probably the most pristine. About 100 species of coral, some very rare, have been identified around Diego Garcia and in its lagoon.

The coral animal itself is a primitive organism known as a polyp. It is akin to a sea anemone and the calcium it extracts from sea-water gradually builds up into a variety of remarkable shapes and sizes. The evocative names given to the differing structures formed give a good idea of their appearance: staghorn, organ-pipe, brain, table, mushroom, moss and so on. The shape of coral rock formed is influenced by the depth at which it grows. The range of colours – yellow, green, pink, blue, violet, brown and grey – is derived from the minute plants which live inside the polyps.

Reef-building corals are delicate and choosy organisms. They are found in a belt around the world in the Indian Ocean, the Pacific and the Caribbean 30 degrees either side of the Equator where the sea temperature is below 100°F (37°C) and above 68°F (20°C). Corals need the right amount of oxygen and salinity in the water. They cannot grow above water and because they need light will not grow much below 150 feet in depth. They like water that is somewhat disturbed but not rough. Consequently, the reef corals are less luxuriant on the south-east side of Diego Garcia which is most exposed to storms.

There are living coral reefs both around and inside the lagoon of Diego Garcia. These are alive with literally hundreds of varieties of small, brilliantly coloured tropical

fish such as are found in aquariums all over the world, as well as the larger grouper, snapper, jack, emperor, trevally, moray eel, sting ray and manta ray. Seaweeds in a multiplicity of forms, sea cucumbers, octopuses, crabs, lobsters and small turtles add to the variety. Underwater swimming is a constant delight in Diego Garcia, although in addition to watching out for sharks an eye must be kept open for the sinister stone fish and the scorpion fish with their poisonous spines.

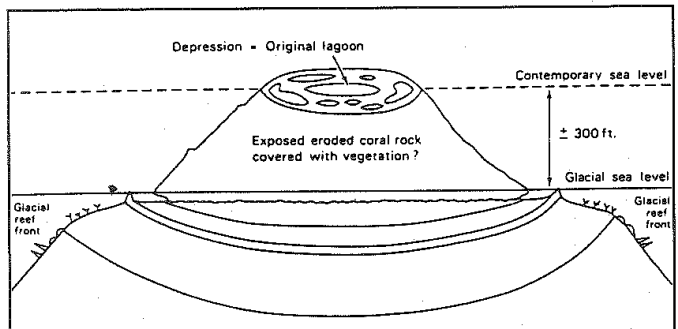
III

From out the Azure Main

Diego Garcia and its sibling islands comprise all that remains above sea-level of huge underwater mountains of volcanic origin which rear dramatically from the ocean bed 10,000 feet or more below. The romantic appellation for these islands is the 'Peaks of Limuria'.

Limuria is the name given to the ancient continent which used to exist in the middle of the Indian Ocean, a sort of Indian Ocean Atlantis. This lost continent was probably created as a result of apocalyptic volcanic activity 130 million years ago as the land mass of what is now India gradually drifted away from Africa. Even now seismic activity is common in the area. A severe earthquake is reported to have occurred in Diego Garcia in 1812 and there was another major one elsewhere in the Chagos Archipelago in 1913. An earthquake measuring as high as 7.6 on the Richter Scale struck Diego Garcia in November 1983. Although causing limited damage to buildings, it ruptured some of the underground fuel lines. Earthquakes of 6.0 or above on the Scale occur regularly. There have been a dozen such occurrences since 1940. Luckily the lack of a wide surrounding platform of shallows precludes the building of tidal waves as a result of seismic activity.

It seems likely that over the aeons of time the sea level in the Indian Ocean waxed and waned as a result both of uplift and subsidence, and of the periodic ice ages which locked up water in the icecaps. Because of the sea level changes during this period, the underlying peaks of basalt became overlaid with coral limestone to a depth of as much as a mile. Only 17,000 years ago, at the end of the last ice age, the sea level was 300 feet lower than at present. This would have meant that, where there are now only banks and atolls, a vastly larger area of dry land would have existed, including the whole of the present Chagos Bank and large adjacent islands.



ARTIST'S IMPRESSION OF A CONTEMPORARY ATOLL DURING THE GLACIAL PERIOD

(From book Half of Paradise by Professor David Bellamy)

We cannot know what type of vegetation flourished then or what sort of wildlife roamed the land because, as the Polar icecaps melted, the sea swept in like Noah's flood. The land may well have been entirely submerged. As Lord Tennyson wrote as he came to grips with dawning scientific reality in his poem *In Memoriam,*

> There rolls the deep where grew the tree,
> Oh earth what changes hast thou seen![1]

Certainly no trace of pre-Holocene, that is before the last ice age, flora and fauna remains, in contrast to the larger land masses in the Western Indian Ocean now comprising Madagascar, Mauritius, Reunion and Seychelles, which had sufficient elevation to avoid being totally engulfed. In these places weird and unique forms of life such as the lemur and, until hunted to extinction, the dodo survived. In fact, the limited range of land flora and fauna in the islands of the Chagos Archipelago suggests that in their latest form they emerged from the sea perhaps only a couple of thousand years ago. Like Britain in the song 'Rule Britannia', Diego Garcia literally 'at heaven's command arose from out the azure main'. Given no further significant changes in sea level during this period and the lack of evidence of major movements of the earth's crust in the area, how could this happen?

The solution to the mystery was first put forward by no less an authority than Charles Darwin, the great nineteenth century natural scientist and author of *The Origin of the Species* which fundamentally altered man's view of the world. In 1842 Darwin published a work called *The Structure and Distribution of Coral Reefs*, which was based on the observations he carried out during his epic four-and-a-half year voyage around the globe on HMS *Beagle*. One of the *Beagle*'s missions was to take soundings around coral islands and to determine if the atolls sat on the summits of extinct volcanoes. Darwin and the *Beagle* visited the Cocos-Keeling Islands and Mauritius in the Indian Ocean but, impatient to return home after such a long voyage, did not call at the Chagos group. However, Darwin drew extensively in his book on coral reefs on a thorough scientific survey of the Chagos, and Diego Garcia in particular, carried out in 1837 by Captain Robert Moresby. As he acknowledged in the preface:

> I must most particularly express my obligations to Captain Moresby, Indian Navy, who conducted the survey of the archipelagos of low coral islands in the Indian Ocean.

According to Darwin's theory, as the sea level rises, the living coral grows up too, keeping pace with and just below the surface of the water. On to this submerged platform wash boulders of dead coral and sand, forming a bank which builds up above high water. Once a dry bank is established it begins to be colonised by seeds of plants and trees borne on the ocean currents. The predominant current washing the Chagos Archipelago is the Malabar current coming from the direction of South-East Asia. It is therefore not surprising that most of the indigenous flora on the islands is of Asian origin. Of these, the key to stabilising the newly emergent islands will have been *Scaevola tacada*, commonly known as 'scavvy' in Diego Garcia, which thrives in sand and does not mind some contact with salt water. It forms a strong and impenetrable thicket along shorelines just above high water. Because of their buoyant water-borne husks the coconut and the rose tree will have been among early trees to establish themselves. Ironwoods and the creeper *Caesalpina bonduc* may have arrived as sea-borne seeds floating on vegetal debris. Birds, which can migrate huge distances across the ocean, will also have been the agents of colonisation by bringing seeds on their bodies. And their droppings, forming guano, will have helped enrich the poor mixture of sand and coral and thus encouraged further growth of vegetation, which in decay also fertilised the ground.

As Darwin recognised, Diego Garcia is unusual as an atoll in that almost the whole reef around the lagoon has been converted into land, 'an unparalleled case, I believe, in an atoll of such large size', he observed.[2] It seems likely that the present island is the result of the merging of a number of smaller islands that established themselves on the reef. The narrowness of the land at various points and the undeveloped nature of the vegetation, especially on the eastern arm of the island north of Minni Minni, suggests that some of the various individual islands which originally existed were joined up only comparatively recently. This could eventually happen between Eclipse Point and West Island. And a new island is forming at the mouth of the lagoon to the west of Middle

Island at the north-western end of Spurs Reef. This islet was given the name Anniversary Island in honour of the 25th anniversary of the establishment of the British Indian Ocean Territory in November 1990. If it survives, it will be interesting to see how quickly it is colonised by 'scavvy' and coconuts.

Darwin's theory of the origin of atolls is still accepted, although he seems to have been misled by some of Moresby's data to conclude that the Chagos was a dying group of coral atolls sitting on top of subsiding submarine mountains. He does not appear to have taken into account the effect of rises and falls in sea level because of periodic ice ages. He later acknowledged Gilbert Bourne's work on the subject and conceded that in the case of Diego Garcia there was no evidence of subsidence.

The fact that a minute marine creature could be responsible for the creation of solid land can still amaze today as much as it did the great scientists who discovered the phenomenon. Darwin wrote:

> Everyone must be struck with astonishment when he first beholds one of those vast rings of coral rock, often many leagues in diameter, here and there surmounted by a low verdant island with dazzling white shores, bathed on the outside by the foaming breakers of the ocean, and on the inside surrounding a calm expanse of water which from reflection is generally of a bright but pale green colour. The naturalist will feel this astonishment more deeply after having examined the soft and almost gelatinous bodies of those apparently insignificant coral polypifers, and when he knows that the solid reef increases only on the outer edge, which day and night is lashed by the breakers of an ocean never at rest.[3]

Bourne echoed the same sentiment on visiting Diego Garcia itself in 1885:

> The most unimaginative person will not fail to be struck with wonder that the vital activity of animals so low on

the scale as coral polyps has been sufficient to raise up this island above the waves and to maintain it there in spite of the increasing wear and tear to which it is subject from the restless waves of the great southern ocean.[4]

IV

Discovery

The Chagos islands may well have been untouched by human footprints from their formation until the dawn of the modern era. It is possible that the Malagasy may have visited the islands as they made their way around the Indian Ocean from present-day Indonesia to their future home in Madagascar in the early days of the Christian era. It has been suggested that it was they who introduced the coconut and that the old Maldivian name for the islands was of Malagasy origin.[1] The Arabs who reached the Laccadive and Maldive islands immediately to the north in the ninth century may have had some inkling of islands to the south. And a remarkable Chinese expedition during the Ming Dynasty commanded by Cheng Ho, the Great Eunuch of the Imperial Palace, would have sailed close to the Chagos in 1413–15. However, if any of these intrepid voyagers did visit the islands, we shall never know for they left no mark or record.

What is certain is that the Portuguese sighted and named the islands in the early sixteenth century. In the course of the fifteenth century, the traditional route through the Eastern Mediterranean, the Red Sea and the Persian Gulf to the Asian sources of luxuries which Europe sought was blocked

by the expansion of the war-like Ottoman Turks. Driven by a mixture of crusading zeal and mercantile enterprise, the Portuguese pioneered an alternative sea route around Africa to India and the Spice Islands in the later fifteenth and early sixteenth centuries. Their route lay across the Indian Ocean.

The actual discoverer of the islands was probably Pedro Mascarenhas, after whom the Mascarene group of islands comprising Mauritius, Reunion and Rodrigues is named. It was the custom of the Portuguese explorers to call newly discovered islands after either captains of vessels or saints' days. There were fleets to the Indian Ocean in 1509 and 1512 commanded by Diego Lopes and Garcia de Naronha respectively. It is tempting to assume that some combination of these names was applied to the largest of the islands that they stumbled on in their caravels and *nãos* far out in the Indian Ocean. According to another account, a Spanish navigator actually named Diego Garcia visited the island in 1532.[2] However, the origin of the name can be no more than speculation. Early maps give a variety of other names including Gratia, Graciosa, Don Garzia and Chagos island. The existing name only became definitive towards the end of the eighteenth century. The Portuguese names for other groups in the Archipelago also stuck, Peros Banhos, and Three Brothers, which is a translation of the Portuguese 'Três Irmãos'.

The only evidence found in Diego Garcia of Portuguese visits are the roof tiles brought up by divers from the floor of the lagoon in Rambler Bay. It was the custom to carry such items on the outward voyage from Portugal as ballast which could be put to good use on arrival before loading up with spices, calicoes, muslins and chinaware for the return trip. There may well be Portuguese wrecks in other parts of the Archipelago. One fairly well-documented case is that of a *não* (a type of sailing ship of about 500 tons, named the *Conceição* (*Conception*) which was outward bound from Lisbon to Goa in India with a cargo of jewels, gold and silver in 1555 when it ran aground on the reefs of Peros Banhos.[3] The captain Francisco Nombre and other officers appropriated

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East Point chapel. *(NSF Fotolab, Diego Garcia)*

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Lagoon just before sunset. *(Dan Layman)*

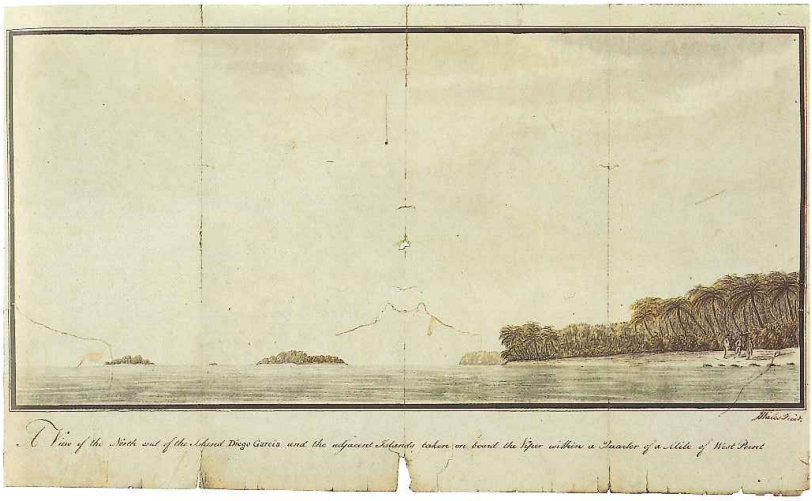
A coconut crab. *(Dan Layman)*

Annex 136

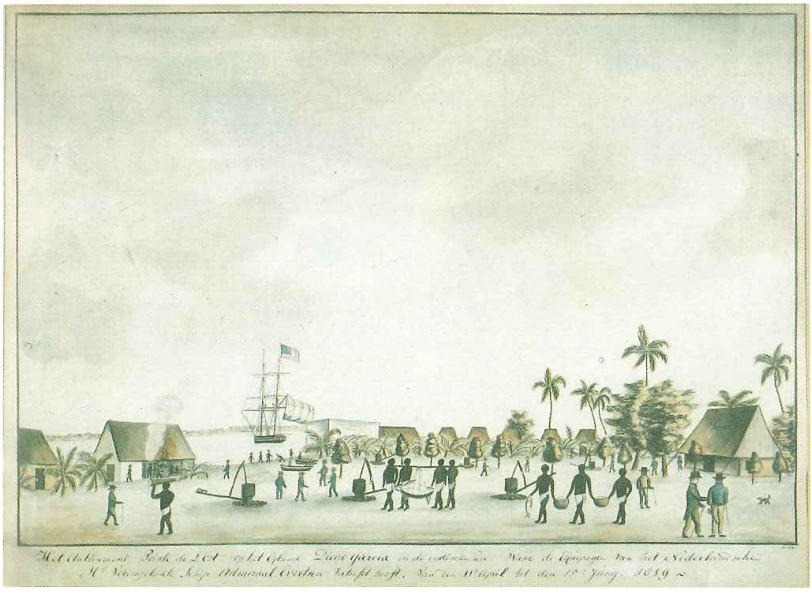
A family of red-footed boobies. *(Dan Layman)*

A sixteenth-century Portuguese map of the Indian Ocean. *(The British Library)*

Annex 136



View of the north end of Diego Garcia; 1786; watercolour by Lieutenant Wales.
(India Office Collection, British Library)



The settlement at East Point, 1819; Dutch print by Lieutenant Verhuell.
(Mr K. Dirkzwager)

Six-inch naval guns at Cannon Point, installed in 1942. *(NSF Fotolab, Diego Garcia)*

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the only undamaged boat, filled it with as much treasure as it could carry and set out for India, leaving 350 crew and passengers to fend for themselves. Of these 50 eventually managed to reach India in improvised craft but the rest perished from hunger and exposure. It is possible that remains of the *Conceição*'s equipment and cargo could still be found.

Among the rare references to the Chagos in this period is the claim to them made by the Christian King of the Maldives, Dom Manuel, who was installed by the Portuguese in the mid-sixteenth century. The islands were called 'Folovahi' in the Maldivian language Divehi, which means something like 'ten islands'. However, two attempts by the Maldivians to colonise the islands failed when they could not locate them.

The discovery of the Chagos Archipelago was a minor incidental by-product of the opening up of the seaway from Europe to the Indies. The islands were not on the main route, which followed the African coast to around the latitude of present-day Kenya and then struck out towards India. Accordingly they were not regarded as of any value as way-stations for water and fresh supplies. On the contrary, the Chagos Archipelago with its network of dangerous reefs was seen as a peril to be given a wide berth. The inaccuracy of the charts, which scattered islands, many of them imaginary, over a wide area increased the uncertainty of navigation in the central Indian Ocean.

The English, along with the French and Dutch, began to follow the route pioneered by the Portuguese to the lucrative *entrepôts* of the East in the later sixteenth century. The experience of the captain of one of the first English fleets to penetrate the Indian Ocean graphically illustrates the perils posed to early navigators in the seas around the Chagos. Setting out from Agalega Island north-east of Madagascar in the direction of India in late March 1602 Sir James Lancaster found himself two weeks later trapped within the reefs of the Chagos Bank. For several days the ships tried to find a way out of the maze or 'pound' (enclosure) as Lancaster called it. Eventually, led by a small boat from which constant sound-

ing of the depth was made, the fleet was able, 'thanks be to God', to nose gingerly out of the reefs to the open ocean to the north and continue its voyage.

Although Lancaster did not land on any of the islands in the Chagos he left a vivid account of his earlier landfall at Agalega, an island which shares many of the same characteristics:

> As we coasted along this island, it seemed very fair and pleasant, exceeding full of fowl [birds] and coconut trees; and there came from the land such a pleasant smell as if it had been a garden of flowers.[4]

For a further century and a half, after Lancaster's inadvertent visit, although the Dutch established themselves from 1639 in Mauritius and the French from 1654 in Reunion, the Chagos remained in a sort of limbo, vaguely in the consciousness but rarely visited by the European nations contending for the upper hand in the Indian Ocean. If pirates, who in the early eighteenth century established a shortlived stronghold in eastern Madagascar and bases in the Seychelles, ever used or visited Diego Garcia, there is no record of this but the intriguing possibility cannot be discounted. An eighteenth century cannon-ball was discovered in the jungle on the eastern arm of the island in 1989. And a mid-nineteenth century ordinance reserved to the Crown any buried treasure found on Diego Garcia.

As time went on, the contest in the Indian Ocean became increasingly one between Britain and France, with India as the prize. The five wars fought by the two countries in the course of the eighteenth century spilled over into eastern seas. Meanwhile the French were assidiously island-hopping. In 1722 they took over Mauritius which the Dutch had abandoned in 1703, and renamed it the Ile de France. They also colonised Rodrigues 300 miles to the east in 1742.

From the 1740s the French began systematically to survey the islands to the north and the north-east of their principal base on Mauritius. Up to this point these islands remained

inaccurately fixed, still unknown, or even figments of the imagination, as was the case in their rendering in the chart the 'English Pilot' published in 1755. The co-ordinator of this effort was the renowned French cartographer Après de Mannevillette who embodied his findings in his famous map of the Indian Ocean 'Neptune Oriental', published in 1780. Much of this effort of filling in the gaps on the map was directed towards the north where Mahé in the Seychelles group was first formally possessed in 1756 and then colonised in 1768. However, several expeditions visited the Chagos. In 1770 a Monsieur la Fontaine in the vessel *L'Heure du Berger* surveyed the northern part of the lagoon at Diego Garcia and produced the first detailed map of the island. This ship also achieved the feat of sailing the dangerous passage between East Island and Barton Point. Subsequently a British ship, the *Hampshire,* was wrecked attempting the passage in 1793. Elsewhere in the Archipelago, in 1777, the French ship *Salomon* visited and named the islands of that name in the northern Chagos.

The British, from their bases in India, were also showing an interest in the islands. In 1760 the *Egmont* visited the islands which bear its name. In 1763 the *Speaker* and the *Pitt* surveyed the banks named after them and also visited Diego Garcia, producing a rough sketch from the north which may be the first known pictorial rendering of the island. In 1772 the *Eagle* called at the island of the same name. And in 1774 the *Drake* visited Diego Garcia and carried out a detailed survey of the entrance to the lagoon, including detailed sketches by a Joseph Mascall which show West, Middle and East islands, which were named respectively Red Beach, Black Beach and White Beach islands on the picture. This expedition left sheep, goats and pigs on the island as fresh provisions for future expeditions.

On the British side, the driving force in mapping the islands of the Central Indian Ocean was Scotsman Alexander Dalrymple, the Hydrographer of the East Indian Company, who published in 1786 a *Memoir concerning the Chagos Archipelago and the Adjacent Islands.* Dalrymple sent orders from

London to the Company's base in Bombay to despatch vessels:

> to ascertain the numerous shoals and islands in the Southern Passage from the Maldives to Madagascar as an accurate knowledge of these hitherto much neglected Seas is essential to the security of the Navigation of the Company's ships.[5]

As a result of these instructions, a comprehensive exploration of the Archipelago was undertaken by Lieutenant Archibald Blair of the East India Company Marine in 1786 and 1787. He was given orders that:

> for facilitating the more particular survey of the island afterwards, he was to leave a distinguishing mark on all the principal points, which should terminate his angles, or form stations, to enable those points to be found at any future time.[6]

Accordingly, in May 1786, Blair carried out a survey of Diego Garcia, setting up flag staffs at key places to act as reference points. Although he was given only a couple of weeks for the undertaking, Blair produced a highly accurate map which would pass muster today. He also observed the eclipse of Jupiter's moons, which no doubt accounts for the names Eclipse and Observatory Points at the entrance to the Diego Garcia lagoon.

The transformation in knowledge about the Chagos resulting from these systematic surveys meant that, in future, mariners would avoid the experience of James Horsburgh, who later succeeded Dalrymple as the East India Company Hydrographer. In May 1786 he was wrecked on Diego Garcia in the *Atlas* on the point on the east coast which bears his name:

> The charts on board were very erroneous in their rendering of the Chagos Islands and Banks and the Com-

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> mander trusting too much to dead reckoning was steering with confidence to make Ady or Candy (islands which turned out not to exist) . . . but unfortunately, a cloud over Diego Garcia prevented the helmsman from discerning it (the officer of the watch being asleep) till we were on the reef close to the shore; the masts, rudder and everything above deck went with the first surge; the second lifted the vessel over the outer rocks and threw her in toward the beach, it being high water and the vessel in ballast, otherwise, she must have been dashed in pieces by two or three surfs on the outer part of the reef and every person on board have perished.[7]

The survivors from the ill-fated *Atlas* were rescued by the expedition described in the next chapter.

V

Settlement

A Monsieur Dupuit de la Faye was given a grant of Diego Garcia by the Governor of Mauritius in 1778 and there is evidence of temporary French sojourns. However, the first systematic attempt to colonise the island was made by the British. In 1786 the East India Company, the great commercial corporation which established and ran Britain's Empire in the East for 250 years, decided that it was now feasible to establish a victualling station where, as Dalrymple put it:

> ships might be enabled to get refreshments after their long voyage from Europe before they came into the low latitudes where the light winds and tedious passages consequent to them, had so often proved fatal to the lives of the seamen before they could reach India.[1]

It was also hoped that Diego Garcia could be a base for further exploration of the islands of the central Indian Ocean, as well as in future wars against France.

The aim was that the new settlement should be self-sufficient. According to the reports available, Diego Garcia had good water, soil which would support 'legumes' (vegetables)

and an abundance of fish, turtles and 'land lobsters'. The latter 'fed on coconuts and are very good, their tails very fat'.[2] The expedition was to take with it boatloads of soil and to experiment with the growing of grain, fruit and vegetables. It was also to bring cattle and poultry.

After meticulous planning, the expedition set out from Bombay on 15 March 1786 in four ships, the *Admiral Hughes*, the *Drake* and the survey ships *Viper* and *Experiment*. Richard Price and John Smyth, senior officials of the East India Company, were respectively first and second in command. Price was appointed 'Resident of Diego Garcia', effectively the first British representative. The civilian element included carpenters, smiths, bricklayers, coopers, stockmen, gardeners, bakers, butchers, tailors and two doctors as well as 50 servants. An engineering officer Captain Sartorius commanded the military element, who were all volunteers. This consisted of 64 Indian infantry sepoys and 2 bandsmen, 24 Indian engineer pioneers and a number of marine surveying officers led by Lieutenant Blair, mentioned in Chapter IV. They also took with them one field piece and 6 or 8 pieces of smaller artillery.

The expedition sailed with sealed orders to be opened at sea in order to keep its destination secret from the French. The instructions included contingency plans in case any French were encountered on the island. If 'beyond all expectations . . . a regular settlement . . . who cannot be removed by force were found, new orders were to be sought. However, if only 'straggling French' were present these were to be 'deemed to be there without authority and not any impediment to occupying the island and establishing a settlement'.[3] In fact when the expedition entered the lagoon of Diego Garcia on 27 April 1786, they were surprised to see a canoe set out from the shore with five men on board who produced papers from a Monsieur Le Normand about his establishment on the island, which consisted of 'a dozen huts of the meanest appearance'. The British expedition chose not to regard this as evidence of a proper French title to the island and on 4 May 'took formal possession of the island of

Diego Garcia and all its Dependencies in the name of His Majesty King George the Third and in the name and for the use of the Honourable United Company'.[4] The hoisting of the British flag was saluted with three volleys of musketry. The East India Company's own flag, on which the American Stars and Stripes was modelled, will also have been flown by the expedition. The Frenchmen found on the island left for Mauritius to report this turn of events.

Meanwhile, the expedition got down to its task of laying out a settlement, building a fort, planting crops, measuring temperatures and winds and surveying the land and the lagoon. A Lieutenant Wales produced charming water-colour sketches of the island, one of which showed three men in broad-brimmed hats and knee-breeches strolling on the shore among the crabs near Cannon Point, and another of two of the expedition's ships sailing across the mouth of the lagoon. The settlement was established on the site of the present East Point, which was named Flag Staff Point. The climate was found to be quite healthy and few men fell sick. Temperatures taken over a four week period between early May and early June showed a range of 73°F to 87°F (approximately 23°C to 31°C), which is remarkably consistent with present-day readings. However, the agricultural experiments were disappointing. Vegetables such as potatoes and grain would grow but the amazing swarms of rats caused problems. Most of the turkeys and ducks died and the cattle sickened. There were also disagreements over whether the island was militarily defensible and who was responsible for surveying the lagoon.

The reports from Price and Smyth to the Council in Bombay sowed doubts about the settlement's viability. The Directors of the East India Company in London also became concerned when they learned of the expedition's 'magnitude and unnecessary cost.'[5] A further problem was that the French were exercised by the establishment of the settlement. The Governor of Mauritius, the Vicomte de Souillac, sent a letter of protest to Bombay. An international incident seemed likely to develop. Accordingly the Bombay Council decided in August 1786 'to entirely withdraw the settlement from

Diego Garcia'. A letter from Bombay Castle signed by Governor Rawson Hart Boddam (after whom Boddam island in the Salomons is named) instructed Price and Smyth that 'on receipt of this letter you will immediately issue the necessary orders for the embarkation of the stores, ammunition and provisions and for evacuating the island'.[6] The expedition sailed away in October 1786, leaving Lieutenant Blair to complete his survey of the rest of the Archipelago.

The French authorities in Mauritius were sufficiently alarmed by news of the British settlement to send the frigate *Minerva* to enforce their claim and eject the interlopers. However, by the time the French ship arrived, the British had already left. The French none the less put up a stone pillar proclaiming their sovereignty. A similar marker decorated with fleur de lys survives at Mahé in the Seychelles but that on Diego Garcia has disappeared; perhaps it still lies somewhere on the island awaiting discovery.

The British incursion led the French to take a more active interest in the islands. In the later 1780s businessmen in Mauritius were granted concessions to gather coconuts. A petition to operate in one of the islands reads 'this desert island uninhabited up to the time of writing, can nevertheless hold out prospects to an industrious and enterprising man.'[7] The first named individual to receive this concession in Diego Garcia was the same Monsieur Le Normand whom the British encountered in 1786. A Sieur Dauguet was also granted fishing rights. It is not clear whether these concessions involved the setting up of permanent establishments or merely limited visits. The French in Mauritius also seem to have begun using Diego Garcia as a leper colony, apparently in the belief that turtle meat helped to cure this condition. According to one account, a British ship anchored off Diego Garcia in 1792 and sent ashore two Lascars or Indian seamen to look for water. These encountered a small party of lepers. When they reported the fact on coming back on board, such was the fear of leprosy in those days that the ship's master put the Lascars ashore to fend for themselves – a nightmare story if true.

In 1793, a Mr Lapotaire of Port Louis proposed to the French authorities that instead of loose coconuts being brought back to Mauritius from Diego Garcia for processing, a 'factory' be established to extract copra and oil from them on the island. Lapotaire sent out two ships with 25 to 30 men in each and a complement of slaves to set up the enterprise, which could be termed Diego Garcia's Jamestown, and seems to have been based at the north-west corner of the island. By the next year, Lapotaire was exporting a considerable amount of oil to Mauritius. According to Baron d'Unienville, salted fish, and rope made of coconut fibre were also exported, and sea slugs to the Far East, where they were a sought-after delicacy among the Chinese.[8]

There was good profit in the extraction of coconut oil which was used for a variety of purposes including lamps, cooking and soap. In the 1790's France was again at war with Britain and Mauritius found itself increasingly cut off from longer distance trade by the British blockade, leading among other things to a steep rise in oil prices. It is therefore not surprising that other businessmen from Mauritius began to follow Lapotaire's example and to set up their own establishments in Diego Garcia, as well as in other islands of the Chagos Archipelago. On Diego Garcia two brothers, Paul and Aimé Cayeux established themselves at East Point and Minni Minni.

While Lapotaire and the Cayeux seem to have had no problems in dividing the island between them, in the early 1800s they united against two newcomers, Messrs Blévec and Chepé, whom they accused of wasteful exploitation of the coconuts. However, in 1809 the French Captain General of Mauritius, De Caen, settled the dispute by assigning eastern parts of the island to Blévec and Chepé, while forbidding the manufacture of oil in Diego Garcia on the grounds that this would attract British raids. Readiness to accept lepers sent from Mauritius was a condition of the concessions.

But French rule in the Indian Ocean was about to be snuffed out at its heart. Exasperated by French privateer attacks on British shipping, a British expeditionary force from

India captured Rodrigues and Reunion and finally Mauritius itself. The capitulation signed on 3 December 1810 marked 'the surrender of the Isle of France (Mauritius) and all its dependencies (including the Chagos) to the arms of His Britannic Majesty'. The Treaty of Paris signed in May 1814 formally ceded 'the Isle of France and all its dependencies . . . to the dominions of the British Crown'. The Chagos Archipelago has remained British territory ever since.

Although the formal period of French rule on Diego Garcia was quite short, by the time it ended the pattern of a plantation society based on exploitation of the coconut, which was to last more than another century and a half, was well established. A contemporary Dutch print of East Point dating from 1819 is the first known depiction of the settlement.[9] It was probably made by a naval officer called Verhuell who was a survivor of the crew of the Dutch warship *Admiral Evertsen,* which was carrying home from Java spices, some 'boxes with curiosities' for the King of the Netherlands, senior officials of the Dutch East India Company and an admiral. The ship foundered off Diego Garcia on 9 April 1819 and the 340-strong crew were rescued by the American brig *Pickering,* a vessel of 154 tons from Plymouth, Massachusetts,[10] which is shown at anchor in the print. Two hundred of the rescued sailors spent many weeks on the island before another ship arrived to take them off.

The Dutch print shows manually driven copra mills, simple buildings and huts, loin-clothed slaves carrying between them a turtle, fish and baskets, and overdressed Europeans promenading with walking sticks. Dogs (one appears in the print), cats, pigs, poultry, bees, new plants and vegetables would have been introduced by this point. Rats had also been inadvertently introduced from visiting ships at an early stage and soon became a menace to bird life, which had not previously experienced predators.

The population in 1826 was 275, made up of 6 Europeans, only one of whom was female; 14 freemen, four of whom were female, and 9 were children; 218 slaves, of whom 17 were female and 13 children; and 37 lepers, 5 of whom were

female and 2 were children.[11] Most of the slaves would have been brought from Mozambique and Madagascar either directly or through Mauritius and Seychelles. As a *lingua franca* they would soon have adopted Creole, a dialect of French with African overtones, whose use was universal in France's tropical possessions and is still spoken by Mauritians working in Diego Garcia today.

In the tiny society of the islands and far from assistance in Mauritius, it does not seem from contemporary accounts that the overseers actively mistreated the slaves. The historian Charles Pridham, who visited the island soon after the abolition of slavery, noted that their set tasks involving the collection and preparation of coconuts were relatively light and their rations of rice and rum could be supplemented by what they could catch or raise for themselves. According to d'Unienville, the latter included fish caught at night by torchlight, birds knocked from their perches by long sticks, *cipaye* crabs, and of course coconuts. As elsewhere in slave societies the considerable imbalance between the sexes and the lack of a religious or moral framework gave rise to considerable promiscuity. Their overseers seem to have provided little better example. As Pridham priggishly remarked, 'Frenchmen when removed from the public eye, have a strong tendency to degenerate into savages'.[12]

VI

Abolition of Slavery

Especially in an age of *laissez-faire* or self-regulation, the new British administration in Mauritius might have been content to leave the planters to their own devices in far off Diego Garcia had it not been for the issue of slavery. The slave trade in the British Empire had been abolished in 1807. Sir Robert Farquhar, the first British Governor of Mauritius and its dependencies, made it clear to the new subjects of the Crown in a proclamation of 1815 that 'no doubt should exist that Acts of Parliament for the abolition of the Trade in Slaves extend to every, *even the most remote and minute portion*, of the Possession, Dominions and Dependencies of His Majesty's Government'.[1] Complete abolition of slavery was already in the wind because of pressure from public opinion in Britain.

Nevertheless, despite the attentions of the Royal Navy, slaving to the islands directly from the East African coast probably persisted surreptitiously for some years. At the time of emancipation in the mid-1830s, there were still 33 slaves in Diego Garcia declared as having been born in either Mozambique or Madagascar.

It was unrest on the island because of problems between the planters, the slaves and the lepers (who were still being

sent there) which led to the appointment of the first British official, a Mr Le Camus, in Diego Garcia in 1824. Le Camus was also charged with managing the anchorage at Diego Garcia and establishing a quarantine station for seafarers with infectious diseases on one of the islands at the mouth of the lagoon. For his services over a five-year period, Le Camus was granted the concession formerly held by Lapotaire, from whom he bought slaves, stock and buildings.

As in the rest of the British Empire the institution of slavery was formally abolished in Mauritius and its dependencies in August 1834. For a six-year transitional period, so that both masters and slaves could get used to the new situation, the ex-slaves were apprenticed to their former masters under various safeguards. The Act of Parliament ending slavery laid down that Governors of Colonies should appoint Special Commissioners with the powers of Justices of the Peace to implement its provisions. The remoteness of the Indian Ocean dependencies posed special difficulties for the emancipation process but the authorities in Mauritius showed great conscientiousness. A report to the Colonial Office in London in 1835 assured the latter that 'all that can be done to carry into effect the provisions of the Abolition Act as far as circumstances will possibly admit'[2] was being done.

Mr George Harrison, designated as Assistant Protector of Slaves, visited the Chagos islands, including Diego Garcia, to supervise emancipation of the former slaves in 1835. There was a follow-up visit by Special Justice Charles Anderson in 1838 in the brig HMS *Leveret*. His instructions before departure pointed out that as the islands could be visited only occasionally, and his stay would be limited, his object was:

> to acquire information with a view to ulterior improvement if required rather than temporary exercise of authority. You will explain to apprentices in the presence of their masters and overseers their positions under the Slavery Abolition Act . . . the work they are expected to do . . . the treatment they have a right to expect . . . and the nature and quantity of their provisions.[3]

Anderson was also to report on general matters and on the possible value of Diego Garcia as a convict settlement.

Anderson was obviously a zealous person. He not only produced a highly critical report of conditions in Diego Garcia, which he described as 'decidedly inferior to those of labourers on the other islands I have visited',[4] but also exceeded his instructions by intervening actively and ordering the reduction of the daily set tasks of the labourers which he regarded as too severe. He found that the food, consisting mainly of rice, and the clothing provided were unsatisfactory. He described the physical state of the labourers as deplorable, with many of them old, infirm or diseased, with several bad cases of leprosy. There was also a deplorable – a word Anderson obviously liked – deficiency of hospital accommodation and an entire want of medical aid.

On the positive side, Anderson found that the labour involved in coconut plantations was of a much milder nature than on the sugar plantations of Mauritius. Crime was also uncommon, which he attributed to the absence of strong liquor.

Anderson recommended that the proprietors of the plantations resident in Mauritius, who still included Monsieur Cayeux, 'ought to be compelled to make good the past deficiencies to their fullest extent and that other means should be adopted to prevent the repetition of such wilful neglect'.[5] However, the Governor decided more judiciously that while he 'cannot but regret that the Act is not fully complied with . . . yet taking into consideration the locality, the precarious nature and infrequency of communications, he did not feel disposed to visit on the masters the whole penalties for breaches of the law.'[6]

At the time of Anderson's visit there were 135 apprentices, that is, freed slaves, on Diego Garcia. The three estates at East Point, Point Marianne and Minni Minni produced between them 36,000 veltes (a velte is about $^3/_4$ gallons or nearly 8 litres) of coconut oil annually. Anderson also noted that the island was much resorted to by whalers and vessels

bound from England to India for supplies of water, firewood, pork and poultry.

The main difference after final emancipation in 1840, was that the now free labourers made a contract with their new employers in return for wages. Apart from this, life on the islands continued much as before. As Pridham remarked in 1845, 'the slaves on the Chagos Group are now free, that is to say nominally, though perhaps very little change would be found in their condition'.[7] Unlike in Mauritius, where the abolition of slavery led to the increasing recruitment of indentured labour from India to work the sugar plantations, the workers in the islands had effectively nowhere else to go and no other occupation to turn to.

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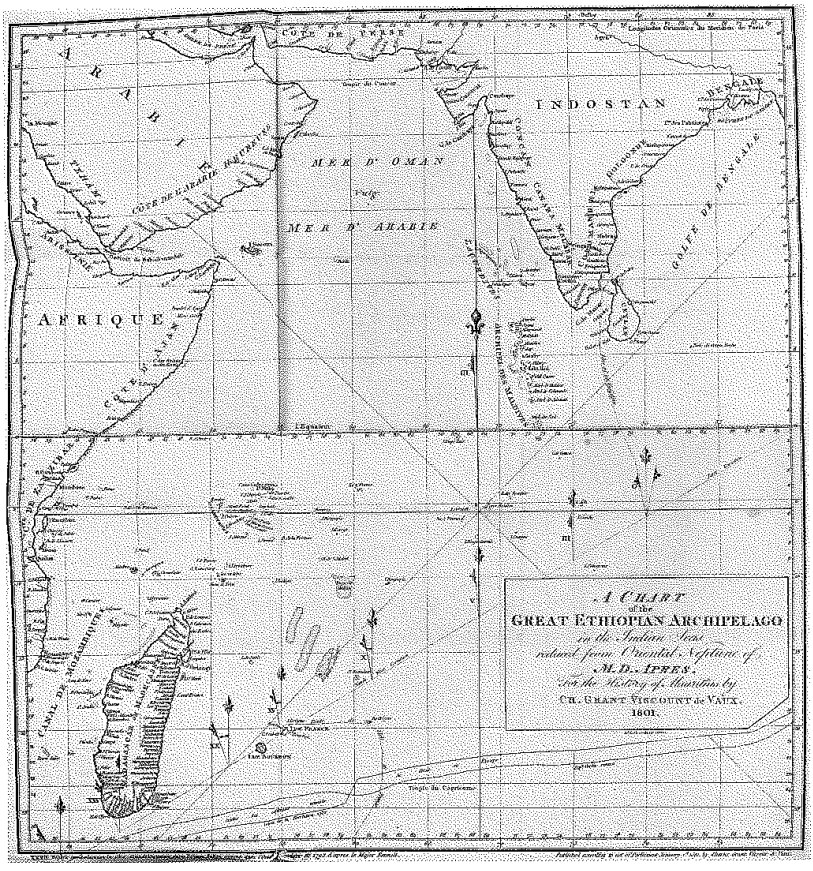
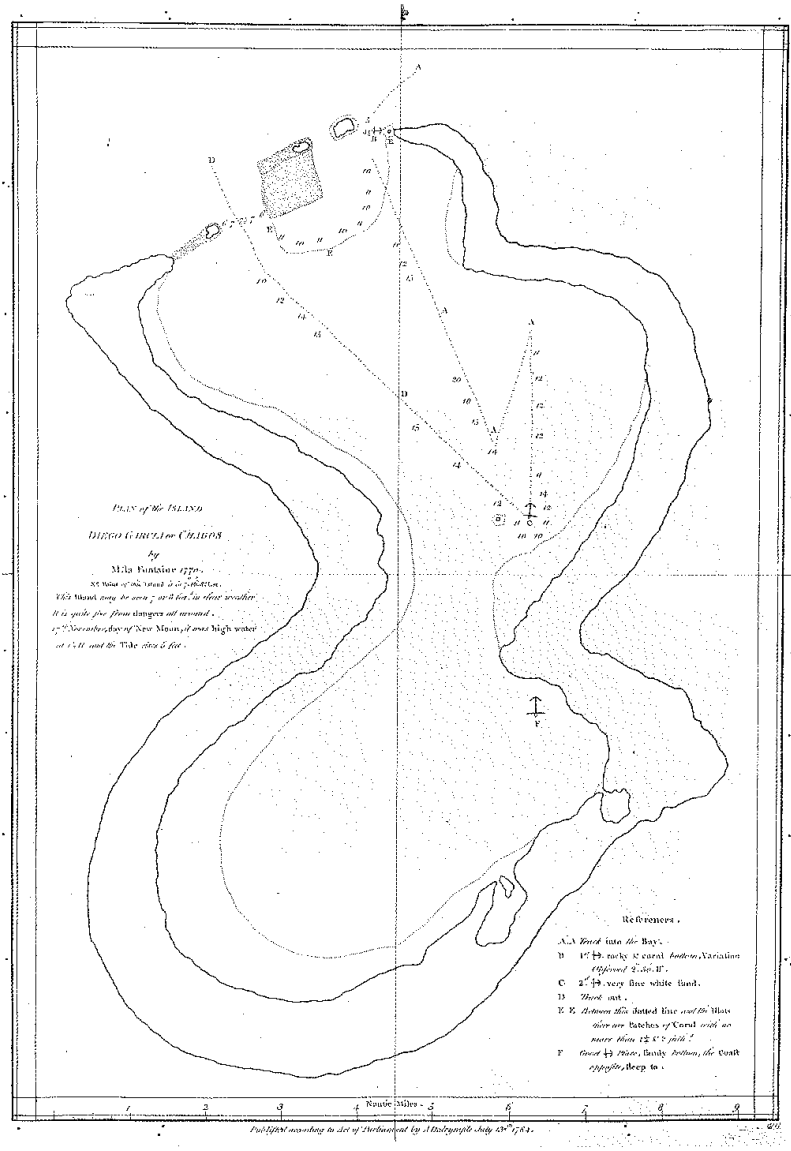


Late eighteenth-century map of the Indian Ocean – 'Neptune Oriental' – by Apres de Mannevillette. *(India Office Collection, British Library)*



La Fontaine's map of Diego Garcia, published in 1784.
(India Office Collection, British Library)

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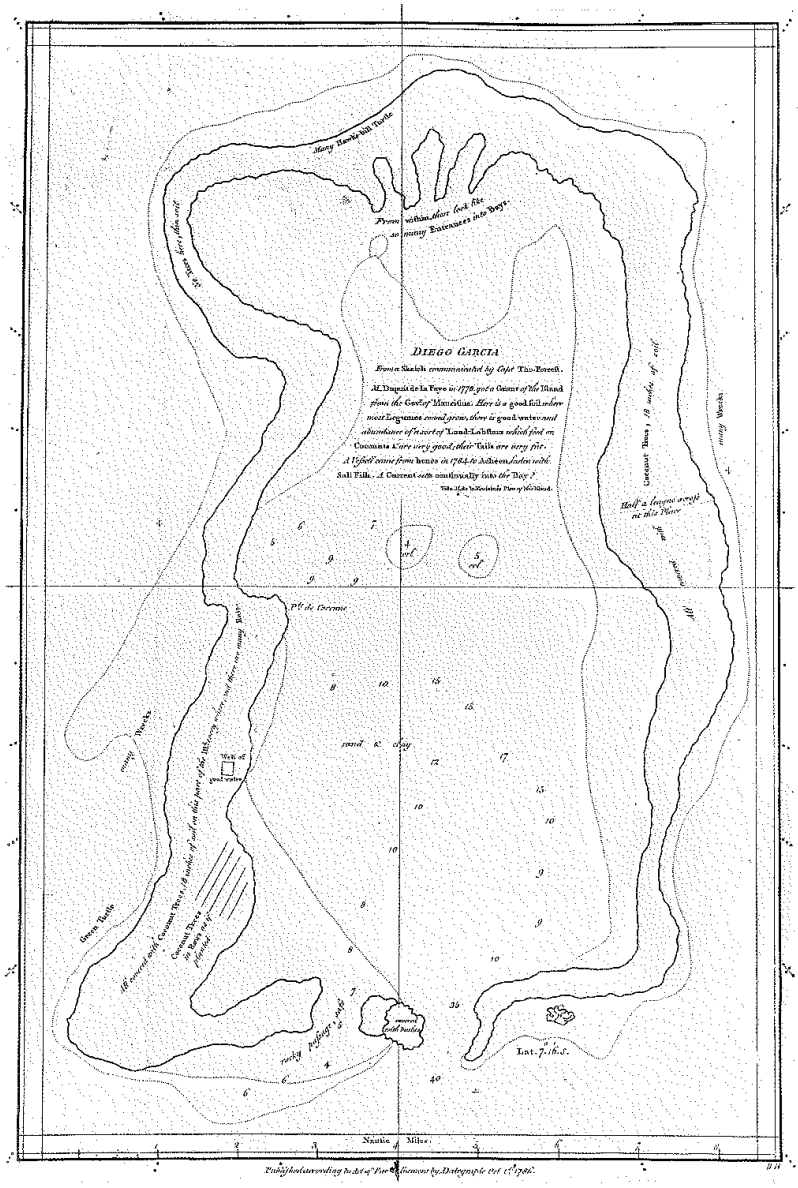
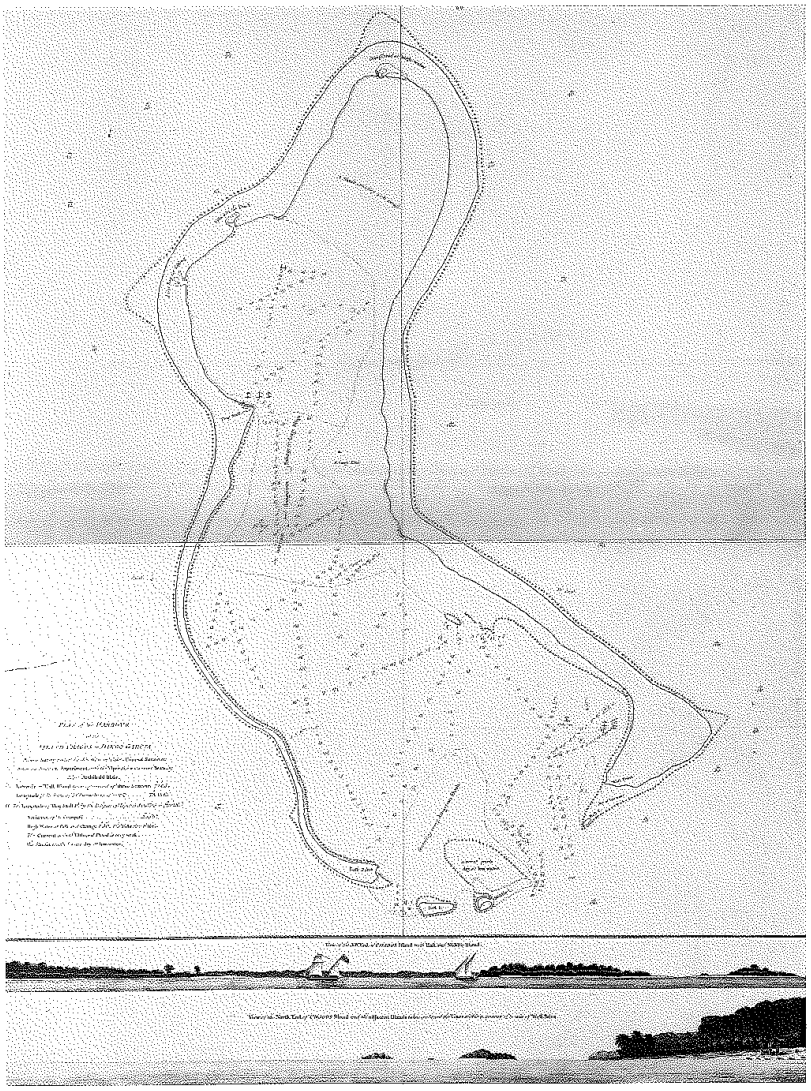


Captain Forrest's map of Diego Garcia, published in 1786.



Lieutenant Archibald Blair's map of Diego Garcia, published in 1787.
(India Office Collection, British Library)

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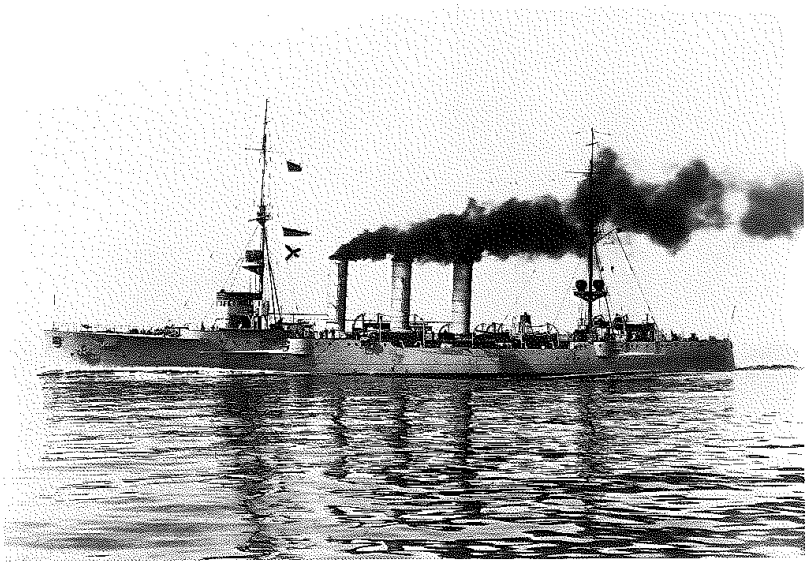
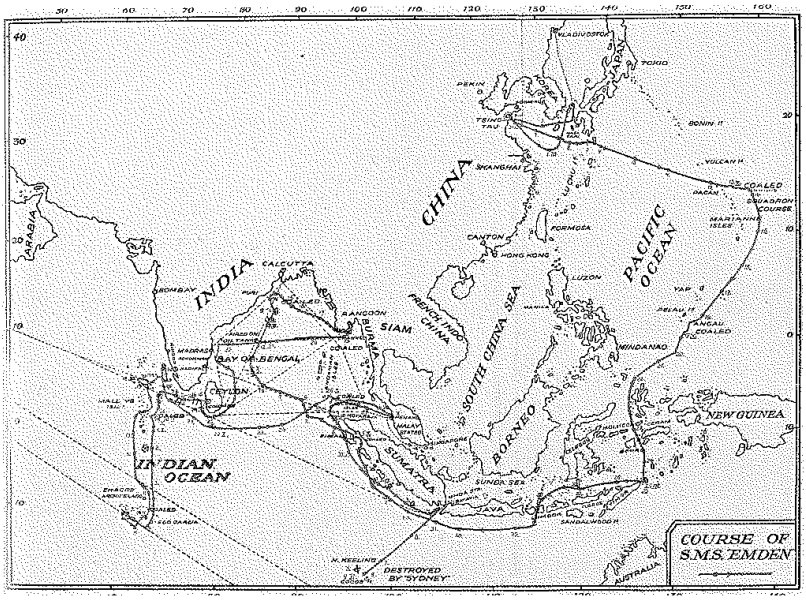
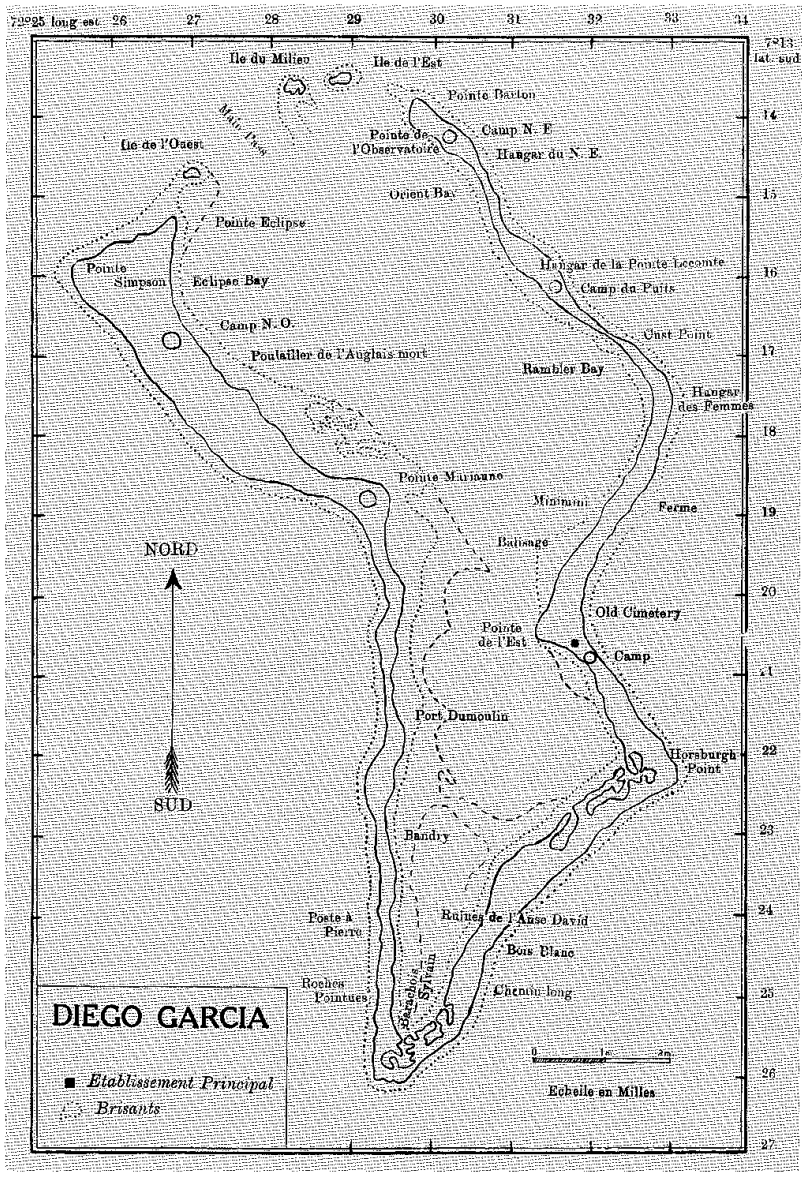


The German cruiser SMS *Emden.* *(MOD Library)*





Dussercle's map of Diego Garcia in 1934.
(From Archipel de Chagos: en mission *by R. Dussercle)*

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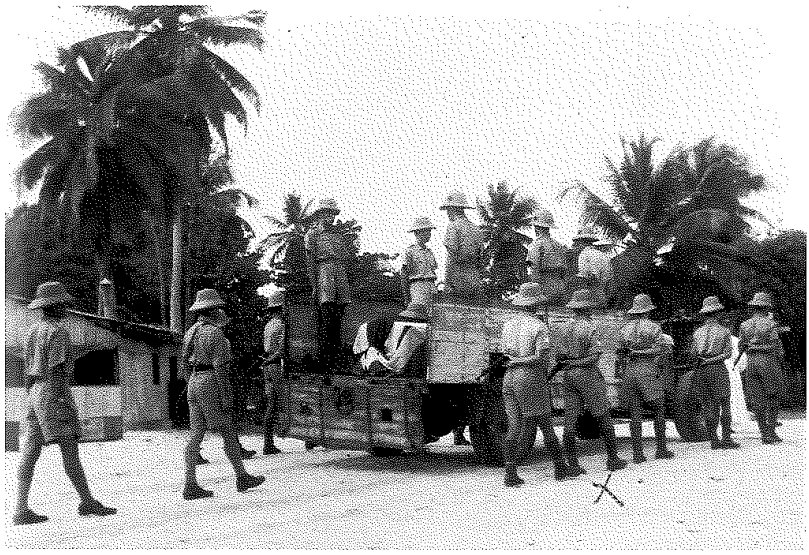
Father Dussercle (seated left with beard) with British military party on Diego Garcia, 1942. *(Fred Barnett – seated next to Dussercle with dog)*



General view of the Downtown area. *(NSF Fotolab, Diego Garcia)*

BIOT Customs and Immigration officers at the airport. *(NSF Fotolab, Diego Garcia)*

Two flags outside the headquarters building. *(NSF Fotolab, Diego Garcia)*

HRH Prince Edward (in hat) with Commissioner Harris (left) Inspecting old oil grinder at East Point, October 1992. *(NSF Fotolab, Diego Garcia)*

VII

The Oil Island

After emancipation had been implemented, direct British intervention in the affairs of the islands was limited for another quarter of a century. Subject to occasional inspections by captains of visiting Royal Navy ships and Special Commissioners, the islands were run effectively as private estates. The owners of the concessions, or *jouissances* in French, which was still the language in general use, were invariably absentees based in Mauritius.

Two significant developments during this period were the change in the system of tenure and the amalgamation of the plantations. From 1865 the holders of the concessions were able to transform them into permanent holdings against payment based on estimates of the amount of oil produced. In 1883 the three separate existing plantations on Diego Garcia at East Point, Minni Minni and Point Marianne were merged into the 'Société Huilière de Diégo et Péros' (the Diego and Peros Oil Company), which continued to run them, along with those in the outer islands, until 1962.

The running of the plantation was in the hands of an *administrateur*, or manager, assisted by a number of undermanagers. These were normally whites from Mauritius. Much of the supervision of the labourers recruited from Mauritius,

Madagascar and Mozambique was left to black *commandeurs* or overseers. Occasionally there was an administrator who by his personality and energy stood out from the run of the mill. One such was James Spurs who ran East Point Plantation as a benevolent despot in the 1870s, among other things showing concern for conservation by forbidding the killing of seabirds, turtles and land crabs.

By the lights of the time, and it should be remembered that slavery persisted in the USA until 1864 and in Brazil until 1888, the management seems to have been reasonably enlightened and humane and the life of the labourers tolerable. Typical wages were 40 dollars a month for an undermanager, 10–14 dollars for an overseer, 5 dollars for craftsmen such as blacksmiths, 4 dollars for field-hands and 3 dollars for the women who shelled the coconuts. The workers were expected to put in a couple of hours of voluntary work on Sunday mornings, known as the *corvée*, to clean up the settlement area and tend the animals.

Huts in the 'camp' for accommodation, and basic rations, were provided. Rations consisted typically of $12\frac{1}{2}$ lbs of rice a week, 1lb of salt a month, and 'as gratification' a glass of rum or 'calou' a day 'drunk at the tub as in Her Majesty's Navy.'[1] and an ounce of tobacco a week. Women with babies were entitled to a bottle of coconut oil a week. The labourers supplemented these rations by raising pigs and chickens and by cultivating fruit and vegetables in gardens enclosed to protect them from the depredations of donkeys and crabs. Fish also varied the diet. Such was the abundance of fish that it was said by a visiting official that 'the inhabitants can literally walk into the water and in a few minutes get a supply as would be a banquet for many of a far superior class in Mauritius'.[2]

There were company shops at each of the plantations, selling basic items such as kettles, pans, hooks and needles and small luxuries such as wine, coffee and eau-de-cologne. There was free, if basic, medical care provided for the treatment of the sick and injured. A stock of medicines was dispensed by a medical attendant whose qualifications seem to

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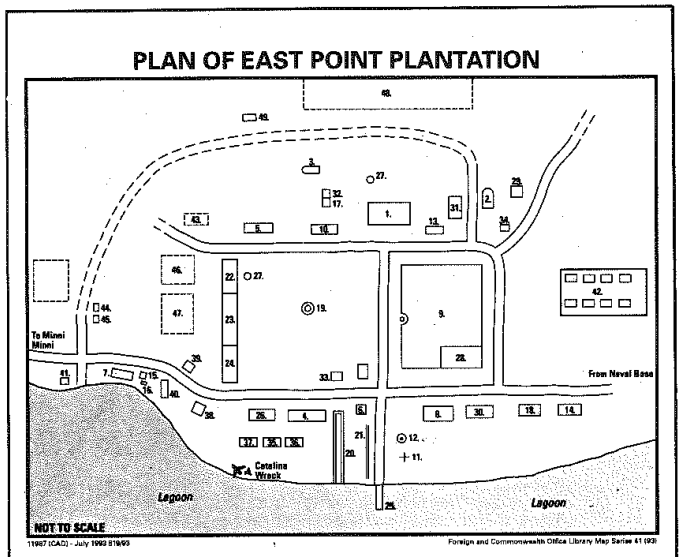

1. Manager's House
2. Church
3. Manager's Chapel
4. Copra Warehouse
5. Company Store-Sales
6. Accountant's Office
7. Cemetery
8. Copra Drying House
9. Copra Drying Platforms
10. Company Store
11. Wooden Cross
12. Flagpole
13. Company Store
14. Jailhouse
15. Mortuary
16. Bleeding Stone
17. Bakery
18. Forge
19. Oil Press
20. Canal
21. Rail Track
22. Workshop
23. Workshop
24. Vehicle Shop
25. Jetty
26. Metal Workshop / Generator House
27. Wells
28. Copra Drying House
29. Company Canteen
30. Baru / Store
31. Manager's Guest House
32. Charcoal Bin
33. Post Office
34. Accountant's House
35. Boat Shed
36. Boat Shed
37. Boat Shed
38. Nurses Quarters
39. Doctor's House
40. Hospital
41. Meteorology Staff Quarters
42. Plantation Worker's Village
43. Piggery
44. Meteorology Generator House
45. Meteorology Office
46. Sugar Cane Plot
47. Sugar Cane Plot
48. Ornamental Gardens
49. Assistant Manager's House

Plan of East Point Plantation

(Charles Borman and Foreign and Commonwealth Office Library)

Appendix No. 9.

List of Prices at which Articles are supplied to Laborers on Minimini Estate, Diego Garcia, together with the retail prices of the same in Mauritius.

Articles.	Price on Minimini Estate.	Price in Mauritius.	Remaks.
	$ ¢	$ ¢	
Sugar per lb.	0 12½	0 09	
Coffe do.	0 40	0 30	
Biscuits do.	0 15	0 15	
Salt Pork do.	0 05	...	Made on the Island.
Soap per bar of 2¼ lbs	0 25	..	Do. do.
Wine per bottle	0 25	0 12½	
Liqueurs do.	0 50	0 25	
Conjon bleu per piece	4 00	2 00	
Coutil per aune	0 25	0 18	
Paliacats each	0 37½	0 15	
Grey Calico per piece	4 00	2 25	
White Calico do.	4 00	2 50	24 yards.
Patna each	1 12½	0 75	
Coloured handkerchiefs each	0 25	0 12½	
Thread per bobbin	0 04	0 04	100 yards.
Buttons per dozen	0 12½	0 04	
Needles do.	0 06	0 03	
Thimbles each	0 12½	0 03	
Straw hats (Seychelles) each	1 00	0 50	
Felt hats each	1 50	1 00	
Spoons do.	0 06	0 03	
Forks do.	0 06	0 03	
Plates do.	0 12½	0 06	
Common round dishes each	0 40	0 25	
Basins large each	0 25	0 15	
Knives (sailor's) each	0 25	0 12½	
Marmittes each	0 37½	0 25	
Pagne (Madagascar) each...	0 20	0 12½	
Tobacco per stick each	0 12½	0 08	
Vermouth per bottle.	1 00	0 50	
Fish Hooks large each.....	0 03	0 01½	
Do. small do.	0 02	0 00½	
Tin pots each	0 50	0 12½	
Tin mugs each	0 25	0 12½	
Padlocks	0 50	0 25	
Grease per lb.	0 06	...	Made on the Island.
Graton do.	0 06	...	Do. do.

E. PAKENHAM BROOKS,
Stipendiary Magistrate.

List of articles for sale at Diego Garcia Plantation shop, 1875.

have been rudimentary. The labourers were reported to have a great fondness for the castor oil administered. Generally the state of health of the labourers was good. Even some of the maladies which led to admission to the sick-bays or giving days off work were attributed by the management to malingering and too much strong liquor.

The population of Diego Garcia fluctuated between 350 and 550 during this period, with additional labour being imported as necessary. The birthrate on the islands was low. There remained a great imbalance between the sexes with women rarely constituting more than 20 per cent. Visitors frequently commented on this, attributing 'the sad state of morality prevailing to the inequality of the members of the sexes. Marriage is unknown and all the women appear to live in a state of concubinage.'[3]

Occasional though they were, the visits to Diego Garcia by British officials, either Special Commissioners such as Commander E. Hardinge of HMS *Persian* or, from 1864, by District Magistrates, such as J. H. Ackroyd and E. Pakenham Brooks, were not perfunctory efforts. Their standard directive from the Governor of Mauritius was threefold: to ensure that no one had been brought to the island against his or her own will, that no one was being kept there against his or her will, and that no one was being treated with cruelty or oppression or illegally detained. They probed with surprising intrusiveness into the island's affairs and their painstaking reports give fascinating glimpses of life on the island. They clearly saw it as their duty to guard against tyrannous behaviour on behalf of the management, which could all too easily have sprung up. They were not slow to upbraid and punish any such manifestations. Pakenham Brooks, who paid a visit as Special Magistrate in 1875, handed out sizable fines both to an under-manager at Point Marianne for striking a labourer and to James Spurs, the Manager at East Point, for unjustifiably imprisoning three labourers without sufficient cause. The management at Point Marianne and Minni Minni were also instructed to provide sick-bays for their workforce. Prices and weights and measures in the Company's shops were

carefully checked and the labourers' accommodation, the hospital and the jail measured to ensure that they fulfilled minimum specifications.

The labourers were not slow in coming forward with complaints against their employers which mainly related to rations and hours of work. This was not always to their advantage. In one case, a labourer was fined for bringing a frivolous and unfounded complaint. There were also disputes between the labourers to adjudicate, usually relating to petty thefts and assaults but occasionally involving suicide and murder. Pakenham Brooks had to investigate one such 'atrocious crime' committed by Janvier, a 'Malagash', that is, a native of Madagascar, who apparently acted as some sort of voodoo doctor. According to the allegations he had 'bewitched' a pregnant woman called Laure, and in presiding at her delivery succeeded not only in killing the unfortunate woman but her twin babies as well. Pakenham Brooks went so far as to exhume the body but the state of decomposition was too advanced. The accused and witnesses were sent to Port Louis for the trial, where it is interesting to note that the Magistrate found Janvier not guilty.

Various attempts were made in the mid-nineteenth century to diversify the economy by introducing new crops and livestock. Maize or Indian corn, cotton, tobacco and citrus trees were tried and found to grow well. Captain Robert Moresby of the Indian Navy had planted breadfruit trees from Ceylon in 1837, which still survive at East Point. His survey of Diego Garcia incidentally produced charts which remained in use for a century and led to the naming of two promentories on the island after two of his officers, Lieutenants Simpson and Cust. Cattle, goats and sheep were also brought in for a while. Donkeys, introduced to drive the copra-grinding mills, became a permanent feature of the island from the 1840s. However, none of the agricultural experiments was pursued, probably because the well-established exploitation of the coconut, which now began to be cultivated systematically, continued to provide a steady and reliable income. In 1864, for revenue purposes, the estate at East Point was assessed as

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producing 51,000 gallons of coconut oil, Point Marianne 30,000 gallons, and Minni Minni 18,000 gallons.

Gilbert Bourne, who visited Diego Garcia a few years later under the auspices of the Royal Geographical Society, gave a comprehensive account of the process of extracting the oil:

> Each palm will bear an abundance of coconuts for four or five years in succession, after which it remains comparatively unfruitful for another three years or more. The nuts when ripe fall on the ground, whence they are gathered by parties of men sent out in boats for the purpose. The daily task of each labourer is to collect, husk and deliver at the habitation 350 coconuts per diem. This is performed in a surprisingly short space of time when the nuts have not to be carried far by boat. Each party of men is in charge of a commander or sarang, who measures out a piece of ground on which each labourer is to work. The labourer collects the required number of coconuts into a heap, and then sticking a short broad-bladed spear into the ground, he takes each coconut, spits it upon the spear, and in a couple of wrenches has stripped off the husk and thrown the nut on one side.
>
> On their arrival at the habitation the nuts are counted on the beach, and delivered to the women whose duty it is to break them and extract the kernel. The daily task of each woman is to break 1300 coconuts in the day, but I am told that they are able to break as many as 2500 in ten hours. The kernels, which are now known as copra, are then exposed to the sun in heaps, to allow an incipient fermentation setting in, but are carefully protected from the rain by a sort of pent-house on wheels, which can be run over the heaps at a minute's notice. After an exposure of two or three days, 250lbs of copra are delivered to each mill, this being the amount which each mill-labourer is required to grind daily; from it about 30 gallons of oil are produced. The mills used are of a most primitive pattern. The body of the mill is a hollow

> cylinder of hard wood, in which an upright beam of the same material is made to rotate, the motive power being supplied by three or four donkeys harnessed to a long horizontal beam, which is connected to the upright by a chain, and is weighted at the far end by two or three large lumps of coral. The copra is put in at the top of the cylinder, and the oil escapes by a hole at the bottom. The oil is merely strained through cloths and allowed to settle for a few days, after which it is run off into large vats, and is ready to be collected in casks and shipped for export. All the oil is exported to Mauritius by the oil company's ship, which calls three times a year at Diego Garcia.[4]

So well known were the Chagos for their principal product that they became known as the 'Oil Islands'. The middle of the century must have been a prosperous one for the coconut oil industry. Several of the most substantial buildings surviving in the East Point Plantation have the date 1864 inscribed on them. At that time on the other side of the world, the American Civil War was raging.

VIII

The Coaling Station Interlude

The 1880s saw an intrusion of the outside world into Diego Garcia unparalleled until the establishment of the permanent naval facilities in the 1970s. The introduction of steam ships, which increasingly replaced the old sailing ships from the 1860s, gave rise to the need to establish strategically placed coaling stations along their routes. The newly constructed Suez Canal opened in 1869. For the routes to Australia and the Far East, Diego Garcia in the centre of the Indian Ocean seemed ideally situated. As Lionel Cox, Acting Procurator-General of Mauritius, noted:

> the advantages of Diego Garcia as a coaling station are now evidently well recognised . . . There is little doubt that situated as this is on the straight line between the entrance to the Red Sea and Cape Leeuwin (on the South west Coast of Australia), and possessing a good harbour, it will become more and more important.[1]

In 1882 the Orient and Pacific Steam Navigation Company relocated its coaling station for the Australia run from Aden to Diego Garcia. Messrs Lund and Company also established itself. Traffic built up and by the second half of 1883 there

were coaling visits by 34 large steamers as well as by two Royal Navy warships. Lund and Company, whose agent was George Worsell, kept its coal on hulks off East Point and ashore there. The coal was sold for £2 10 shillings a ton and was hauled by labourers hired from the plantation.

The Orient Company appointed James Spurs, the former manager of East Point, as its permanent agent. He, with characteristic energy, set about bringing in the latest technology for its operations. The Company's coal was kept mostly on hulks, initially off Minni Minni and later in the lee of Barton Point, accounting for the name Orient Bay, but some also on shore at East Point. To transfer the coal to the visiting ships 12 iron lighters were brought in sections and assembled on the spot by artisans from Greece and England. A 35 horse-power tug was used to pull the lighters and the coal was hoisted into the ship by special steam appliances. Spurs based himself on East Island and his work force on Middle Island which was leased to the Orient Company. The remains of the buildings, wells and some of the equipment can still be seen on these islands. The latter included 'a large condensing apparatus which will furnish a sufficient supply of wholesome distilled, filtered and aerated water for the use of the manager and labourers.'[2]

The need for safe navigation of the lagoon by ships calling to coal led to the carrying out of an accurate and detailed survey in 1885 by Captain the Honourable E. P. Vereker, in HMS *Rambler*, after which the bay north of Minni Minni is named. There was also a plan to place lighthouses at Horsburgh Point and West Island. This was never implemented, though temporary lights on posts were rigged up.

Labour proved a problem. Initially 40 Somalis were brought from Port Said but they proved unreliable and troublesome, and were sent back. They were replaced by labour from Mauritius who did not prove entirely satisfactory either, and there was an abortive project to recruit Chinese instead. Imported labour seems to have been behind a near insurrection in 1883 described by Bourne when the residence of the manager at East Point, Mr Leconte, was besieged by a

mob of about 30 men armed with knives and clubs who threatened his life.

> Luckily for him they were as cowardly as they were insolent, and he was able to keep them at bay by presenting a revolver, until he had succeeded in reducing them to a more reasonable state of mind.[3]

The crews and passengers of the visiting ships, carrying such diverse elements as migrants to Australia and Moslem Javanese pilgrims on their way to Mecca, also contributed to the Wild West atmosphere on Diego Garcia in the 1880s. Those on board the ships were not meant to disembark, for quarantine reasons, but this instruction was often ignored, causing havoc ashore. In February 1884 for example, Captain Raymond of the *Windsor Castle*, while in a drunken fit

> landed at East Point with 16 men with loaded guns; had the Union Jack hoisted on the top of a tree in front of the manager's house; paraded his men; had a volley fired at the house (fortunately unoccupied), patrolled about, informed the manager that he had taken possession of the island in the name of the British Government and appointed the Manager Mr Leconte in writing as Lieutenant Governor.[4]

The plantation workers too became infected with the general air of indiscipline. They were induced on board the ships and administered strong drink. There were attempts to desert, some of them successful. Two labourers stowed away on an Orient Company steamer and got as far as Port Said in Egypt.

Visiting British officials noted the deterioration in law and order with concern and were not themselves immune from its manifestations. The memorably named Mr Ivanoff Dupont was exasperated by the lack of respect shown him by the labourers of the Orient Company on Middle Island but, especially as some of those concerned were said to be armed,

decided that discretion was the better part of valour. He reported somewhat plaintively:

> the attitude of these men was impertinent and provoking to the extreme, and they would have met with severe punishment had I the means of enforcing my judgement. But I had not the assistance of policemen, which I would have asked for before leaving Mauritius had I known the state of insubordination in which I found some of the labourers of the Orient Company, and I considered it wiser to let them go unpunished.[5]

As a result of Dupont's report, the authorities in Mauritius concluded there was a need for an officer stationed in Diego Garcia 'who will make all, high or low, feel that they are living under the authority of the Queen and that differences are not to be adjusted by means of sticks and knives and revolvers'.[6] In response to the unprecedented threats to law and order it was decided in 1885 to set up a police post at Minni Minni at the surprisingly large contemporary cost of £1000 and with a sizable complement of an inspector, a Mr V. A. Butler, sergeant and six constables. The inspector's request for a steam launch was however turned down by the Colonial Secretary on the grounds of expense. Indeed the cost of the police operation and the disinclination of the Imperial Government, the authorities in Mauritius and the companies operating in the island to pay for it led to the withdrawal of the police presence in 1888. Although Special Constables were appointed as needed, it was not until 1973 that regular British policemen were reintroduced to Diego Garcia.

In any case, the use of the island as a coaling station did not last beyond the end of the decade. The introduction of larger ships with a longer range rendered the use of Diego Garcia superfluous. In 1888 a visiting official, Mr A. Boucherat, reported that:

> it does not seem at all certain that Lund's coaling com-

> pany will continue its operations at Diego Garcia. The Orient Company no longer have their coaling station on East Island. The Agent has left for Colombo, having sold the greater part of the stock.[7]

What happened to any remains of the coal stocks is unclear. Perhaps some of it litters the floor of the lagoon.

After this shortlived brush with the developing modern world, the island returned to its sleepy existence as a plantation economy. Developments of local importance included the erection of a chapel at East Point in 1895, and the building of a light railway, whose remains can still be seen, to carry produce to the new jetty. More significantly, in the early 1900s coconut oil gave way to copra as the main product. This was partly because oil was falling into disuse as a means of lighting and partly because of the introduction of new and more efficient techniques to dry copra using a combination of solar power and furnaces fed by husks of coconuts.

X

Partir C'est Mourir un Peu: Life Between the Wars

In the 1930s and early 1940s a French Roman Catholic priest Father Roger Dussercle, a native of Normandy, paid a number of visits to the Chagos which he described in several books which he had published at his own expense in Mauritius. Photographs taken by a British soldier Sergeant Barnett during the Second World War show Dussercle as bluff, well-built, with a black bushy beard and sporting a pith-helmet. He was sent by the Archbishop Leen of Port Louis to minister to, as the Archbishop put it, 'those poor souls who have till now been more or less abandoned'. Writing in 1846, Pridham had described the spiritual state of the inhabitants as follows: 'there exists no means of instruction among these poor people, either religious or secular; they had scarcely an idea of a Supreme Being.'[1] Other nineteenth-century visitors frequently made similar observations. Forty years after Pridham, Bourne observed: 'no priest is resident on the island, nor is there any arrangement for religious or

other education.'[2] As Pridham had commented, 'Here then is a field, however small or obscure, for some missionary.'[3]

Previous pastoral visits to the islands seem to have been few and far between before Dussercle's mission. The first recorded is by the intrepid Bishop Vincent, the Anglican Bishop of Mauritius, who made the difficult voyage to the Chagos in 1859. He found there 'a good proportion of Protestants', including some who could repeat the Lord's Prayer and the Creed in English, and he carried out several baptisms. The Bishop thought the islands 'a most promising field of labour'.[4] There were at least two visits by Roman Catholic priests in 1875 and 1884. It is doubtful whether the nuances of denominations made much sense to the islanders, although one of Dussercle's aims was to eliminate Protestantism from the island, a goal foiled by the stubbornness of one particular woman who resisted all his blandishments to convert.

Setting sail from Port Louis in the 380-ton three-masted barque the *Diego* in November 1933, Father Dussercle took 15 days to reach the islands. His arrival, as he stepped ashore from the motor boat *Marshal Foch*, caused, like all visits from the outside, a great stir. He found a community and a way of life in many respects little changed from earlier accounts written in the nineteenth century. About 60 per cent of the population were now 'children of the islands' or *Ilois*, who had been born and bred there. They wore a 'national dress' of striped material, patterned like that of mattress covers, and spoke a Creole similar to that of Mauritius. Dussercle describes them as like big children, simple and amenable. Their diet consisted of rice, pork, chicken and fish, with wine and tobacco as simple luxuries. With all their immediate needs taken care of, they were, according to Dussercle, 'the happiest people in the world from the material point of view'.[5]

Dussercle described his pastoral duties in lyrical terms. He took the children through their catechism under the shade of a giant takamaka tree at Point Marianne, and on the beach at East Point in order to catch the breeze. He administered

First Communion to young and old confirmants. He celebrated Christmas midnight mass under the stars at an altar decorated with palm fronds and garlands of flowers which was set up near the jetty at East Point. Rich, strong island voices sang familiar carols such as 'Come all ye faithful' and 'Midnight, Christians'. Dussercle preached good sermons in Creole, drawing on his deep familiarity with the islanders' language and folk stories. He warned of the danger of death which came suddenly 'like a thief at the gate', or like 'brother hare', and which, if not prepared for, could lead to an eternity in hell, stewing in hot spice and salt. After the service the entire island population processed round the settlement from lagoon-side to ocean-side.

However, there were what Dussercle regarded as persistent moral problems, especially a deplorable tendency for couples to live together without benefit of formal marriage. The local description of this practice was to be 'married from behind the kitchen'. Dussercle said that in that case these were the 'Devil's kitchens'. He spent much of his visits to the island trying to persuade couples to regularise their situations but with only limited success. It may be that the women, who were still in a minority, found it an advantage not to be bound to one man. Apart from this, it was, as before, the labour recruited from outside who were seen by Dussercle as a disruptive influence, possibly because they were less inclined to accept the paternalistic system run by the Oil Company.

As before, copra was exported three or four times a year to Mauritius for processing. But some coconut oil was still produced for local use by primitive mills driven by donkey-power. Although some people lived at Point Marianne and Minni Minni, all copra processing had been concentrated at East Point. The set-up at East Point was typical of the other 'Oil Islands', with a manager's residence or *château*, a chapel, which was built in its present form during this period after the existing one was flattened by a tree in a storm in October 1932, a shop, copra drying sheds, an oil mill, boatsheds, a sail-maker's shed, a workshop, hospital and jail. All these

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buildings can still be seen at the East Point Plantation site. The Manager's private chapel behind the Plantation House was reconsecrated by Dussercle in 1933, as a stone set in the wall proclaims. The jail contained four cells. During Dussercle's second visit, three of these were occupied by two men, who had killed a donkey to use its skin for a drum, and a young woman who had been cheeky to a supervisor.

A typical labourer's hut was divided into rooms by partitions made of coconut fronds. In the sleeping quarters were straw mattresses, raised above the ground on short stilts. Tattered clothes were scattered on the floor or hung up by strings. The living room was plastered with picture postcards and greeting cards, often with representations of couples in amorous poses. On cheap shelves were knick-knacks, decorative plates and occasionally a cheap and scratchy gramophone. Finally, there were drums for use in dancing, which was presumably what the inhabitants of the jail had in mind for the wretched donkey's skin.

Sports days and picnics were part of island life when it came to holidays and other celebrations. Dussercle records a Christmas afternoon of donkey races, sack races, bobbing for pieces of bread on strings, tug of war and swimming competitions. Dances were also held to the music of accordions, mouth organs and a sort of one-stringed harp. A dance which gave Dussercle particularly grave cause for concern was that typical of the islands, the *Séga*. No doubt because of the Mozambican origin of many of the islanders, this dance seems to have come from central Mozambique, where a similar dance exists to this day.[6] It was regarded by Dussercle and other European visitors as a throwback to African roots and too wild and abandoned for civilized tastes, accompanied by wild drumming, stamping of feet and suggestive movements as well as generous infusions of rum. The dance, held around a fire on a beach or in a clearing, went on for several hours and became increasingly frenzied and reportedly often ended in fornication. The islanders were very attached to the dance. An attempt by a manager in the Salomons to ban *Séga*

in 1937 led to an insurrection. A more decorous version of the dance is still performed in Mauritius.

The *Séga* was not the only African survival which caused Dussercle concern. Distinctly non-Christian death ceremonies, intended to ensure that the ghost would not haunt the living, continued to be practised. Reports of these had cropped up before. In October 1886 a certain Louis Fidèle had been imprisoned for 'practising witchcraft in the Cemetery'. Dussercle described these practices as 'savage, barbarous and often bestial . . . such as one would only expect to find in the middle of Africa'. According to him the rites, which went on for eight days after the death, involved 'orgies, disgusting talk, witchcraft, casting spells, hellish invocations, devilish incantations, lascivious dancing, immoral getups, frenetic leaping off coconut trees on to the roofs of huts, and all accompanied by revolting acts committed on the corpse'.[6] Having given this lurid description Dussercle said that he was not prepared to give more detail in order not to shock normal sensibilities!

Dussercle made the Chagos his special field of labour and, despite suffering shipwreck with the *Diego* on Eagle Island in June 1935, continued to serve the inhabitants of Diego Garcia through periodic visits up to and during the Second World War. He also ministered to the military garrison stationed on Diego Garcia during the war and presided at the funerals of those soldiers who are buried at Point Marianne cemetery.

Dussercle loved the islands and their people. As he quoted on his departure, 'Partir c'est mourir un peu' (to leave is to die a little).[7] Many have felt the same on leaving Diego for the last time.

XII

The End of an Era

Sources of information about Diego Garcia become more vivid during the period between the end of the Second World War and the final closure of the plantations in 1971. In addition to written accounts, there are now numerous photographs and even a colour movie film. As a result we can form a clear view of life on the island as the plantation era drew to a close. Obviously the pattern of life had still changed little since the nineteenth century, an amazing and perhaps unique survival of 'Gone with the Wind' plantation life.

Sir Robert Scott was Governor of Mauritius and visited Diego Garcia as part of a wider tour of inspection of the 'Oil Islands' in October 1955. What might have been simply a routine chore by a senior Colonial Office official produced a minor literary masterpiece. Scott was clearly enchanted by the islands and some years later transformed the diary he had kept and the observations he had jotted down into *Limuria,* a masterly and beautifully written survey of their history and their then state.

Scott arrived at Diego Garcia in the corvette HMS *Killisport.* East Point Plantation was at the peak of its development, set in a crescent of lawns and flowering shrubs. Scott described

East Point as having 'the look of a French coastal village, miraculously transferred whole to this shore',[1] with the manager's *château,* the chapel, white-washed buildings, thatched cottages and even lamp-standards all grouped around a village green. A substantial portion of the then 680 population of the island turned out on the pier to welcome him, waving Union Jacks and creating a fête-like atmosphere. The visit of the Governor was a major event.

According to Scott, for every human being there was at least a score of other creatures, chickens, ducks, dogs, cats, donkeys, horses, pigs. And for each creature there were thousands of flies, which could blanket a horse to the extent of transforming it into a piebald. The smell of drying copra was everywhere. As Scott observed:

> the principal characteristic of Diego Garcia is a prodigal fecundity, with the useful forms of life continually under pressure from the useless. The vegetation thrusts, sprawls, creeps, intertwines and shoots upward and sideways.[2]

(This vegetable vigour is the bane of efforts currently under way to preserve the East Point Plantation in a recognisable form.) Among the trees acrobatic rats disported themselves like squirrels.

In Scott's day, there was a motorable track both up to Barton Point and round the bottom of the island. There were a number of hamlets scattered around both arms of the island with now forgotten names and even locations. To the north of Minni Minni were Balisage, Camp du Puits and North East Camp; between East Point and Point Marianne lay Barochois, Roches Pointes, and Port Dumoulin; and to the north of Point Marianne, Noroit. Scott describes the islanders as dour and hard-headed compared with those of the other 'Oil Islands'. Like their present-day successors in Diego Garcia, they played soccer with an obvious and noisy consciousness that the match was for real and in earnest.

There had been some diversification of production on the

island. Dried fish, and timber from the large hardwood trees such as the takamaka, were exported. And from the mid-1950s guano for fertiliser was dug at the north-west end of the island, carted to the shore by tractors, and loaded on to a ship by barge. Maize, or Indian corn, was also grown on quite a large scale.

But exploitation of the coconut continued to provide the staple crop. Seven thousand nuts were needed to produce 1 ton of copra which in turn produced 11 hundredweight of crude oil. The film referred to above was made by the Colonial Film Unit, probably during Scott's visit. In scenes remarkably reminiscent of Bourne's account a century before, it shows in colour what was essentially an eighteenth- and nineteenth-century plantation society functioning in the middle of the twentieth century. The labourers are seen collecting fallen coconuts which they speared with cutlasses and tossed with great skill and rapidity into large baskets carried on their heads. As in Bourne's day the coconuts were then husked among the coconut groves on a stake-like device stuck in the ground. From there the nuts were taken by donkey and horsedrawn carts to East Point where women were waiting to break them into pieces with pestles and then, with the help of children, to chop them into even smaller bits. These were then spread out to dry on large concrete beds which, in the event of rain, could be covered in a matter of moments by corrugated-iron shelters on wheels. Finally, the copra was dried in hot-air chambers heated from below by burning coconut husks. Most of the dried copra was then exported by boat to Mauritius for the extraction of oil for cooking and soap. However, a small amount of oil for local needs was produced on the spot in a primitive mill composed of a beam in a large metal drum propelled by donkey power. These mills can still be seen at East Point. What was left over after the oil had been extracted was known as 'poonac' and was fed to pigs and poultry.

The same film also shows a weather balloon being released at the meteorological station at East Point, still a key element in particular for cyclone forecasting in that pre-satellite age.

The film gives a glimpse of the range of physical types among the islanders, from African to Malagasy to Creole, as they went about their work, propelling punt-like craft in the lagoon with long poles, and hanging up octopuses to dry to provide a culinary feast.

Neither the islanders nor indeed Scott could have had any inkling that the plantation era was soon to end, although his book contains some prophetic remarks about the artificial nature of the small society on Diego Garcia and the uncertainty of its long-term viability. The imbalance in sexes, with women in a distinct minority, and a low birth-rate characteristic of marginal populations, persisted. The drift away from the island to the bright lights and wider prospects of Mauritius was quickening. The population fell by 50 per cent between 1952 and 1962. As a result, labour to help work the plantations had to be imported from the Seychelles. By the mid-1960s imported labour outnumbered those born in Diego Garcia by two to one. Previously in the history of the Chagos Group, other islands had been abandoned as a result of commercial decisions; Three Brothers in the 1850s and the Egmonts and Eagle Island as recently as the 1930s. The events soon to take place on Diego Garcia were therefore by no means unprecedented.

Dependent on a single major staple crop, the plantation economy on Diego Garcia was in any case vulnerable and its future doubtful. By the early 1960s, the copra industry was in serious decline world-wide. As Scott put it:

> a population was drafted to the lesser Dependencies in the first place because there was work for it there. It moved from group to group as opportunities for paid work expanded and contracted. It was not a natural island society, and even today [1960], it shows little inclination to exploit the natural bounties of the island.[3]

Certainly no community could have survived the closure of the plantations. So even had the outside world not again projected itself into the islands, the long-term continuance

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of the way of life there must have been in doubt. History sadly shows a catalogue of such evacuations elsewhere in the world; St Kilda in the North Atlantic off the Scottish coast for example, and perhaps eventually Pitcairn in the Pacific.

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J. Addison & K. Hazareesingh, *A New History of Mauritius* (1993)

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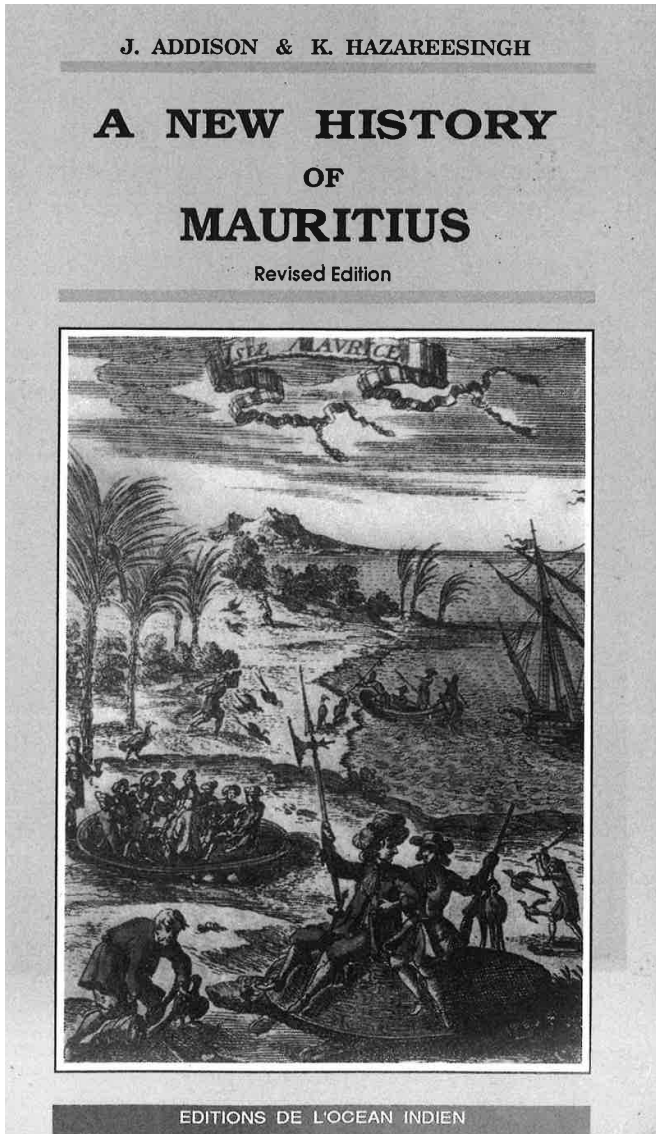
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A NEW HISTORY OF MAURITIUS

John ADDISON
and
K. HAZAREESINGH

Revised Edition

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CHAPTER 1

Introduction: geographical background and early exploration

Mauritius is a predominantly green island with a considerable area of rocky volcanic mountains. These run roughly from north-east to south-west and rise to a height of well over 2000 feet in the south. Some of the sharply rising peaks look much higher than this and the land in their vicinity is so steep and rocky that neither crops nor any other vegetation will grow there. The lower slopes of the mountains are covered with forests and grassland. Most of the rest of the island, nearly 40 per cent of its area, is today covered with sugar cane fields which give it its dominant soft green colour. The soil is fertile and water supplies are good; but over the years vast quantities of rocks and boulders have been moved to make way for sugar cultivation. Mauritius possesses almost nothing of value in the way of natural resources or raw materials. It lies in the path of destructive cyclones which periodically cause widespread devastation to crops and property.

Those who have visited the island over the years have often depicted it in glowing and idyllic terms. In 1629 Thomas Herbert, an English writer and one of the first Englishmen to visit Mauritius, described it as 'an island paradise', a phrase used today in many tourist advertisements. In the nineteenth century the American author Mark Twain once said that God made Mauritius first and then modelled Heaven on the island. The fact that it took so long for men and women to settle there in any significant numbers, however, suggests that it was more difficult to live there permanently than to pay a short visit as an early 'tourist' or member of a visiting ship's crew.

Today Mauritius is one of the world's most densely populated countries and its population is one of the world's most culturally mixed. Yet the island had no indigenous people and it is less than 400 years since the first of its inhabitants settled there. It is very isolated: 500 miles from Madagascar, over 1000 miles from the nearest point on the East African coast and 2000 miles from India. It is this isolation which partly explains why it remained uninhabited for so long.

The first people to attempt to settle in Mauritius were the Dutch in the seventeenth century. The history of Mauritius effectively begins with these Dutch settlers of the seventeenth century. Long before that date, nearly a thousand years before the birth of Christ, it is possible that Phoenician sailors, setting out from what is today the Gulf of Aqaba, may have sailed into the southern parts of the Indian Ocean and visited Mauritius. If they did, however, we have no records to confirm it. In the fourth and fifth centuries A.D. Polynesians may have visited the island in their canoes on their way to settle in Madagascar. Again, however, there is no proof that they did so.

Arab traders

It is necessary to move on to the end of the first millenium A.D. before we have reliable evidence that traders were active in the vicinity of Mauritius. Arab merchants certainly began trading with the East African coast as far south as Mozambique and the Comoro Islands well before 1000 A.D. By mingling with African peoples on that coast they built up a new culture and civilisation known as the Swahili culture. This was the product of the mixing of Arab and African people, their languages and their ways of life.

Arab and Swahili traders visited the Comoro Islands and Madagascar and from the evidence of early maps they also seem to have visited the Seychelles and the Mascarenes. These two groups of islands are marked on medieval Arab maps. Rodrigues is called Dina arabi, Mauritius is Dina mozare and Réunion is Dina margabim. None of these people attempted to settle on any of these islands. They were first

An Arab dhow

and foremost traders and since the islands were all uninhabited, there were no possibilities for trading. Moreover it was dangerous for the Arab and Swahili sailors to venture regularly as far into the Indian Ocean as the Mascarene islands in their small ships, the triangular-sailed 'dhows' or 'sambouks'.

Eventually the Arabs controlled a rich trading empire stretching in a great arc around the shores of the Indian Ocean, from the East African coast to Indonesia via Arabia, Persia, India and Malaysia. In carrying on their trade with this empire they kept as close as possible to the main coastline, though they were aware of, and used, the steady seasonal monsoon winds for voyages across the Indian Ocean.

It was the desire of Christian Europe, for a combination of reasons, to attack and eventually take over this Muslim trading empire that led the European powers for the first time into the Indian Ocean. For the first Europeans, the Portuguese, it was, partly at least, a religious crusading spirit which lay behind their voyages of exploration and conquest in the fifteenth and sixteenth centuries. The most powerful motive, however, which drove others to follow, was the prospect of profit from the valuable trade of the area.

Portuguese exploration and trade

In 1498 the Portuguese explorer Vasco da Gama rounded the Cape of Good Hope and entered the Indian Ocean. He called at some of the Arab-Swahili cities as he sailed northwards up the East African coast and from Malindi an Arab pilot showed him the way to Goa in India. In the next few years other Portuguese expeditions followed. The East African cities from Sofala, in modern Mozambique, to Mogadishu, near the Horn of Africa in modern Somalia, were taken over, if necessary by force. In 1510 the Portuguese captured Goa and in 1511 Malacca in Malaysia. The way to the Spice Islands and China lay open to them.

In East Africa they eventually abandoned the northern section of the coast and Mozambique became their main base. Their route to India was via the Mozambique Channel. It was known as the 'inner route'. Though their ships, whether the light 'caravels' or the heavier 'carracks', were more suited to voyages in the

A Portuguese caravel of the fifteenth century

open oceans than the Arab 'dhows', the Portuguese followed the traditional monsoon routes to and from India which had been used by Arab sailors for centuries. The Portuguese were skilled navigators, many of them trained in the famous school of navigation founded by Prince Henry the Navigator at Sagres in the south-west of Portugal. Their captains charted the Indian Ocean. They 'discovered' Madagascar, the Comoros and the Seychelles within ten years of rounding the Cape. For a short time they attempted to establish a base on the Comoros but the islanders, who were staunch Muslims, were hostile and the Portuguese withdrew. Fernandez Pereira sighted Mauritius in 1507 and gave it the name of his ship, Cerne. The island and its near neighbours were given the name of the Mascarenes after another Portuguese captain, Pero Mascarenhas. The number of islands with Portuguese names in the area is an indication of the importance of the Portuguese contribution to the exploration of the Indian Ocean.

Dutch traders

In spite of this, the Portuguese showed no interest in colonising any of the small groups of islands. They soon had more than enough to do in merely holding on to the scattered bases which protected their new trade routes. Before 1600 the Dutch and the English had followed the Portuguese into the Indian Ocean. They both established East India Companies, the English in 1600 and the Dutch in 1602, to monopolise the trade of the two countries with India and the vast area between the Cape of Good Hope and Cape Horn. In 1598 a Dutch admiral, van Warwyck, called at Mauritius with a small expedition and took possession of the island in the name of the Dutch. They called it Mauritius in honour of Prince Maurice of Nassau, a member of the House of Orange and Stadtholder of Holland. At the time the Dutch were in rebellion against the Spanish and Portugal was ruled by the King of Spain. Portuguese ships and trade and Portuguese possessions were, therefore, targets for the Dutch ships in the Indian Ocean. Though they had claimed Mauritius as a Dutch possession, the Dutch made no attempt to settle or colonise the island for some years. In the meantime English, Dutch and, soon, French ships occa-

Don Pero Mascarenhas

Maurice of Nassau, Prince of Orange 1567-1625

sionally used the island as a port of call for their vessels. They were all interested in trade rather than territory at that time.

During the first half of the seventeenth century the Dutch built up an unchallenged supremacy in Indonesia and the Spice Islands. Their rivals, the English and the Portuguese, were forced to recognise this Dutch supremacy, and the islands now making the state of Indonesia became known as the Dutch East Indies. The main Dutch base was established in Batavia in Java in 1619. The English and the Portuguese, driven out of this area, continued to trade alongside the Dutch in India. The route to India followed by the Dutch and the English passed close to the Mascarene islands. This route was developed after 1611 and became known as the 'great route'. As a result the number of ships calling at Mauritius increased and they soon included French as well as Dutch and English ships. They took on supplies of food and fresh water. Occasionally they repaired their vessels. The island had plentiful supplies of timber, including ebony. Trees were often felled and the valuable cargo was taken off. European commercial activity in the Indian Ocean was rapidly building up and the rivalry and competition between the four main powers was increasing. Although they were all primarily interested in trade, this was a period when it was normal for each power to try to establish a monopoly of trade with a certain area. It was obvious that each power needed to establish and maintain bases if its merchants' trading rights were to be protected.

Suggestions for further work

1 Find out more about Portuguese and Arab ships of the period. In what ways were the Portuguese and other European ships superior to those of the Arab sailors of the period?

2 Who was Maurice of Nassau and for what reasons did he became famous as a leader of the Dutch?

3 Mark on a map of the Indian Ocean the main trading places occupied by the Portuguese in the early sixteenth century.
Make a list of the main items of trade carried by merchants in the Indian Ocean at this time.

4 Make sure you understand the meaning of the following words: indigenous and millenium (page 1), crusading (page 2), monopoly and Stadtholder (page 3).

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CHAPTER 15

From oligarchy and colonial status to democracy and independence

Dr Seewoosagur Ramgoolam: early political career

For nearly a decade before this process began, a new figure had been emerging on the political scene as a champion of the oppressed Indian community and a leading member of the Labour Party. This was Dr Seewoosagur Ramgoolam, who returned to Mauritius in 1935 after fourteen years in Britain where he had completed his training as a doctor. Whilst in Britain he had served a useful political apprenticeship. He became a member of the Fabian Society and was, for a time, the secretary of the London branch of the Indian National Congress. In 1931, at the time of the Round Table Conference, he had met Mahatma Gandhi, Rabindranath Tagore and Srinivasa Sastri. He had made the acquaintance of several socialist politicians, including George Lansbury and Arthur Creech Jones, who became the Labour Party's spokesman on colonial affairs and, unofficially, a representative of colonial peoples and their interests. Dr Ramgoolam's return to Mauritius coincided with preparations for the centenary celebrations of the beginning of Indian immigration. He contributed an article to the *Indian Centenary Book*, published to mark the occasion. In it he wrote of the need to end 'the social cruelties rampant in our society'.

He knew that this would take a long time and would mean a long hard struggle against powerful vested interests. He was realistic about the patient groundwork that would be needed to influence public opinion and make the Indian workers aware of their political rights and responsibilities. With the help of socialist friends he established a daily newspaper, *Advance*. On Sundays he regularly visited Indian workers in their villages and began their political education. Slowly he built up support amongst the workers and earned the respect of the authorities. He was elected a member of the Port Louis Municipal Council.

Not long after this, in November 1940, he was nominated by the governor, Sir Bede Clifford, to replace one of the two Indians on the Council of Government who represented the interests of small planters and workers. His appointment was a break with tradition, for no one with such radical views had previously been nominated to the Council. His appointment did not mean that he had been won over to the establishment. He made it clear at once that he wanted genuine social reform which would benefit the workers. In his first speech in the Council he demanded that workers should be given the right to form themselves into trade unions and to take strike action.

In 1942 Sir Bede Clifford was replaced as governor by Sir Donald Mackenzie-Kennedy. Increasingly Dr Ramgoolam found himself out of sympathy with the new governor's approach and policies. He decided that his only course was to join the opposition so that he would be free to campaign openly for such causes as the extension of the franchise to the workers. When Mackenzie-Kennedy put forward his first constitutional proposals in October 1946, they did not go far enough for socialist leaders in Mauritius, for the franchise qualifications would still have excluded the mass of the people and left power in the hands of the whites. B. Bissoondoyal organised demonstrations against the proposals in Port Louis.

One of the most effective of these took the form of boycotting for the first time the 'Last Races' in 1947. Race meetings in Port Louis were organised by the Turf Club, an exclusive club whose membership at that time was restricted to Franco-Mauritians. The workers obtained a special leave on that day to attend the races. However, this gave the Franco-Mauritians an opportunity to look down on the labourers and their way of life and the special

Dr Ramgoolam, who became Sir Seewoosagur Ramgoolam in June 1965

day was dubbed in Creole 'les courses Malbar' which carried a pejorative meaning. Bissoondoyal campaigned against attending the races on that day and his move met with complete success. As from that year that particular race meeting no longer enjoyed popular support and, perforce, the appellation was dropped.

Dr Ramgoolam, with the support of men like Emmanuel Anquetil and Renganaden Seeneevassen, continued to press for a wider extension of the right to vote. Their cause was helped by a number of developments. The Labour Party had come to power in Britain in the first post-war general election. The war itself had brought a revolution in public opinion all over the world on issues like colonialism, self-determination and human freedoms and rights. It was becoming increasingly difficult for colonial powers such as Britain to ignore the mounting demands for freedom from foreign domination coming from rising nationalist movements in Asia and Africa. Lastly but by no means least in its impact on Mauritius, India gained her independence in 1947.

It did not take long for Britain's post-war Labour Government, elected in 1945 and faced with these pressures, to reach a decision in principle to work towards the granting of self-government and independence to all Britain's colonial territories. Once taken, this decision was maintained as a fundamental strand in Britain's policy towards her colonial territories. Subsequent British governments in the 1950s and 1960s, whether Labour or Conservative, continued with its gradual implementation. Alongside the pressures from nationalist and independence movements it was a major factor in bringing about the decolonisation of all Britain's colonial territories between 1947 and the late 1960s. The only alternative to such a policy would have been to resist, by force, the nationalist movements which began to emerge and gain momentum everywhere soon after the end of the Second World War. This would have been contrary to Britain's commitment to democratic principles. Equally important, it would have been unacceptably costly both financially and in terms of human resources and lives.

Mauritius was a part of Britain's colonial empire. The pressures there from nationalist movements were small in comparison with those in other larger territories. Nevertheless Governor Mackenzie-Kennedy was under pressure both from Britain, from the outside world and from inside Mauritius to move beyond his 1946 proposals for constitutional reform. In a letter to Creech Jones, who was now himself Colonial Secretary in the Labour Government, he admitted that his earlier proposals would no longer be acceptable in the atmosphere of 1948. Nevertheless both the Governor and the Colonial Secretary believed that it was too soon to move to universal suffrage. A commission appointed to make new proposals recommended in 1947 that the vote should be extended to anyone able to read and write simple sentences in any language used in Mauritius. This went far beyond the previous suggestion that the vote should be restricted to those holding the Primary Leaving Certificate. Anyone who had served in the armed forces should also qualify for the vote.

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The Mackenzie-Kennedy Constitution 1947

The new proposals were accepted by the Colonial Office and were the basis for the election held in 1948. This was a real landmark in the constitutional history of Mauritius. In the previous election held in 1936 there had been 11,427 registered voters. In 1948 the number had risen to 71,236. Nearly two-fifths of the adult population could now vote. For the first time in the island's history the electorate included a significant number of workers. The governor presided over a Legislative Council consisting of nineteen elected, twelve nominated and three official members. For the first time the elected members in the Council outnumbered the nominated and official members. The island was divided into five electoral districts. Six members represented Plaines Wilhems and Rivière Noire; four represented Port Louis; and three members represented each of the districts of Moka-Flacq, Grand Port-Savanne and Pamplemousses-Rivière du Rempart.

The election of 1948

In the election of 1948, twelve of those returned to the Legislative Council were members of the Labour Party and these included several Indo-Mauritians. The struggle for the effective transfer of power from the old oligarchy to new men had really begun. Dr Ramgoolam and his colleagues, amongst the new men, made it clear that this was only the beginning. They had new objectives for the immediate future; and within the next decade they achieved most of them. These included the introduction of universal suffrage; an increase in the number of elected members in the Legislative Council; and the establishment of the principle that ministers should be responsible to the elected council.

These achievements were made in the face of opposition from the conservative elements in the country, who organised themselves after the election and fought a strong rearguard action to try to retain their old position of privilege as long as possible. They made as much as they could of the alleged danger of 'communalism': that is the danger that politics and political parties would develop and operate round the sectional interests of the different communities that made up the multi-racial society of Mauritius. There was, it was claimed, evidence that the voting in the 1948 election had followed a communal pattern in that eleven candidates had been elected largely on Hindu votes in rural districts, eight by Creoles and one by Europeans. It is, however, not surprising that, with the extension of the franchise, the different groups should vote for candidates who they felt would support their own interests; and indeed this was the traditional pattern of voting when power was in the hands of the Franco-Mauritians. After the election, Dr Ramgoolam and others who genuinely wanted to encourage national unity and play down communalism tried to broaden the base of the Labour Party by attracting support from the different communities, particularly the non-European community. The main opposition to further change after 1948 was led by Jules Koenig and his Franco-Mauritian party, the Ralliement Mauricien or Parti Mauricien. They raised the bogey of Hindu domination, and until the next election they still held political power in Mauritius because they had the support of the nominated and official members of the Council.

The election of 1953

The election of 1953 brought genuine democracy a step nearer. The Labour Party increased its share of the elected seats to fourteen; but this was not enough to give the party an overall majority. The conservatives were still supported by most of the nominated and official members. Soon after the election the Labour Party newspaper, *Advance*, complained bitterly that in exercising his right to choose the nominated members, the governor had flouted the electors' wishes. Instead of reflecting the preference the electors had shown for Labour candidates he had chosen men who would prolong the political domination of the Franco-Mauritians. Further change was needed before the voice of the people in elections could become really effective. Dr Ramgoolam and the Labour Party demanded three main types of change: firstly, universal suffrage; secondly, a further increase in the number of elected members in the Legislative Council; and thirdly, the

introduction of ministerial responsibility.

In 1953 the Labour Party managed to persuade the Legislative Council to pass a resolution calling for an extension of the franchise. Talks followed in London and the outcome was the offer of a new constitution in February 1956. It was proposed that the number of elected members of the Council should be increased to twenty-five; that universal suffrage should be introduced and that seven of the twelve members of the Executive Council should be chosen from the legislature. However, the second proposal was linked with another which made it unacceptable to the Labour Party; this was that elections should be held under a system of proportional representation. The Labour Party objected to proportional representation because they feared that in a multi-racial society such as that in Mauritius it would encourage people to vote in their communal groups. They also feared that it could undermine the strength and unity of the party.

The emergence of new parties and the election of 1959

In the face of this opposition the proposal of proportional representation was dropped. The details of the electoral system were to be worked out by an electoral commission under the chairmanship of Trustram Eve. The commission reported in 1958 and recommended an increase in the number of elected members to forty. On this basis the 1959 election was held. Before the election a number of changes had taken place in the pattern of political parties in Mauritius. The main opposition party, the Ralliement Mauricien, had taken a new name: the Parti Mauricien Social Démocrate (PMSD). It had done this largely because it realised that, in order to have a future, it must attract more support from the non-white population, particularly from the Creoles.

The Muslims had formed the Muslim Committee of Action (MCA), the Comité d'Action Musulmane (CAM). Its leader, Sir Abdool Razack Mohamed, had represented Muslim opinion at the London constitutional talks in 1955. At the time he was a member of the Ralliement Mauricien. The MCA was formed in 1958 when the Muslims realised that they were merely being used by the Europeans as allies against the Labour Party.

A fourth party, the Independent Forward Bloc (IFB), was also founded in 1958. It stood for the energetic revival of Indian culture and the consequent rejection of political systems based on Western culture.

The leading part in the founding of the IFB was played by Sookdeo Bissoondoyal, brother of Basudeo Bissoondoyal who had influenced his political thinking. Sookdeo Bissoondoyal had turned from school teaching to politics in 1948. In the election of that year he was elected to the Legislative Council as one of the members for the constituency of Grand Port/Savanne and one of the group of twelve Labour Party members. He also served as a member of the Executive Committee, but from 1953 he became increasingly critical of the Labour Party, believing that it had swerved from its original objective, namely the promotion of the ordinary working people's interests, and had forgotten its socialist aims. In 1957 he called for a boycott of the visit of Princess Margaret to Mauritius as a protest against corruption in the administration. It was during one of several terms of imprisonment in 1957 that he decided to form the IFB. Although he did not always agree with the policies of the Labour Party, Sookdeo Bissoondoyal did not hesitate to ally with it to seek the independence of Mauritius.

In spite of the existence of these two parties which were bound to attract some of the Indian votes, the Labour Party's fortunes reached a peak in the 1959 election. Of the forty elected seats, the party gained twenty-four. The IFB won six seats, the MCA five. Jules Koenig's PMSD won only three seats; and the remaining two went to Independent candidates.

One of the three PMSD seats was won by Gaëtan Duval, a young lawyer with a flamboyant personality, who was later to lead the party in succession to Jules Koenig. As a result of its decisive victory in this election the Labour Party was in a strong position to press for an early realisation of its final objectives: self-government and independence.

The 1961 Constitutional Conference

A constitutional conference at which all the Mauritian political parties were represented

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was held in London in June 1961. It soon became obvious that there was a serious rift between the PMSD and all the other parties. The PMSD did not want independence; the other parties did. The PMSD favoured some form of integration or association with Britain. The difference of opinion was easily explained. The PMSD, as the party representing Creoles and the Franco-Mauritian minority, was afraid of independence and of the political dominance of Indo-Mauritians which they believed would follow. Its fears were similar to those expressed by parties representing minority groups in other colonial territories, especially in Africa. As the date of independence came nearer, such fears became more real.

The PMSD claimed that most Mauritians were not yet ready to assume the responsibility of running their own affairs. This again was an argument that had been heard, and continued to be heard, from settler groups in African territories like Kenya and Northern and Southern Rhodesia. The PMSD argued that, if independence was inevitable, it should come slowly and with adequate safeguards for the minority groups. In Mauritius, as in other colonial territories, the British showed sympathy with these arguments.

Two stages to Independence

The PMSD was outnumbered, however, by the Labour Party and its allies who favoured as quick a transition to self-government and independence as possible. The PMSD representatives withdrew from the conference before any decisions were reached. It was agreed that self-government should be reached in two stages. In the first stage, effected in 1962, Dr Ramgoolam took the title of Chief Minister. The governor was to seek his advice on all ministerial appointments and on the question of the duration and date of dissolution of the Legislative Assembly. Dr Ramgoolam decided

Mauritians demonstrate at the constitutional talks in London, 1965

to speed up the transition to the second stage by bringing forward the date of the election from 1964 to 1963.

The election of 1963

In this election the Labour Party suffered a check. They won only nineteen seats out of forty and thus lost their overall majority, but they remained easily the largest party. The PMSD made some recovery with eight seats. The IFB had seven seats, the MCA four and the Independents two. The PMSD had benefited from the attractive personality of Gaëtan Duval. He was a colourful figure who had entered the legislature at the previous election and was to succeed Koenig as leader of the party in 1966.

In consultation with the Colonial Office, Ramgoolam formed an all-party coalition government after the election. Both the British Government and Ramgoolam were anxious to reassure the electorate and all sections of the community that their interests would not be overlooked. The second stage of progress towards self-government could now be effected. In March 1964 Dr Ramgoolam became Premier and the Executive Council became a council of ministers responsible to the Legislature. The coalition ministry proved to be a fragile one. The difference of opinion between the PMSD on the one hand and the Labour Party and its allies on the other persisted.

Constitutional Conference of 1965

Once again in 1965 all parties were represented in constitutional talks in London with the Colonial Secretary. Labour and its allies pressed for early independence. The PMSD put forward a scheme for 'associated status' with Britain, under which certain matters, including defence, foreign affairs and some constitutional decisions would have been kept under British control. They also asked that no final decision should be taken on the future of Mauritius before a referendum was held.

At the Constitutional Conference in London

Mr Anthony Greenwood, the Colonial Secretary, and Sir Seewoosagur Ramgoolam, Premier of Mauritius

the British negotiators seemed reluctant to agree to an early move towards independence and showed sympathy with, and a readiness to listen to, the proposals of the PMSD. The prospects of Mauritius being granted independence as the MLP wished seemed to be threatened. This British attitude, however, was probably adopted as a means of persuading Sir Seewoosagur and the MLP to agree to the transfer to Britain of the Chagos Islands, as the price of a British grant of independence. If this was the case, the strategy worked. The MLP agreed not to raise objections to the transfer of the Chagos group to Britain as part of the British Indian Ocean Territories and to the evacuation of their inhabitants to Mauritius.

Other considerations, however, certainly influenced the final outcome. Sir Seewoosagur's reputation for moderation and tolerance and his long-standing connections with old Labour politicians in Britain were crucial. He was prepared to offer guarantees to the minorities including the appointment of an ombudsman[1],

1 *Ombudsman: an official first employed in Scandinavian countries and more recently in some other European countries to act as an arbiter between an ordinary citizen and government in cases where a citizen feels himself to be a victim of some form of injustice or discrimination.*

as proposed by Sookdeo Bissoondoyal, who would not be a Mauritian. Finally, with some misgivings but no doubt with African precedents in mind, the decision was taken that independence should be granted, provided a further election showed a clear demand for independence from the Mauritian people. It was to be granted, however, under a new electoral system designed to ensure the adequate representation of all minority groups. The end of 1966 was suggested as a possible date for independence after a six-month period of self-government. The Colonial Secretary ruled out both the PMSD's suggestion of a referendum and of a form of association with Britain. This was partly on the grounds that both did not conform to current British constitutional practice. They were, of course, though this was not said, peculiarly French.

The new electoral system

The final advance to independence was delayed by difficulties in reaching agreement on the form of the new electoral system. The PMSD made the most of these disagreements. An electoral commission, the Barnwell Commission, arrived in Mauritius early in 1966. Its recommendations were complicated and were felt to be too favourable to the urban electorate. Ramgoolam feared that the system would produce splinter groups and make stable government difficult. John Stonehouse, the Under Secretary for the Colonies, arrived in Mauritius to resolve the crisis. In the end the following arrangements were made. Mauritius was divided into twenty constituencies, each represented by three members. The island of Rodrigues was to form a two-member constituency. Eight seats would not be contested in the initial voting. They would be held in reserve and allocated to the eight best losers from the four groups which were judged to be inadequately represented after the main election. The main purpose of this 'corrective machinery' was to ensure adequate representation for the minority groups.

The election of 1967

The 'independence' election was finally held under this complicated system in August 1967. It was to take place under the scrutiny of observers from the Commonwealth, who would pass judgement on its fairness. Three parties, Labour, the MCA and the IFB, fought the election as the 'Independence Party'. The PMSD, now led by Duval, campaigned on the platform of something less than complete independence. The central issue was, therefore, clear-cut and the electorate's decision was equally decisive. The 'Independence Party' won thirty-nine seats shared as follows: Labour twenty-four, MCA four and IFB eleven. They polled 54.8 per cent of the votes. The PMSD won twenty-three seats with 43 per cent of the votes. The Commonwealth observers reported that, with few reservations, they were satisfied that the elections had been conducted fairly and with a minimum of violence. The very small number of spoiled ballot papers seemed to show that the great majority of the electors had understood the complicated electoral system. The final stage of the exercise, the allocation of the eight reserved seats, awarded an equal share to the government and opposition parties.

Self-government and independence

At last the way lay open for a rapid advance to independence. Mauritius became self-governing on 12 August 1967, immediately after the election. At the first meeting of the new Legislative Assembly on 22 August 1967, Sir Seewoosagur Ramgoolam put down for debate the resolution 'That this Assembly requests Her Majesty's Government in the United Kingdom to take the necessary steps to give effect, as soon as practicable this year, to the desire of the people of Mauritius to accede to Independence within the Commonwealth of Nations and that Mauritius be admitted to membership of the Commonwealth on the attainment of Independence.'

The resolution was passed and the British Government fixed 12 March 1968 as Independence Day. During the debate Sir Seewoosagur spoke hopefully of the country's future:

> We are meeting today on an historic and solemn occasion. By our decision today, Sir, we shall put Mauritius on the path of her destiny. It is a day of joy for all patriotic men and women, for on this day we are taking the formal step which will confer on our

Independence celebrations 1968

people freedom and bring them into their heritage . . .

With Independence there will come among the people of this country a sense of regeneration and there will arise in the hearts of our fellow countrymen a fervour and a determination to go forward and build for themselves and for future generations a strong and happy Mauritius . . .

Let us resolve that in our determination to build a better future for ourselves and our children we shall all be inspired by the loftiest principles of patriotism and love for our island home.

We have striven for many years now to create a new sense of unity out of our rich diversity and in the words of the poet let it be said for the glory of those who are fortunate to live at this hour:

'Bliss was it in that dawn to be alive.'

Such sentiments are expected of political leaders on these occasions; but what really mattered was the extent to which the hopes and ideals were realised in the future. It is time to examine how Mauritius has fared since her 'day of destiny'.

Suggestions for revision

The main concern of this chapter is the story of the struggle for, and the main steps towards, independence in Mauritius. You should know:

a) the main stages and landmarks on the road to independence, such as the new Constitution of 1948, the Constitutional Conference of 1961, and the elections of 1948, 1953, 1959, 1963 and 1967;
b) the names of and the difference between, the main political parties that emerged during this period, for example, the Rallie-ment Maurician (later the PMSD), the MCA and the IFB;
c) the part played by, and the ideas of, leading politicians and officials such as Dr Seewoosagur Ramgoolam, Gaëtan Duval, Jules Koenig, Sir Donald Mackenzie-Kennedy and the Bissoondoyal brothers.

Suggestions for further work

1 Once again, it would be interesting to do some 'oral' research with the help of older people in your family or your friends' families. Try to talk to people who had different views about whether it was best for Mauritius to become independent as soon as possible after the election of 1967 or whether it would have been better to have a longer period of self-government, as a preparation for complete independence.
2 Make sure you know the meaning of the following words: franchise (page 86), suffrage (page 88), proportional representation (page 89) and coalition (page 91).

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Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (1995)

Self-determination of peoples

A legal reappraisal

ANTONIO CASSESE

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3

Treaty law

The United Nations Charter

During the Second World War, as early as 1941, the US and the UK proclaimed self-determination as one of the objectives to be attained and put into practice at the end of the conflict. The Atlantic Charter drafted by President F. D. Roosevelt and Winston Churchill, and made public on 14 August 1941, proclaimed self-determination as a general standard governing territorial changes, as well as a principle concerning the free choice of rulers in every sovereign State (internal self-determination).[1] However, Churchill hastened to place a restrictive interpretation on the Atlantic Charter: on 9 September 1941 he clearly stated to the House of Commons that the principle of self-determination proclaimed in the Charter did not apply to colonial peoples (in particular, to India, Burma, and other parts of the British Empire) but only aimed at restoring 'the sovereignty, self-government and national life of the States and nations of Europe under the Nazi yoke', besides providing for 'any alterations in the territorial boundaries which may have to be made'.[2]

[1] '*Second*, they [the two drafters of the Declaration] desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned; *third*, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.' Text in J. A. S. Grenville, *The Major International Treaties: 1914–1973 – A History and Guide with Texts*, London 1974, 198 ff.

[2] Parliamentary Debates, Fifth Series, vol. 374, *House of Commons, Official Report*, eighth vol. of Session 1940–41, 68–69. Churchill's statement is mentioned by E. R. Stettinius, Jr, *Roosevelt and the Russians – The Yalta Conference*, Garden City, New York 1949, 244 ff. See also R. C. Hula, 'National Self-Determination Reconsidered', 10 *Social Research*,

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In 1944, representatives of the US, the UK, the Soviet Union, and China entered into secret and informal negotiations with the aim of setting the foundations for a world organization. They emerged from the talks at Dumbarton Oaks with several proposals for a UN Charter. However, despite the fact that the Allies had embraced the principle of self-determination in several policy documents adopted between 1941 and 1944,[3] it did not appear anywhere in the draft Charter, which however included a provision, although somewhat weak, on human rights.[4] It seemed that the UN Charter was destined, like the League of Nations Covenant, to be silent with regard to the rights of peoples.

By the end of April 1945, when the United Nations Conference on International Organization met in San Francisco, the Four Powers had, however, reconsidered the issue at the insistence of the USSR.[5] Thus, among the amendments renegotiated and presented in San Francisco was a provision stating that the Organization aimed 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'.[6] Although the Four Powers had not devised an effective means for the use and expansion of the principle, they had at least identified self-determination as a major objective of the new world organization.

In the relevant body of the San Francisco Conference (Committee I of Commission I) several States approved of the new provision, the Philippines, Egypt, the Ukraine, Iran, Syria, and Yugoslavia among

1943, 1–21. On the Atlantic Charter and self-determination, see generally G. Decker, *Das Selbstbestimmungsrecht der Nationen*, 177–86; K. J. Partsch, 'Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination', in K. Vasak (ed.), *The International Dimensions of Human Rights*, vol. I, Paris 1982, 64–5.

[3] For a discussion of these documents, which include the Atlantic Charter, see in particular Brownlie, 'An Essay in the History of the Principle of Self-Determination', 96–8. See also A. Cassese, 'Political Self-Determination – Old Concepts and New Developments', in A. Cassese (ed.), *U.N. Law – Fundamental Rights: Two Topics in International Law*, Alphen aan der Rijn 1979, 161, note 2.

[4] For the text of the Dumbarton Oaks Proposals, see *Postwar Foreign Policy Preparation 1939–1945*, Department of State Publication 3580, Washington, DC, Government Printing Office, 1949, 611 ff.

[5] On the role of the Soviet Union in insisting on the proclamation of the right to self-determination, see R.B. Russel, *A History of the United Nations Charter*, Washington 1958, 62 ff., 810; G. Starushenko, *The Principle of National Self-Determination in Soviet Foreign Policy*, 142–7; Brownlie, 'An Essay in the History', 98.

[6] See UNCIO, vol. VI, 1945, 296.

them.[7] However, not all of the States were amenable to the idea that self-determination ought to be included in the Charter. Some, most notably Belgium, were in fact very critical. The Belgian representative, the distinguished international lawyer H. Rolin, issued a brief memorandum containing two major criticisms, both focusing on the provision's departure from the traditional State-oriented approach. He first asserted that the provision referring to self-determination had been founded on 'confusion'; and he pointed out that 'one speaks generally of the equality of *States*' not of peoples. His second argument was:

> It would be dangerous to put forth the peoples' right of self-determination as a basis for the friendly relations *between the nations*. This would open the door to inadmissible interventions if, as seems probable, one wishes to take inspiration from the peoples' right of self-determination in the action of the Organization and not in the relations between the peoples.[8]

After stressing that the world was still far from full self-determination, the Belgian delegate raised several important concerns. Specifically, he wondered whether in the case where a national minority in a given country claimed the right to self-determination, the Organization would be expected to step in and other States would feel duty-bound to intervene on the strength of the concept of 'friendly relations'. Rolin then proposed that the entire provision be withdrawn.[9]

It would seem that the Belgian delegate did not take into account self-determination as an anti-colonial principle. He only perceived it as a criterion for protecting *nationalities* or *minorities* but even from this angle he dismissed it. In its place, Belgium put forward counter-proposals aimed at strengthening the protection of human rights[10] but later withdrew them.

Other States also expressed doubts about the proposed Charter provision, mostly out of fear that a provision on self-determination would foster civil strife and secessionist movements. Venezuela voiced concern.[11] Colombia formally declared:

> If it [self-determination] means self-government, the right of a country to provide its own government, yes, we would certainly like it to be included; but if it were to

[7] See the microfilmed minutes (unpublished) of the debates of the First Committee of the First Commission of the San Francisco Conference, 14–15 May and 1 and 11 June, 1945, Library of the Palais des Nations, Geneva [hereinafter Debates].
[8] UNCIO, vol. VI, 300.
[9] See Debates, 14 May (afternoon session), 12 and 14.
[10] Debates, 14 May, 13. See also UNCIO, vol. VI, 640.
[11] Debates, 15 May (morning session), 14.

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be interpreted, on the other hand, as connoting a withdrawal, the *right of withdrawal or secession*, then we should regard that as tantamount to *international anarchy*, and we should not desire that it should be included in the text of the Charter.[12]

Fomenting secessionist movements was not, however, the only fear. The potential misuse of the principle of self-determination was also raised. For example, Egypt, making a veiled reference to Germany and Italy, observed that the principle lent itself to manipulation. Politicians could easily invoke the principle – as did Hitler – to justify military invasions and annexations. This led the Syrian delegate to point out that the principle of self-determination contemplates free expression; if a people is unable to express its genuine will, self-determination cannot be considered to have been achieved.[13]

Subsequently, the Committee responsible for the drafting of the relevant provision agreed on four points. First, 'this principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Chapter [of the UN Charter]'.[14] Second, 'the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession'.[15] Third, it was agreed that the principle of self-determination 'as one whole extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose'.[16] Fourth, it was agreed that 'an essential element of the principle [of self-determination] is 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'.[17]

This last passage might be construed to mean that the framers of the Charter – intent on emphasizing that many authoritarian governments which claim the support of the 'popular will' do not in fact rule with the 'free and genuine' will of the people – considered the realization of self-determination to be coterminous with 'freedom of political expression and from authoritarian government'. However, a careful examination of the unpublished minutes of the debates that led to the adoption of the passage

[12] Debates, 15 May, 20 (my italics).
[13] Debates, 14 May, 24 ff. (Egypt); 15 May (morning session), 12 (Syria).
[14] See UNCIO, vol. VI, 296.
[15] *Ibid.* The French text was as follows: 'On a déclaré que ce principe n'était compatible avec les buts de la Charte que dans la mesure où il impliquait, pour les peuples, le droit de s'administrer eux-mêmes, mais non pas le droit de sécession', *ibid.*, 298.
[16] *Ibid.*, 704.
[17] UNCIO, vol. VI, 455.

quoted warns against such a conclusion. The preparatory work suggests that the Wilsonian dream of representative governments for all was not contemplated. The emphasis on the need for a 'genuine' choice was only intended to stress that where a people is afforded the right to express its views, it must truly be free to do so.[18]

The final text of UN Charter does not confine itself to the political 'rhetoric' of self-determination of the League of Nations' Covenant (the name of the new Organization also includes the word 'Nations', and the preamble starts with the well-known, rather hypocritical and misleading sentence 'We the peoples of the United Nations . . . '). The UN Charter goes beyond that and includes Article 1(2), which provides that one of the purposes of the United Nations is:

> to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.[19]

The lively debate on self-determination and the Syrian Rapporteur's report to the Commission[20] suggest that four main features characterize the concept eventually proclaimed in Article 1(2).[21]

[18] See Cassese, 'Political Self-determination', 139 and notes 5 and 6.

[19] See also Articles 55 and 56 of the UN Charter. Article 55 provides that: 'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.' Article 56 provides that: 'All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.'

[20] UNCIO, vol. VI, 455 and 714 ff.

[21] On Articles 1(2), 55–6, 73 and 76, in addition to the classic commentaries on the UN Charter, see, among others, S. Calogeropoulos-Stratis, *Le droit des peuples à disposer d'eux-mêmes*, 108–15, 263–5; Guilhaudis, *Le droit des peuples à disposer d'eux-mêmes*, 168–73; K. Doehring, 'Das Selbstbestimmungsrecht der deutschen Nation', in *Recht und Staat im sozialen Wandeln. Fest. für H. U. Scupin*, Berlin 1983, 555–60; Thürer, 'Das Selbstbestimmungsrecht der Völker. Ein Ueberblick', 118–19; D. Thürer, 'Self-Determination' in *Encyclopedia*, vol. VIII, 1985 at 471–2; F. Lattanzi, 'Autodeterminazione dei popoli', in *Digesto delle Discipline Pubblicistiche*, vol. II, Turin 1987, 5–9; G. Arangio-Ruiz, 'Autodeterminazione (diritto dei popoli alla)', in *Enciclopedia Giuridica*, vol. IV, Rome 1988, 2–3; E. Gayim, *The Principle of Self-Determination – A Study of its Historical and Contemporary Legal Evolution*, Oslo 1990, 21–6; M. Bedjaoui, in J. P. Cot and A. Pellet (eds.), *La Charte des Nations Unies*, 2nd edn, Paris 1991, 1070–83; K. J. Partsch

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First, States were unable positively to define self-determination. The concept of self-determination upheld in the Charter can only be negatively inferred from the debate preceding the adoption of Article 1(2). Self-determination *did not mean* (a) the right of a minority or an ethnic or national group to secede from a sovereign country; (b) the right of a colonial people to achieve political independence; for these peoples self-determination could only mean 'self-government' (this conclusion can be drawn from the clear agreement reached when drafting the provision to the effect that self-determination only meant 'self-government' and also from the fact that Article 76 of the UN Charter, laying down the basic objectives of the trusteeship system, contemplated 'their progressive development towards self-government or independence'; a systematic interpretation of the Charter would thus warrant the conclusion that, by implication, 'self-government' did not mean 'independence'); (c) the right of the people of a sovereign State freely to choose its rulers through regular, democratic and free elections; for these peoples also self-determination only meant 'self-government'; (d) the right of two or more nations belonging either to a sovereign country or two sovereign countries to merge; this right is ruled out by the ban on secession (plainly, the right at issue would imply that nations belonging to one or more States could secede, in order to achieve the 'possible amalgamation of nationalities' referred to by the Syrian Rapporteur).[22]

It follows that the principle enshrined in the UN Charter boils down to very little; it is only a principle suggesting that States should grant *self-government* as much as possible to the communities over which they exercise jurisdiction.[23]

'Selbstbestimmung' in R. Wolfrum (ed.), *Handbuch der Vereinten Nationen*, Munich 1991, 745–52; K. Doehring, in B. Simma (ed.), *Charta der Vereinten Nationen – Ein Kommentar*, Munich 1991, 15–32; B. Driessen, *A Concept of Nation in International Law*, The Hague 1992, 118–24.

[22] Consequently, the reference to 'amalgamation' can only be taken to mean the merger of two sovereign countries based on the same nationality (think, for instance, of the unification of the two German States, which actually took place in recent years).

[23] Cf. UNCIO, vol. VI, 296. The Charter's other provisions, Chapters XII and XIII and Article 73 in particular, support the thesis that Article 1(2) enshrined the moderate version of self-determination. Chapters XII and XIII ensured that there was no radical break with the colonial system by providing for an international trusteeship system. Article 73 provided for colonial power rule the so-called 'non-self-governing territories'. Article 76 imposed upon the colonial powers the rather vague obligation 'to develop *self-government*' in the non-self-governing territories. Article 76, part of the trusteeship programme, was more pointed; 'the basic objectives' of the trusteeship system included,

So much for the *notion* of self-determination. As for the second feature of the principle in the UN Charter, it should be stressed that Article 1(2) merely laid down one of many lofty *goals of the Organization.* The threat to State interests was thus minimized.

The third feature of the principle is that self-determination, conceived of as a postulate deeply rooted in the concept of the equal rights of peoples or, as explained by the Philippine delegate, in the 'equality of races',[24] was considered to be a means of furthering the development of *friendly relations among States*: it would foster universal peace. This last qualifier, *a fortiori*, limited the power of the principle. Since self-determination was not considered to have a value independent of its use as an instrument of peace, it could easily be set aside when its fulfilment raised the possibility of conflicts between States.

Fourthly, since self-determination was envisaged primarily as a programme or aim of the Organization, and since the UN Charter neither defined self-determination precisely nor distinguished between 'external' and 'internal' self-determination, the Charter *did not impose direct and immediate legal obligations on Member States* in this area (the obligation laid down in Article 56 of the Charter is very loose and in any case does not impose the taking of direct and specific action by each Member State of the UN).

In spite of all these limitations and shortcomings, the fact remains that this was the first time that self-determination had been laid down in a multilateral treaty – a treaty, one should add, that had been conceived of as one of the major pieces of legislation of the new world community. Thus, the adoption of the UN Charter marks an important turning-point; it signals the maturing of the political postulate of self-determination into a legal standard of behaviour. In 1945 this legal standard was primarily intended to guide the action of the Organization. Over the years Member States of the UN gradually turned that standard into a precept that was also directly binding on States.

in addition to 'self-government', 'independence'. Thus, although the level of self-government afforded was to be 'appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement', Chapter XIII actually afforded peoples greater rights than Article 1(2) (the general provision on self-determination) — or at least offered a limited class of dependent peoples greater rights.

[24] UNCIO, vol. VI, 704.

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particular the right of peoples under foreign domination. Thirdly, the situation of the black populations of Southern Rhodesia and South Africa prompted the same majority of States to frame this situation as a question of the (internal) self-determination of the black population. As it was unthinkable – on account of Western opposition – for treaty rules to be agreed upon on these matters, the best way out was found in the gradual evolution of general standards. One of the advantages of these standards was that their relatively slow formation and their necessarily flexible content would make them more palatable to the West.

It follows from the above remarks that although in the next pages I shall primarily concentrate on UN practice and pronouncements of individual States for the purpose of ascertaining the content and import of general rules, this does in no way imply that treaty rules are excluded from the picture. It is only for the sake of clarity and a more precise exposition, that treaty rules and their implementation will not be mentioned again from this different angle – that is, *qua* part and parcel of the customary process.

The role of UN Resolutions in the crystallization of customary rules

A second caveat is necessary. The problem area we are discussing shows a distinct feature: although customary rules have resulted from the usual combination of *usus* and *opinio juris*, these two elements have not played the normal role that can be discerned in other – less political and more technical – areas of international relations. In these other areas, the first element that normally emerges is the repetition of conduct by an increasing number of States, accompanied at some stage by the belief that this conduct is not only dictated by practical (economic, military, political) reasons, but is also imposed by some sort of legal command. By contrast, in the case of self-determination – as in similar highly sensitive areas fraught with ideological and political dissension – the first push to the emergence of general standards has been given by the *political will* of the majority of Member States of the UN, which has then coalesced in the form of General Assembly resolutions. Strictly speaking, these resolutions are neither *opinio juris* nor *usus*. Rather they constitute the major factor triggering (a) the taking of a legal stand by many Member States of the UN (which thereby express their legal view on the matter)[3] and (b)

[3] In the *Nicaragua* case the International Court of Justice pointed out that '*opinio juris* may, though with all due caution, be deduced from, *inter alia*, . . . the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625(XXV) [on

the gradual adoption by these States of attitudes consistent with the resolutions.

It follows that, when discussing customary international law in the area of self-determination, special emphasis will be placed here on two UN Documents: the 1960 Declaration Granting Independence to Colonial Countries and Peoples[4] and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN.[5] The former, in conjunction with the UN Charter, contributed to the gradual transformation of the 'principle' of self-determination into a legal right for non-self-governing peoples. The latter was instrumental in crystallizing a growing consensus concerning the extension of self-determination to other areas. Both are vital in developing an understanding of how general international law regulates self-determination.

These two documents, however, should not be looked at *per se*, but within the general context of their adoption. In other words, they are significant in that their elaboration prompted Member States of the UN to express their views and take a stand on self-determination. The pronouncements of States before, during, and after the adoption of the two Declarations, in conjunction with the actual behaviour of States in international dealings, constitute important elements of State practice. Together with statements made by individual States in other fora (for instance, declarations of government representatives in national parliaments) and rulings of international courts, they make up the bulk of *usus* and *opinio juris* in the matter.

For the sake of clarity, I shall analyse the formation of customary law in the area of 'external' and 'internal' self-determination[6] separately.

Friendly Relations]'. The Court went on to state the following: 'The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves' (ICJ, Reports 1986, 99–100, para. 188).

[4] GA Resolution 1514(XV), 14 December 1960.

[5] GA Resolution 2625(XXV), 24 October 1970.

[6] This distinction can already be found in W. Wengler, 'Le droit à la libre disposition des peuples comme principe de droit international', 10 *Revue hellénique de droit international*, 1957, 27, and W. Wengler, *Völkerrecht*, vol. II, Berlin 1964, 1032–3. It has been taken up by various authors, including A. V. Lombardi, *Bürgerkrieg und Völkerrecht*, Berlin 1976, 181, 335–9, 341–2. It would seem that A. Verdross and B. Simma, *Universelles Völkerrecht*, 3rd edn, Berlin 1984, at 320, erroneously attributed the distinction to Lombardi's work cited above.

have been limited by the perceived need to safeguard territorial integrity and political unity.

Before analysing the manner in which the practice of the United Nations evolved, it should be emphasized that the legal regulation just mentioned manifested *three major flaws*.

Firstly, the internal self-determination of colonial peoples was totally disregarded, that is, their right freely to choose their form of government, their rulers, etc. Their liberation from colonial rule, in order to achieve independence (or association or integration with another State) was what was seen as important. Admittedly, it would have been historically difficult and, in practice, complicated to provide for free and democratic political elections so as to ensure respect for pluralistic democracy in those territories. The fact remains however that no attention was paid to this 'internal' dimension of self-determination.

Secondly, the norms that gradually evolved eventually gave pride of place to the territorial integrity of colonial territories, thus ruling out the possibility for ethnic groups that constituted a 'colonial people' freely to choose their international status. The resultant self-determination was therefore rather truncated in this second respect.

Thirdly, it was taken for granted that whenever it appeared that the people of a colonial territory wished to opt for independence, it was not necessary to establish this wish by means of a plebiscite or a referendum. In other words, it was felt that the wish for independence – however manifested or ascertained – did not need to be verified by resorting to the means that the practical implementation of self-determination normally required.

THE ACTUAL IMPLEMENTATION OF THE STANDARDS

An overview of UN practice with regard to colonial situations

The UN record in the field of decolonization is impressive.[15] According to a 1979 report prepared for the UN by Héctor Gros Espiell, the then

[15] On the role of self-determination in the process of decolonization, and the UN practice in this matter, see in particular: C. Eagleton, 'Excesses of Self-Determination', 31 FA, 1952–3, 592 ff., and 'Self-Determination in the United Nations', 47 AJIL, 1953, 88 ff.; R. Emerson, *Self-Determination Revisited in the Era of Decolonization*, Cambridge, Mass. 1964, 25 ff.; J. Kunz, 'The Principle of Self-Determination of Peoples, Particularly in the Practice of the United Nations', in K. Rabl (ed.), *Inhalt, Wesen und gegenwärtige praktische Bedeutung des Selbstbestimmungsrechts der Völker*, Munich 1964, 137–70; M. K. Nawaz, 'The Meaning and Range of the Principle of Self-Determination', 82 *Duke Law*

Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, seventy territories achieved independence between 1945 and 1979.[16] In only a limited number of cases was the right of self-determination exercised and independence not achieved.[17] In the years following the publication of Gros Espiell's report, several territories included in his list of twenty-eight situations still to be resolved achieved independence.[18] Others on the list, South Africa and the territories occupied by Israel in particular, do not, it is submitted, come within the purview of 'colonial situations' included within the report. Thus, at present, there are approximately a dozen 'situations' still outstanding and

Journal, 1965, 82 ff.; D. W. Bowett, 'Self-Determination and Political Rights in the Developing Countries', 60 Proceedings ASIL, 1966, 129–35; R. Emerson, 'Self-Determination', *ibid.*, 135–41; W. B. Ofuatey-Kodjoe, *Self-Determination in International Law: Towards a Definition of the Principle*, PhD thesis, Columbia University 1970, 245–74; U. Umozurike, *Self-Determination in International Law*, Hamden, Conn. 1972; A. Rigo Sureda, *The Evolution of the Right of Self-Determination: A Study of the United Nations Practice*, Leiden, 1973; T. M. Franck and P. Hoffman, 'The Right of Self-Determination in Very Small Places', 8 NYUJILP, 1976, 331 ff.; W. Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law*, New York 1977, 97–147; J. F. Engers, 'From Sacred Trust to Self-Determination', 24 NILR, 1977, 85 ff.; J. Crawford, *The Creation of States in International Law*, Oxford 1979, 89 ff.; anon., 'The Decolonization of Belize: Self-Determination v. Territorial Integrity', 22 *Virginia Journal of International Law* 1982, 849 ff.; Pomerance, *Self-Determination in Law and Practice*, 1982, 9–36; J. Charpentier, 'Autodétermination et décolonisation', in *Mélanges C. Chaumont*, Paris 1984, 117–33; O. Kimminich, 'Die Renaissance des Selbstbestimmungsrechts nach dern Ende des Kolonialismus', *Fest. für B. Meissner*, Berlin 1985, 601 ff.; M. Shaw, *Title to Territory in Africa*, Oxford 1986, 92–144; Z. Drnas de Clément, 'El derecho de libre determinacion de los pueblos: colonialismo formal, Neocolonialismo, colonialismo interno', 3 *Anuario Argentino de Derecho Internacional*, 1987–9, especially 214 ff.; Bennouna, 'Tiers Monde et autodétermination', in *Le droit à l'autodétermination*, 83–94; Lombardi, *Bürgerkrieg und Völkerrecht*, 189 ff.; Blay, 'Self-Determination versus Territorial Integrity in Decolonization', 441 ff.; T. M. Franck, *The Power of Legitimacy among Nations*, New York and Oxford 1990, 160 ff.

[16] H. Gros Espiell, Special Rapporteur, *Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination*, Study for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, United Nations, New York, 1980. Text originally issued under the symbol E/CN.4/Sub.2/405 (vols. I and II).

[17] West Irian became part of Indonesia; Ifni was incorporated into Morocco; the Mariana Islands became a free associated state with the US; and Niue achieved 'self-government in free association' with New Zealand.

[18] South Rhodesia, now called Zimbabwe; Belize; Brunei; Saint Christopher and Nevis; Saint Lucia; Saint Vincent and the Grenadines; and most recently, Namibia (however, as we shall see, to some extent the question of Namibia is not only a colonial question, but also an issue of foreign illegal occupation).

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one case, that of East Timor (annexed by Indonesia in 1975), which was settled with total disregard for UN pronouncements and without UN approval.

Among the remaining situations, three stand out in particular, they being indicative of the inherent difficulties in resolving self-determination claims and the predicament the UN faces in the field: Gibraltar, the Falklands/Malvinas, and Western Sahara.

To what extent has the United Nations taken notice of the freely expressed will of colonial peoples?

The United Nations' practice has to a great extent upheld and applied the standards which have been referred to above. However, it has placed a liberal interpretation on them, in two respects.

Firstly the World Organization has sought to emphasize the requirement that self-determination should always be based on the freely expressed will of peoples. Accordingly, since 1954 the United Nations has organized, and often supervised, elections or plebiscites in non-self-governing territories, before their accession to independence or their association or integration with other countries.[19] Mention can be made of the plebiscites or elections held in the British Togoland Trust Territory in 1956,[20] French Togoland in 1958,[21] the British Northern Cameroons

[19] See M. Merle, 'Les plébiscites organisés par les Nations Unies', AFDI, 1961, 425–44. See also H. S. Johnson, *Self-Determination within the Community of Nations*, Leiden 1967, 59–98. It is interesting to note that in 1952 the US delegate in the UN Economic and Social Council (ECOSOC) criticized the practice of UN supervised plebiscites. In a statement of 31 July 1952, commenting on a draft resolution, he pointed out the following: 'The United States feels that the paragraph [of the draft resolution] unduly restricts the methods by which the wishes of non-self-governing people may be ascertained in the future by placing virtually sole reliance upon the UN supervised plebiscite. The adoption of the U.N. Charter does not require all nations to conduct *all* their foreign affairs through the United Nations; other means of international dealings have distinct advantages. Similarly, in the dealings between an administering country and the non-self-governing people, these people themselves may desire direct methods of contact which may not always be associated with the United Nations. For example, the United States recently arranged to determine the wishes of the people of Puerto Rico, Alaska and Hawaii, without a U.N. plebiscite' (30 *Dept. St. Bul.*, 1952, at 270).

[20] A plebiscite was held in British Togoland in May 1956 (upon the recommendation of the UN GA Res. 944(X) of 15 December 1955). The population voted in favour of the union of their territory with an independent Gold Coast (the other option being the separation of Togoland under British administration and continuance of a trusteeship pending a decision as regards independence). See UN Ybk, 1956, 368 ff.

[21] By virtue of Res. 1182(XII) the UN General Assembly accepted the invitation of the government of Togoland to supervise elections, which were held on 27 April 1958. On

in 1959[22] and the British Southern Cameroons in 1961,[23] Rwanda-Urundi in 1961,[24] Western Samoa in 1962,[25] the Cook Islands in 1965,[26] Equatorial Guinea in 1968,[27] Papua-New Guinea in 1972,[28] the New Zealand Territory of Niue in 1974,[29] the Ellice Islands in 1974 (the voters decided to become a separate territory under the name of Tuvalu),[30] the

23 October 1958 the Chamber of Deputies of Togoland voted in favour of independence. See UN Ybk, 1958, 355 ff.

22 On 13 May 1959 the UN GA decided, by virtue of Res. 1350(XIII) to hold separate plebiscites under UN supervision in Northern and Southern Cameroons (under British administration). A plebiscite was held in Northern Cameroons on 7 November 1959 and people chose to postpone a decision (the alternative being that of joining Nigeria immediately). Arrangements were made for another referendum to be held in 1961. See UN Ybk, 1959, 361.

23 UN supervised plebiscites were held in the two territories on 11 and 12 February 1961. Northern Cameroons decided to join Nigeria, Southern Cameroon decided to join the Republic of Cameroun. The results were later endorsed by the UN GA by virtue of Res.1608(XV) of 21 April 1961. See UN Ybk, 1961, 494 ff.

24 The future of the monarchy in Rwanda was submitted to a UN supervised referendum (UN GA Res. 1580(XV)). The referendum was held in Rwanda on 25 September 1961 alongside the general elections. People voted against the monarchy and consequently a republic was proclaimed. See UN Ybk, 1961, 484 ff.

25 A plebiscite was held on 9 May 1961 in order to ascertain the wishes of the inhabitants concerning their future (UN GA Res. 1569(XV) of 18 December 1960). The constitution adopted by the Constitutional Convention on 28 October 1960 was endorsed and it was decided that Western Samoa would become an independent State on the basis of that same constitution on 1 January 1962. See UN Ybk, 1961, 495 ff.

26 On 18 February 1965 the UN GA (Res. 2005(XIX)) authorized the Secretary-General to appoint a UN representative to supervise general elections, which were held on the Cook Islands on 21 April 1965. See UN Ybk, 1965, 570 ff.

27 A UN supervised referendum on the question of independence was held in Equatorial Guinea on 11 August 1968. The mission stayed on to supervise general elections, which were held on 22 and 29 September. See UN Ybk, 1968, 741.

28 By virtue of Res. 2156(XXXVIII) of 18 June 1971 the Trusteeship Council decided to send a visiting mission to Papua-New Guinea to observe the elections to the House of Assembly. The mission visited the country from 15 February to 17 March 1972. See UN Ybk, 1972, 522.

29 A referendum on self-determination was held in Niue in September 1974. The administering authority, New Zealand, invited the UN to send observers. The vote was in favour of self-government in free association with New Zealand. The results were endorsed by the G.A. by virtue of Res. 3285(XXIX) of 13 December 1974. See UN Ybk, 1974, 792 ff.

30 On 12 November 1974 a UN visiting mission was sent to Ellice Island at the request of the United Kingdom, to supervise a referendum on separation from the Gilbert islands. Ellice islanders voted in favour of separation. By virtue of Res. 3288(XXIX) of 13 December 1974 the GA expressed their appreciation of the mission's work. See UN Ybk, 1974, 791.

Northern Marianas in 1975,[31] and the French Comores Islands in 1974 and 1976.[32] Only in few cases did the UN fail to organize such plebiscites or elections. According to a distinguished commentator,[33] the cases of Gibraltar, West Irian, and Western Sahara stand out in this respect.

Secondly, in at least two cases (Rwanda-Urundi and the British Cameroons) the United Nations did not give primacy to the principle of territorial integrity. In the case of Rwanda-Urundi (a Belgian-administered territory) between 1959 and 1962 the United Nations overcame strong resistance to the splitting of the territory on the part of many African States, which were convinced that the best future for the territory lay 'in the evolution of a single, united and composite State'. As UN visiting missions had found compelling evidence of a strong feeling among the population that the separate personalities of Rwanda and Burundi should be respected, the Organization set up and supervised free elections from which the will of the two peoples to separate became apparent. In 1962, the General Assembly, by Resolution 1746(XVI) thus agreed to let Rwanda and Burundi 'emerge as two independent and sovereign States'. In the case of the British Cameroons, the United Nations' visiting mission concluded that the people of the Northern Cameroons preferred integration into Nigeria to political independence as a sovereign State. As for the inhabitants of Southern Cameroons (also under British administration), it was not clear whether they wished independence or integration into Cameroun (a former French colony). The United Nations therefore decided to call for separate UN-supervised plebiscites. The result was that the people of the Northern Cameroons opted for union with Nigeria and those of the Southern Cameroons voted for integration with Cameroun. In this case too, the United Nations was thus instrumental in making the principle of self-determination prevail over that of territorial integrity.

This practice should not, however, be overemphasized. The first of the two trends referred to above merely shows that the UN endeavoured, as

[31] By virtue of Res. 2160(XLII) of 4 June 1975 the Trusteeship Council decided to send a visiting mission to observe the plebiscite in the Mariana Islands district of the Trust Territory of the Pacific Islands. See UN Ybk, 1975, 744.

[32] Plebiscites were held in the Comoro Islands in 1974 and in 1976. In 1974 the three main islands (Anjouan, Grande Comore, and Moheli) opted for independence, whereas the majority in Mayotte rejected independence. A special referendum was again held concerning Mayotte in 1976 and the vast majority voted in favour of remaining with France. See 22 AFDI, 1976, 964–7; D. Rouzié, 'Note', in 103 *Journal de Droit International*, 1976, 392–405. For the reactions to the referendum in Mayotte in the General Assembly and Security Council, see Pomerance, *Self-Determination in Law and Practice*, 30–1.

[33] T. M. Franck, 'The Stealing of the Sahara', 70 AJIL, 1976, 700 ff.

far as possible, to meet the basic requirements of the principle of self-determination. It is not clear, however, whether the States concerned regarded themselves as legally bound to hold a referendum or a plebiscite in each case of decolonization. As for the second of the trends above mentioned, it should be underlined that the two territories at issue were even at the time of colonization distinct and separate in many respects. We are therefore confronted here with cases where the setting up of one independent State would have been blatantly contrary to the history and wishes of the populations concerned. The practice followed by the UN in these two cases cannot however be transposed to other instances, such as that of a colonial people consisting of various ethnic groups artificially welded together by the colonial Power. Indeed in these cases, the United Nations did not inquire as to the possible wishes of the various groups but simply endorsed the achievement of independence by the colonial territory.

Cases where the principle of self-determination was blatantly set aside

Against this background of a fairly consistent implementation of self-determination in the colonial sphere, some instances of a gross disregard for the principle stand out; (i) India's annexation of the Portuguese enclaves within its territory of *Goa, Damao and Din*, in 1961; (ii) the annexation of *West Irian* by Indonesia in 1969; (iii) the occupation and subsequent annexation of *East Timor* by Indonesia in 1975. This last case will be the subject of closer scrutiny in Chapter 9 (pp. 223–30). Therefore, only the first two cases will be dealt with here. (Some commentators add to this list the territories of

[34] As is well known, under the Treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong islands and a part of the Kowloon Peninsula were ceded to Great Britain in perpetuity. The rest of the territory (the New Territories plus the rest of Kowloon) comprising 92 per cent of the total land area was leased to Great Britain for ninety-nine years under a third Treaty, the Convention of Peking executed in 1898. The Chinese government has consistently argued that the whole of Hong Kong is Chinese territory and that the aforementioned treaties were unequal. Recently, negotiations commenced between the two governments concerning the whole area (the 8 per cent of Hong Kong's land area would not be viable without the New Territories, which contain most of the territory's agriculture and industry, its power stations, airport and container port). In 1984 the two governments signed a Joint Declaration whereby Hong Kong would revert to China in 1997.

On a few occasions, in discussions before the UN Human Rights Committee on the British periodic reports on the Covenant on Civil and Political Rights, the British government has reported on measures taken to respect self-determination. Thus, in 1991, answering questions on self-determination in Hong Kong, the British delegate pointed out that: 'Following the signing of the Joint Declaration in 1984, an Assessment

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Hong Kong[34] and Macao,[35] but this inclusion may be questionable, in view of the historical particularities of the territories; in any case, in the face of the lukewarm attitude taken by the UN,[36] it would seem that, at least in the case of Hong Kong, the two parties concerned have attached importance to the wishes of the population.)[37]

With regard to the three enclaves of Goa, Damao, and Din,[38] Portugal

Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Basic Law Drafting Committee consisted of 59 members, 23 of whom were from Hong Kong, and a Basic Law Consultative Committee, consisting exclusively of Hong Kong representatives, had been set up to determine public opinion in the Territory with regard to the draft Basic Law. The Hong Kong Government had issued a statement to the effect that it welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process and that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process' (see *Report of the Human Rights Committee to the General Assembly*, 1991, UN Doc. A/46/40, para. 367; see also paras. 354, 368–9). The issue had already been discussed in 1988 (see *Report of the Human Rights Committee to the General Assembly*, 1989, UN Doc. A/44/40, paras. 143, 152–4).

[35] As for Macao, which will be returned by Portugal to China in 1999, see, *inter alia*, the discussion in 1990 on the Portuguese periodic report on the UN Covenant on Civil and Political Rights, before the Human Rights Committee: *Report of the Human Rights Committee to the General Assembly*, 1990, vol. I, UN Doc. A/45/40, paras. 124, 126.

[36] It is worth recalling that in 1972 the United Nations, at the request of China, decided that Hong Kong and Macao and dependencies were 'part of Chinese territory occupied' respectively 'by the British and Portuguese authorities' and consequently must be removed from the list of non-self-governing Territories (see UN Ybk, 1972, 543, where mention is made of the Chinese request of 8 March 1972 and the subsequent decision of the Committee of 24). See also the endorsement by the General Assembly, in Resolution 2908(XXVII) (*ibid.*, 550–1; and cf. 625), which has the consequence that the exercise of reversionary rights by China will be carried out without any consultation of the population concerned. This position is accounted for by the political and military importance of China and the consequent fear, by other countries, that China might reclaim the territories in question by resort to force, without being checked by the UN Security Council. However, the particularities of the case that may have warranted the setting aside of self-determination include at least two important elements: (i) the population of the territory has remained to a very large extent Chinese; (ii) the transfer of the two territories to Great Britain was effected on the basis of a Treaty that provided for a lease and not a cession proper.

[37] See below, Chapter 12.

[38] On the question of Goa, see in particular Q. Wright, 'The Goa Incident', 56 AJIL, 1962, 617 ff.; I. Brownlie, *International Law and the Use of Force by States*, Oxford 1964, 349, 379–83; Higgins, *The Development of International Law, Through the Political Organs of the United Nations*, London 1963, 187–8; Blay, 'Self-Determination v. Territorial Integrity', 466–7; J. Crawford, *The Creation of States in International Law*, cit., 112–13; R. C. A. White, 'Self-Determination: Time for a Re-Assessment?', 28 NILR, 1981, 158; Emerson, *Self-Determination Revisited in the Era of Decolonization* 19–24; Rigo Sureda, *The Evolution of the Right of Self-Determination*, 172–7, 329–32; M. Shaw, *Title to Territory in Africa*, cit., 151.

was slow to put in motion the process of decolonization but India decided not to wait for a plebiscite or referendum and so invaded this territory on 12–13 December 1961. When the UN Security Council met at the request of Portugal, India, supported by Liberia, asserted that its armed action was justified because Portugal had no sovereign right over non-self-governing territories in Asia, its occupation of those territories was illegal, and furthermore 'the people of Goa are as much Indians as people of any other part of India'.[39] This view was rejected by some members of the Security Council, namely the US, the UK, France, Turkey, and China, who all put forward various arguments mainly related to the illegal use of force (but the US also mentioned, in passing, the principle of self-determination).[40] Two other States, namely Chile and Ecuador, also criticised the stand taken by India but explicitly referred to self-determination. Thus, the Chilean delegate pointed out the following:

> In the present case, we think the parties should take into consideration the wishes of the inhabitants of Goa, Damao and Din. There is no doubt whatsoever that the Portuguese possessions in India are historical vestiges of a colonial past . . . Neither historical possessions [by Portugal] nor violent possessions [by India] should prevail, but the freely expressed wishes of the inhabitants of the disputed territories.[41]

The United Arab Republic (as it then was) and Ceylon also relied on self-determination but their conclusion was different to that of Chile and Ecuador. According to them, since the people of the enclaves had not been allowed by Portugal to exercise their right to self-determination, India's resort to force did not amount to an act of aggression.[42]

The formal outcome of this situation is well known. A draft resolution submitted by France, Turkey, the UK, and the US, which, among other things, referred in its preamble to the principle of self-determination as laid down in Article 1(2) of the UN Charter, was not adopted because of a negative vote cast by the USSR.[43] The Indian annexation of the three Portuguese enclaves, although briefly challenged in the Security Council, was thus endorsed *de facto* by the world community, without the slightest regard being paid to the wishes of the population concerned.

[39] SCOR, 987th Meeting, para. 46; 988th Meeting, para. 77. As for the position of Liberia, see SCOR, 987th Meeting, paras. 93–5.

[40] The US stated among other things: 'The U.S. stand on the colonial question is that we wholeheartedly believe in progress, in self-government and in self-determination for colonial peoples' (SCOR, 988th Meeting, para. 90).

[41] SCOR, 988th Meeting, para. 30.

[42] SCOR, 987th Meeting, para. 125.

[43] See UN Ybk, 1961, 131.

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Let us now turn to the question of West Irian (West New Guinea).[44]

In 1954 Indonesia, which had achieved independence in 1949, asked the UN General Assembly to discuss the question of the status of the territory. According to Indonesia, West Irian had always been an integral part of Indonesia, and must therefore be returned to this State. The Netherlands, supported by other Western countries (Australia, Belgium, Colombia, France, and New Zealand) contended that the Dutch administration of West Irian constituted a peaceful attempt to create conditions for the self-determination of the population; in its view, the interests of the non-self-governing people concerned should prevail above all else.[45] Other States, including Brazil, El Salvador, Pakistan, Peru, and Uruguay, after voicing their opposition to colonialism in all its forms, considered that the General Assembly should adopt a resolution stressing the importance, not of bilateral negotiations between the two States concerned but rather of the attainment of self-determination by the people of West Irian.[46] However, by reason of the lack of agreement no resolution was adopted. In subsequent years the parties reiterated their positions, The Netherlands insisting that the question of sovereignty over the territory was to be ultimately resolved by the inhabitants themselves and Indonesia seeking instead a negotiated settlement between the two States.[47]

[44] On this question, see in particular Emerson, *Self-Determination Revisited*, 53–62; H. von Mangoldt, 'Die West-Irian Frage und das Selbstbestimmungsrecht der Völker', 313 *Zeit.*, 1971, 197–245; Rigo Sureda, *The Evolution of the Right of Self-Determination*, 143–51; Blay, 'Self-Determination versus Territorial Integrity', 450–2, as well as the writings by T.M. Franck and M. Pomerance quoted below (notes 58 and 59).

[45] UN Ybk, 1954, 57–8.

[46] *Ibid.*, 58.

[47] See UN Ybk, 1955, 61–2; UN Ybk, 1956, 125–7; UN Ybk, 1957, 76–9. The position of the two parties was clearly restated in 1957. As is recorded in the UN Ybk, 1957 (at 77), the Indonesian stand was as follows: 'Instead of the United Nations being allowed to serve as an instrument for reconciling the differences between the two States, numerous pretexts were being invoked to prevent a peaceful settlement, notably the principle of "self-determination". The Indonesian representative found it curious that certain powers which had proclaimed their adherence to the principle of reunification of divided States were conducting a movement exactly in reverse of that principle with respect to West Irian. Indonesia was fighting against the amputation of West Irian from the rest of Indonesia and for the principle of reunification and national unity. Any thought of splitting Indonesia into several smaller States was illusory. If Indonesia were to disintegrate and if the present democratic character of the State were to come to an end and be replaced by a different political system, it would not be a development designed to increase the stability or ensure the peace and security of South-East Asia.'

The Dutch stand was as follows (*ibid.*, 77–8): 'The representative of the Netherlands summed up the basic position of his Government as follows: (1) The Netherlands, in

The situation remained as stated until 1961, when the question was once again brought before the General Assembly. In this forum the parties underlined their positions: The Netherlands insisted on the principle of self-determination and Indonesia on the principle of negotiation between the two States. It should be noted, in this respect, that the Dutch proposal to consult the population concerned offered a wide range of options: independence, integration into Indonesia, association with the other part of New Guinea or other islands in the Pacific region.[48] Western States sided with The Netherlands while Indonesia mustered the support of socialist and developing countries. However, the basic disagreement existing among States once again made it impossible for a resolution to be adopted.[49]

Subsequently, an agreement was reached by the two States on 15 August 1962; under this agreement The Netherlands would transfer the administration of the territory to a United Nations Temporary Executive Authority (UNTEA), established by, and under the jurisdiction of, the Secretary-General, who would appoint a UN Administrator to lead it. The Administrator would have the discretion to transfer all or part of the administration of the territory to Indonesia at any time after 1 May 1963. The inhabitants of West Irian were to exercise their right of self-

accordance with Chapter XI of the United Nations Charter, was responsible for the administration of Netherlands New Guinea and was fulfilling its obligations under Article 73. (2) If the Netherlands were to agree to transfer the territory to Indonesia without first ascertaining the wishes of the inhabitants, it would be forsaking its duty to them and to the United Nations. (3) The Netherlands had solemnly promised the territory's inhabitants that they would be granted the opportunity to decide their own political future as soon as they were able to express their will on this. (4) In the absence of such a decision, the Netherlands could not and would not comply with any Indonesian demands for the annexation of the territory. Nor would it enter into any negotiations about its future status.... The Netherlands representative further stated that Indonesia was not really advocating negotiations with the Netherlands so as to reach a solution by common consent which would take the wishes of the territory's inhabitants into account. On the contrary, it was urging the General Assembly to advocate negotiations on the basis of two assumptions: (1) that Netherlands New Guinea was legally part of Indonesia and illegally occupied by the Netherlands, and (2) that the territory should be transferred to Indonesia without its population being previously consulted.

The Netherlands, he added, was willing to have the first assumption tested by the International Court of Justice. The second assumption, he thought, was a denial of the right of self-determination and thus contrary to the Charter.'

[48] See UN Doc. A/4954, of 4 November 1961 (letter from the Dutch representative to the President of the UN General Assembly).

[49] UN Ybk, 1961, 51–7.

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determination before the end of 1969 and to decide whether they wished to remain with Indonesia or to sever their ties with it.[50] As far as the procedure for establishing the wishes of the inhabitants was concerned, the agreement provided that the act of self-determination was to be held 'in accordance with international practice' and with the participation of 'all adults, male and female, not foreign nationals'. The agreement also referred to the Indonesian system of *musjawarah*, a traditional method of consultation consisting in reaching 'a decision based on discussion, understanding and knowledge of a problem';[51] however, resort to this system was only provided for with respect to the preliminary issue of the 'procedures and appropriate methods' to be followed in the 'act of self-determination'. The General Assembly approved the treaty by virtue of Resolution 1752(XVII) of 21 September 1962. Control of the territory was eventually handed over to Indonesia after 1 May 1963. In 1969 an 'act of free choice' was held, in accordance with GA Resolution 1752(XVII); the population opted for Indonesia and the General Assembly took note of this choice in its Resolution 2504(XXIV) of 19 November 1969.

In spite of this 'act of free choice', the integration of West Irian into Indonesia amounted to a substantial denial of self-determination. First, the choice provided for in the bilateral agreement of 1962 was limited to 'whether they wished to remain with Indonesia' and 'whether they wished to sever their ties with Indonesia'. No reference was made to the possible alternatives in case the vote was in favour of leaving Indonesia.[52] Second, the criteria for establishing whether a territory ceased to be non-self-governing, listed in GA Resolutions 742(VIII) and 1541(XV) were not met by the bilateral agreement of 1962, as was pointed out by Rigo Sureda;[53] consequently, 'the attitude taken by the General Assembly can be assumed to mean that West Irian was regarded as an "integral part" of Indonesia and, therefore, that there was no need for it to go through the process indicated by the General Assembly to achieve self-determination'.[54] Third, the method of consultation was that of the *musjawarah* system, which undoubtedly did not meet the requirements set forth by the General Assembly. Fourth, no real and direct consultation of the population was made; the 'consultation' was indirect, in that Regional Councils (enlarged by three classes of representatives: regional, organizational, and tribal)

[50] UN Ybk, 1962, 124–7.
[51] See below, note 55.
[52] Cf. Rigo Sureda, *The Evolution of the Right of Self-Determination*, 232.
[53] *Ibid.*, 151. [54] *Ibid.*, 151.

were called upon to decide which of the options to accept.[55] Fifth, by reason of the reduction of UN personnel (due to budget cuts by The Netherlands and Indonesia and to the inability of the Indonesian authorities to provide the UN mission with adequate housing in the capital city of West Irian), the UN staff were unable properly to supervise the elections for the consultative assemblies.[56] Sixth, the Indonesian authorities put strong pressure on the population of West Irian in order to secure support for integration into Indonesia.[57]

[55] The Indonesian authorities refused to accept the suggestions for consultation made by the UN Representative. According to his report, in November 1968, at a meeting with Indonesian authorities, 'I pointed out that, in my capacity as United Nations Representative, I could suggest no other method for this delicate political exercise than the democratic, orthodox and universally accepted method of "one man, one vote". However, while maintaining firmly my conviction that the people of West Irian might be given as ample and as complete an opportunity as possible to express their opinion, I recognized that the geographical and human realities in the territory required the application of a realistic criterion. I therefore suggested that the system of "one man, one vote"' should be used in the urban areas, where the communications and transportation, the comparatively advanced cultural level of the population and the availability of adequate administrative facilities made it possible, and that this might be complemented by collective consultations in the less accessible and less advanced areas of the interior. A mixed system of that type would have the merit of being the best possible in the circumstances and would enable the Indonesian Government and the United Nations to state that the orthodox and perfect method of 'one man, one vote' had been used in the act of free choice to the maximum extent compatible with reality. I added that the staff of my mission would be ready to co-operate in the preparations for the exercise and in the registration of the voters and the tabulation of the results. The modalities of the collective consultations in the areas where that system would be applied would have to be the subject of future discussions' (*Report of the [UN] Secretary-General Concerning the Act of Self-Determination in West Irian*, 24 General Assembly, Agenda Item 98, UN Doc. A/7723, 6 November 1969, 29 (para. 82).

The response of the Indonesian government, given in February 1969, was that its 'intention was to consult the representative councils in order to obtain their approval for implementing the act of free choice through the eight representative councils, which would be enlarged to form consultative assemblies where each member would represent approximately 750 inhabitants. The consultative assemblies would not reach a decision through voting but through *musjawarah* which, as explained at that meeting, consisted in reaching a "decision based on discussion, understanding and knowledge of a problem".

This meant that the Government still intended to apply the consultation (*musjawarah*) method of decision through representatives of the people but, in contradistinction to the ideas expressed on 1 October . . . it planned to carry out the act of free choice not through one body of 200 representatives but consecutively through eight consultative assemblies, comprising some 1,025 representatives' (*ibid.*, 30, paras 84–5).

[56] *Ibid.*, 312.

[57] Cf. *Report of the [UN] Secretary-General Regarding the Act of Self-Determination in West Irian*, 54–6, 70. As the UN Representatives pointed out: 'I regret to have to express my reservation regarding the implementation of article XXII of the Agreement, relating to "the rights, including the rights of free speech, freedom of movement and of assembly,

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The critical comments that have been made concerning this pseudo-choice – which, as shown above, actually proved to be a charade and a substantive betrayal of the principle of self-determination – by such authors as Pomerance[58] and Franck[59] are fully justified, as are the views put forth by the Dutch delegate to the General Assembly in 1962,[60] which were rightly referred to by Franck as 'an eloquent epitaph to self-determination'.[61]

Three outstanding situations

Three situations still await a proper solution based on respect for the will of the population concerned: Western Sahara, Gibraltar, and the Falklands/Malvinas. Since the first two will be discussed at some length in Chapter 9, only the third case will be briefly dealt with here. Nevertheless, in so doing, reference will be made, if somewhat briefly, to the Gibraltar question, with which that of the Falklands/Malvinas has some common elements.[62]

It is indeed interesting at the outset to note these common features. Both the Falklands/Malvinas and Gibraltar have been under British control for more than 150 years, the former since 1833, as a result of military occupation, and the latter since 1713, as a result of a treaty of cession with Spain subsequent to its occupation in 1704 by the United Kingdom. Both

of the inhabitants of the area". In spite of my constant efforts, this important provision was not fully implemented and the Administration exercised at all times a tight political control over the population' (*ibid.*, 70, para. 251).

58 M. Pomerance, 'Methods of Self-Determination and the Argument of "Primitiveness"', 12 CYIL, 1974, 65; Pomerance, *Self-Determination in Law and Practice*, 26, 32–5.

59 T. M. Franck, *Nation against Nation*, New York and Oxford 1985, 76–81.

60 He stated the following: 'Of what happened . . . I will say only this: that the Netherlands Government regrets that in this instance no effective remedy was to be found against the use of force, contrary to the obligations of the States under the Charter of the United Nations. As a result, the Netherlands was faced with the choice between fighting in self-defense or resigning itself to transfer of the territory to Indonesia without a previous expression of the will of the population. War would have meant exposing the Papuans and their country to death and destruction and many Dutchmen and Indonesians to the horrors of combat – without even providing a sensible solution to the problem. And so, with a heavy heart, the Netherlands Government decided to agree to the transfer of the territory to Indonesia on the best conditions obtainable for the Papuan population' (GAOR, XVII, 1127th Pl. Mtg., 21 September 1961, 51).

61 *Ibid.*, 81.

62 On the question of Gibraltar and Falklands/Malvinas, see in particular Blay, 'Self-Determination v. Territorial Integrity', 463–5 and the bibliography quoted there. See also M. Iovane, 'Le Falkland/Malvinas: autodeterminazione o colonizzazione?', in N. Ronzitti (ed.), *La questione delle Falkland/Malvinas nel diritto internazionale*, Milan 1984, 85–122; R. Dolzer, 'Falkland Islands (Malvinas)', 12 *Encyclopedia*, 1990, 103–8.

are a considerable geographical distance from the administering country. Furthermore, the inhabitants of both the Falklands/Malvinas and Gibraltar are essentially of 'colonial' (i.e. British) stock (although the present inhabitants of Gibraltar are of a less homogeneous origin, since many of them are also descended from Spaniards or other groups who have moved to Gibraltar over the years). Finally, in both cases the 'contiguous' country – Argentina in the case of the Falklands/Malvinas, Spain in the case of Gibraltar – claims a reversionary title to sovereignty over the territory in question.

As is well known, an armed conflict broke out in the Falklands/Malvinas in 1982, when Argentina attempted to take the islands by force. At the end of the war, Britain, having won a decisive victory, reaffirmed her right to the islands. The self-determination issue, however, remains unresolved. Argentina's claims – based on the reversion of territorial sovereignty, contiguity, and anti-colonialism – remain in fundamental opposition to Britain's claim to title resulting from conquest, the continuing display of territorial sovereignty, and self-determination.[63]

In general, the UN's failures in the Falklands/Malvinas, Gibraltar, and the Western Sahara, and in the other situations still pending, are rooted more in the intricacies of each situation than in the principle of self-determination itself. In some cases the composition of the population and the existence of conflicting claims of sovereign States make the actual implementation of self-determination impracticable. However, the existence of the right demands that those in power take into account the wishes or the interests of the territory's population when a solution is finally worked out. Therefore, despite the present impracticability of the principle in question, it retains a potential role. In other cases, the intractability of the problem is rooted in overriding economic and strategic interests.

However, regardless of the UN's failures – stemming, to some extent, from the non-existence of a UN enforcement mechanism – one point

[63] For a reasoned statement on the official British stand on the question of the Falklands/Malvinas and the role of self-determination, see 53 BYIL, 1982, 367 ff. See also 61 BYIL, 1990, 507. It should be noted that in 1991, when discussing in the UN Human Rights Committee the 3rd British Periodic Report on the implementation of the UN Covenant on Civil and Political Rights, the British delegate pointed out the following: '[T]he people of the Falkland Islands expressed their views in regular elections and . . . there was no doubt that their wish was to remain under British sovereignty. Since the 1990 agreement between the United Kingdom and Argentina, the two Governments had been able to agree on a number of issues relating to activities in the Islands and in the South Atlantic region in general' (*Report of the Human Rights Committee to the G.A.*, 1991, UN Doc. A/46/40, para. 366).

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needs to be emphasized: in each case the UN has pursued the most logical and realistic course of action. The UN must be credited with promoting *negotiations* between the States claiming title to the Falklands/Malvinas and Gibraltar. Its insistence that all negotiations fully recognize the wishes and interests of the populations concerned is to be welcomed. In addition, it seems difficult to criticize the UN's hesitancy to resolve outstanding differences by merely resorting to the traditional means of implementing self-determination (referendums and plebiscites) in the cases of the Falklands/Malvinas and Gibraltar. Since the British – rightly or wrongly – have for a long time maintained policies designed to keep the two territories in the hands of British people and to exclude Argentinians and Spaniards respectively, perhaps one should not reject out of hand the argument that in the Falklands/Malvinas and Gibraltar cases one ought in principle to take account of the interests and concerns of the 'contiguous' State as well.

Be that as it may, by reaffirming the principle of self-determination as the *basic standard of conduct* while at the same time calling for *direct negotiations* between all parties concerned, the UN has assumed an active and important role in the field of self-determination (see, on this matter, my comments in Chapter 8).

THE PRONOUNCEMENTS OF THE INTERNATIONAL COURT OF JUSTICE

The legal regulation of the self-determination of colonial peoples was authoritatively stated by the ICJ, first in its Advisory Opinion on *Namibia*,[64] of 1971 and then in the Advisory Opinion on *Western Sahara*, of 1975. In the latter Opinion the Court actually placed an interpretation on the existing standards that broadened the purport and impact of self-determination. After mentioning the GA Resolution 1514(XV), the Court pointed out that:

> The above provisions, in particular paragraph 2 [defining self-determination], thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.[65]

The Court then went on to quote two other resolutions of the General Assembly, namely Resolution 1541 (XV), that has been discussed above and the 1970 Declaration on Friendly Relations (Resolution 2625(XXV)). It then concluded as follows:

[64] See above, p. 72 note 12. [65] ICJ, Reports 1975, 32, para. 55.

does not seem that the pronouncements of States and the international practice in this matter have hardened into a specific customary rule to the effect that the population concerned must always be enabled to express its free and genuine will as to whether or not to be transferred to another country (to use the language of the Atlantic Charter, this would be a rule providing that no 'territorial changes' are permissible 'that do not accord with the freely expressed wishes of the people concerned').[56] Nor, on the other hand, does a rule exist stating that the people's views are irrelevant or should not be sought. Here the principle at hand comes into play and requires that no cession or transfer should be carried out if the population concerned is not in agreement (see below, pp. 189–90).[57]

Self-determination as imposing obligations towards the whole international community and as part of jus cogens

Two distinguishing features of the law on self-determination should now be emphasized, which are indicative, at the legal level, of the overriding importance self-determination has now acquired in the world community.

[56] However, some national Constitutions lay down the principle. Mention can be made, for example, of the French Constitution of 1958, Art. 53(3) which provides that 'Nulle cession, nul échange, nulle adjonction de territoire n'est valable sans le consentement des populations intéressées' (this provision takes up Art. 27(2) of the 1946 French Constitution). Art. 53(3) was applied by the 'Conseil Constitutionnel' with regard to the Comoros Islands in 1975 (see J.C. Mestre, 'L'indivisibilité de la République française et l'exercise du droit à l'autodétermination', RDP, 1976, 431–62; L. Favoreu, 'La décision du 30 décembre 1975 dans l'affaire des Comores', *ibid.*, 537–81).

[57] In spite of the joint working and interplay of the principle and the rules on self-determination, the fact remains that the international regulation of this matter is far from satisfactory. In this connection, it is fitting to recall the wise remarks set out in 1958 by W. Wengler: 'Plus on étudie donc le principe de la libre disposition des peuples jusque dans les détails de son application pratique, plus il paraît nécessaire de le compléter par d'autres règles du droit international. Il faut des garanties internationales pour la liberté des plébiscites. Si la population du territoire, qui est choisie comme base d'un plébiscite, n'est pas d'opinion unanime et si une majorité l'emporte sur une minorité, le droit de disposer d'elle-même exercé par la collectivité doit être complété par le droit d'option et par une protection efficace internationale de la minorité. La libre disposition des peuples exige aussi une réglementation internationale des migrations, basée sur la liberté de mouvements de l'individu, l'interdiction de priver un homme de son foyer, et l'interdiction des manipulations gouvernementales destinées à changer la composition de la population d'un territoire. Il faut surtout réprimer l'abus du droit de la libre disposition par la population habitant un territoire contenant des richesses naturelles nécessaires à l'humanité entière' ('Le droit de libre disposition des peuples', 38–9).

First, the obligations flowing from the principle and rules on self-determination are *erga omnes*, that is, they belong to that class of international legal obligations which are not 'bilateral' or reciprocal, but arise in favour of all members of the international community. As is well known, following the celebrated dictum of the ICJ in the *Barcelona Traction* case,[58] there is now a firm distinction between two sets of international legal obligations: (a) those which (i) only arise as between pairs of States and (ii) are reciprocal or 'synallagmatic' in kind, in that their fulfilment by each State is conditioned by that of the other State, and (b) the obligations which (i) are incumbent on a State towards all the other members of the international community, (ii) must be fulfilled regardless of the behaviour of other States in the same field, and (iii) give rise to a claim for their execution that accrues to any other member of the international community.[59]

There can be no gainsaying that the set of norms on self-determination, to which attention has been drawn above, imposes obligations *erga omnes*. This proposition is supported by the fact that both within and outside the United Nations States have consistently taken the view that (a) self-determination must be respected by any State (be it a colonial State or a Power occupying a foreign territory or a State denying a racial group equal access to government), (b) it must be respected regardless of whether or not third States, finding themselves in the same situation, comply with the norms on self-determination and (c) any other international subject is entitled to demand respect for self-determination. However, we shall see below (pp. 147–58) that in actual practice States have only seldom made use of their right to demand compliance with international standards on self-determination by a given State.

Let us now turn to the question of *jus cogens*. According to a number of commentators,[60] self-determination has now become a peremptory norm

[58] ICJ, Reports 1970, 32.

[59] On obligations *erga omnes*, see: J. Juste Ruiz, 'Las obligaciones *erga omnes* en Derecho internacional público', *Estudios de derecho internacional – Homenaje al Profesor Miaja de La Muela*, vol. I, Madrid 1979, 219 ff.; P. Weil, 'Towards Relative Normativity in International Law?' 77 AJIL, 1983, 413 ff.; J. Frowein, 'Die Verpflichtungen erga omnes in Völkerrecht und ihre Durchsetzung', *Fest. H. Mosler*, Berlin, Heidelberg, and New York 1983, 241 ff.; P. Picone, 'Obblighi reciproci e obbligazioni *erga omnes* degli Stati nel campo della protezione internazionale dell'ambiente marino dall'inquinamento', in V. Starace (ed.), *Diritto internazionale e protezione dell'ambiente marino*, 1983, 15 ff.

[60] See Brownlie, *Principles of Public International Law*, 513, 515; H. Bokor-Szegö, 'The International Legal Content of the Right of Self-Determination as Reflected by the

of international law from which no derogation is admissible by means of a treaty or any similar international transaction. These authors, however, do not provide any element of State practice or *opinio juris* in support of their view.

Two issues should be discussed in this respect. Firstly, on what basis can it be contended that self-determination belongs to the body of international peremptory norms? Secondly, given the distinction outlined above between a principle proper of self-determination and a set of specific customary rules, which of them can be said to be part of *jus cogens*?

As far as the first issue is concerned, the legal basis for the transformation of self-determination into *jus cogens* cannot of course be found in views – however authoritative – put forward by persons acting in their individual capacity. I am referring to the well-known separate opinion of Judge Ammoun in the *Barcelona Traction* case,[61] to the opinion of some members of the International Law Commission,[62] as well as the views expressed in the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities,[63] and, more recently, in the UN International

Disintegration of the Colonial System', in *Questions of International Law*, Budapest 1966, 39–41; H. Gross-Espiell, 'Self-Determination and Jus Cogens', in A. Cassese (ed.), *United Nations. Fundamental Rights*, Alphen aan den Rijn1979, 167; Ermacora, 'The Protection of Minorities before the United Nations', 325; E. Klein, 'Vereinte Nationen und Selbstbestimmungsrecht', in D. Blumenwitz and B. Meissner (eds.), *Das Selbstbestimmungsrecht der Völker und die deutsche Frage*, Cologne 1984, 121; Shaw, *Title to Territory in Africa*, 91; A. Kiss, 'The Peoples' Right to Self-determination', at 174; N. Quoc Dinh, P. Daillier, and A. Pellet, *Droit international public*, 4th edn, Paris 1992, 490; A. Pellet, 'The Destruction of Troy Will Not Take Place', in Playfair, *International Law and the Administration of Occupied Territories*, 184; J. A. Frowein, 'Self-Determination as a Limit to Obligations under International Law', in Tomuschat, *Modern Law of Self-Determination*, 218–21. Cf. also Cassese, *International Law in a Divided World*, 136.

By far the most extensive treatment of this issue can be found in L. Hannikainen, *Peremptory Norms (jus cogens) in International Law*, Helsinki 1988, 357–424. This author concludes that 'all States are *under the peremptory obligation*: (1) not to forcibly subject alien peoples to a colonial-type domination; (2) not to keep alien peoples by forcible or deceitful means under a colonial-type domination; and (3) not to exploit the natural resources of those alien territories, which are under their colonial-type domination, to the serious detriment of the people of those territories' (at 421).

That self-determination has become part of *jus cogens* is *denied* by Calogeropoulos-Stratis, *Le droit des peuples à disposer d'eux-mêmes*, 269–71; Crawford, *The Creation of States in International Law*, at 81; Pomerance, *Self-Determination in Law and Practice*, 70–2; and B. Driessen, *A Concept of Nation in International Law*, 60–1, at note 57.

[61] ICJ, Reports 1970, 304, 312.

[62] See, e.g., *Yearbook of the ILC*, 1963, vol. II, 199.

[63] In 1978, in reporting to the UN Human Rights Commission on the work of the Sub-Commission (a body consisting of experts acting in a personal capacity), T. van Boven, Director of the UN Division of Human Rights, stated that: 'The view had been

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Law Commission by the Special Rapporteur on State Responsibility, G. Arangio-Ruiz.[64] These views cannot be held to reflect State practice, although they are highly indicative of the new trends emerging in the international community and may contribute, and have indeed contributed, to the evolution of State practice. More weight should of course be attributed to statements made by State organs (it should be noted, in passing, that in the absence of State practice proper, for the purpose of classifying an international rule as belonging to *jus cogens*, the *opinio juris* of States as to the legal standing of that rule may prove sufficient).[65]

In this respect, reference can be made to the pronouncements of various States in the UN General Assembly on the occasion of a discussion on the Draft Articles on the Law of Treaties in 1963,[66] at the Vienna Conference on the Law of Treaties in 1968–9,[67] as well as in the General Assembly in 1970, on the occasion of the discussion on the Declaration on Friendly

widely expressed in the Sub-Commission that the principle of self-determination had the character of *jus cogens* – a peremptory norm of international law' (UN Doc. E/CN.4/SR 1431, at 3, para. 6). The same view was expressed in the Human Rights Commission by the representative of the PLO (*ibid.*, 1437, at 8, para. 26), but it is doubtful whether it can be equated to that of a State, for the purpose of the formation of international practice.

[64] G. Arangio-Ruiz, *Fourth Report on State Responsibility*, UN Doc. A/CN.4/444/Add. 1 (25 May 1992), at 31 (para. 91).

[65] Recently, it has been authoritatively held by C. Dominicé ('Le grand retour du droit naturel en droit des gens', *Mélanges J.-M. Grossen*, Basle and Frankfurt am Main 1992, especially 401–9; cf. also J. Verhoeven, 'Le droit, le juge et la violence', RGDIP 1987, 1205) that some general precepts based upon *ethical* values, and in particular those precepts which belong to *jus cogens*, can acquire the status of legally binding rules or even peremptory norms of international law without the confirmation by any State practice proper, provided the element of *opinio juris* is present.

[66] See GAOR, XXIst Session, VIth Committee, 905th Meeting.

[67] See the statements of the delegates of the USSR (United Nations Conference on the Law of Treaties, First Session, 1968, *Official Records*, 294, para. 3), Sierra Leone (*ibid.*, 300, para. 9), Ghana (*ibid.*, 301, para. 16), Cyprus (*ibid.*, 306, para. 69), Poland (United Nations Conference on the Law of Treaties, Second Session, 1969, *Official Records* 99, para. 71), Byelorussia (*ibid.*, 105, para. 48). See also the statements of those delegates who affirmed that all the principles laid down in Art. 1 (or Arts. 1 and 2) of the UN Charter belong to *jus cogens*: Poland (United Nations Conference on the Law of Treaties, First Session, *Official Records*, 302, para. 35; see also Second Session, *Official Records*, 99, para 70), Romania (First Session, *Official Records*, 312, para. 55), Czechoslovakia (*ibid.*, 318, para. 25), Ecuador (Second Session, *Official Records*, 96, para. 35), Cuba (*ibid.*, 97, para. 42), Ukraine (*ibid.*, 100, para. 75), the USSR (*ibid.*, 104, para. 41).

Relations.[68] Reference can also be made to the submissions made in 1975 before the ICJ both by a Western State (Spain) and by Algeria and Morocco (this last State asserted, however, that only the 'principle of decolonization' – of which self-determination is only one of the possible methods of implementation – has the status of *jus cogens*).[69]

The problem with these pronouncements is that they mostly emanate from two groups of States: that is, the developing and 'socialist' States (as they were then called) but not from Western countries. Thus, in the UN General Assembly a view favourable to regarding self-determination as *jus cogens* was taken by Ukraine, Czechoslovakia, the USSR, Peru and Pakistan, Iraq, Ethiopia, and Trinidad and Tobago while at the Vienna Conference a similar view was expressed by the USSR, Sierra Leone, Ghana, Cyprus, Byelorussia, and Poland. As for Western countries, it would seem that only Greece in 1970,[70] Spain,[71] and Italy in 1975[72] are on record as upholding the view at issue. However, an important statement by the US should also be mentioned. It was made in 1979 by the Legal Adviser to the US State Department in a memorandum submitted to the then Acting Secretary of State Warren Christopher. In this document the Legal Adviser stated that the Soviet invasion of Afghanistan was contrary to Article 2(4) of the UN Charter as well as to the principle of self-determination of peoples, to which that provision referred. As Article 2(4)

[68] See the statements of Iraq (GAOR, 25th Session, Sixth Committee, A/C.6/SR.1180, para. 6), Ethiopia (*ibid.*, 1182, para. 49) and Trinidad and Tobago (*ibid.*, 1183, para. 5). A contrary view was taken by Hungary (*ibid.*, 1179, para. 35: 'The Declaration would not have the status of a treaty and could not be considered *jus cogens*').

[69] See, e.g., the Memorial of the Spanish Government to the ICJ in the *Western Sahara* case, ICJ, *Pleadings. Oral Arguments. Documents*, Western Sahara, vol. I, 206–8; the oral statement of Mr Bedjaoui, counsel for Algeria, *ibid.*, vol. IV, 497–500 and vol. V, 319–20; and the oral statement of Mr Vedel, counsel for Morocco, *ibid.*, vol. V, 179–80.

[70] In 1970, in the UN General Assembly, on the occasion of the debate on the Declaration on Friendly Relations, the Greek delegate stated that 'The Declaration would constitute an important contribution to the safeguarding of international peace and security, and the consensus reached on the text of the seven principles furnished greatly needed clarification of the content of the related *jus cogens* provisions of the Charter' (GAOR, 25th Session, VIth Committee, A/C.6/SR.1181, para. 31).

[71] See above, note 69.

[72] In 1975, Prof. G. Sperduti, in his capacity as Italian delegate to the UN Human Rights Committee stated that 'The right of peoples to self-determination was not just one of the fundamental principles of the new world order. It could also be classified in a new category of international legal rules recently stated and still in the course of codification. The principle might be reckoned among those which came under the head of *jus cogens*. If it was thus classified, it would have very important repercussions and the two Special Rapporteurs appointed by the Sub-Commission should try to study the problem from that standpoint too' (UN Doc. E/CN.4/SR.1300, 91).

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was to be regarded as a peremptory norm of international law, the Treaty of 1978 between Afghanistan and the USSR, to the extent that it would support the Soviet intervention, was to be regarded as null and void as being in conflict with *jus cogens*.[73] No doubt this was a very skilful and subtle way of elevating self-determination – albeit in an indirect and roundabout way – to the rank of *jus cogens*. It can be contended that a more straightforward way of relying on self-determination would consist in arguing that any invasion of a foreign territory such as that of Afghanistan amounts to the breach of two distinct and closely intertwined peremptory norms: the one prohibiting any unauthorized use of force and the norm on the right of peoples to self-determination. The US adverted instead to self-determination only insofar as it is referred to in Article 2(4). Nevertheless, whichever of these two views is regarded as the more correct, the fact remains that the US statement constitutes an important contribution to the consolidation of self-determination as a norm of *jus cogens*.

One should also mention that in its Opinion no. 1, of 11 January 1992, the 'Arbitration Committee' set up by the EC 'Conference on Yugoslavia' held that 'the peremptory norms of general international law and, in particular, respect for the fundamental rights of the individuals and the rights of peoples and minorities, are binding on all the parties to the

[73] It is worth quoting the relevant passages of this important pronouncement by the US authorities: '1. By the terms of Article 2(4) of the UN Charter, the USSR is bound "to refrain in its international relations from 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". Among those Purposes are "respect for the principle of equal rights and self-determination of peoples" (Article 1(2)). The use of Soviet troops forcibly to depose one ruler and substitute another clearly is a use of force against the political independence of Afghanistan; and it just as clearly contravenes the principle of Afghanistan's equal international rights and the self-determination of the Afghan people . . . 3. No treaty between the USSR and Afghanistan can overcome these Charter obligations of the USSR. Article 103 of the Charter provides: "In the event of conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." 4. Nor is it clear that the treaty between the USSR and Afghanistan, concluded in 1978 between the revolutionary Taraki Government and the USSR, is valid. If it actually does lend itself to support of Soviet intervention of the type in question in Afghanistan, it would be void under contemporary principles of international law, since it would conflict with what the Vienna Convention on the Law of Treaties describes as a "peremptory norm of general international law" (Article 53), namely, that contained in Article 2(4) of the Charter. While agreement on precisely what are the peremptory norms of international law is not broad, there is universal agreement that the exemplary illustration of a peremptory norm is Article 2(4)' (in 74 AJIL, 1980, 418 ff.).

succession [to Yugoslavia]'.[74] Although this ruling, restated in Opinion no. 9, of 4 July 1992,[75] may be regarded as too sweeping and in addition emanates from a body consisting of individuals and not of States, it is nevertheless indicative of the increasingly strong movement among Western countries towards *jus cogens*.[76]

The criticism may, however, be made that these elements of Western State practice are too few and far between to signal a consistent and generalized attitude. If this view is accepted, one could adopt the following line of reasoning. It is well known that for a norm of *jus cogens* to have developed the 'acceptance and recognition' of 'the international community of States as a whole' is required (ex Article 53 of the Vienna Convention on the Law of Treaties, which in this respect can be regarded as part of customary law).[77] The lack of support by an important segment of the world community might therefore lead to the conclusion that self-determination has not acquired the rank and force of *jus cogens*. Arguably, however, for a norm of *jus cogens* to evolve, it is not always necessary for all States to say in so many words that they consider that norm as existing. Although such formal 'labelling' proves important and in some cases indispensable, there may be instances where the upgrading of a rule to *jus cogens* may result *implicitly* from the attitude taken by States in their international dealings and in collective fora. Self-determination is a case in point. Undisputedly *Western* countries have stated time and again that self-determination is one of the fundamental principles of the world community; they have consequently agreed to such international instruments as the 1970 UN Declaration on Friendly Relations and the 1975 Helsinki Final Act; they have also insisted on the universality of self-determination, thereby showing that they intend to assign to self-determination a scope and impact extending far beyond the meaning advocated by the developing and the then socialist countries. By the same token, Western countries, except for France, have eventually accepted the formation of *jus cogens* as a class of 'special' international norms.[78] It would

[74] For the text of the Opinion, see 3 EJIL, 1992, 182–3.

[75] For the text, see 4 EJIL, 1993, at 89.

[76] In addition and *generally speaking*, one should not underevaluate, as an element of international practice, the arbitral award in the *Guinea-Bissau* v. *Senegal* case (*Détermination de la frontière maritime*) of 31 July 1989; the Tribunal *implicitly* regarded self-determination as a peremptory norm of international law (see 94 RGDIP 1990, 234–5).

[77] See Cassese, *International Law in a Divided World*, 175–9.

[78] See also the dictum of the International Court of Justice in the *Nicaragua* case (ICJ, Reports 1986, 100–1, para. 190).

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therefore seem appropriate, in this case, to rely upon a syllogism: (i) Western countries have accepted *jus cogens*; (ii) they regard the principle of self-determination as fundamental and universal in international relations; (iii) they consequently may be assumed to consider self-determination as non-derogable on the part of States. It is submitted that resort to this 'syllogistic reasoning' is warranted in this case (but possibly not in others) because of the exceptional wealth of pronouncements by Western States on the fundamental importance of self-determination in its various versions that have become accepted at the normative level.

The aforementioned reasoning can therefore make up for the lack, among Western countries, of widespread explicit support for considering self-determination as a part of *jus cogens*. Consequently, the conclusion is justified that self-determination constitutes a peremptory norm of international law. This view, it should be added, is warranted even though so far no case has been raised in the appropriate fora of the world community of a possible conflict of a treaty with *jus cogens* (the case of East Timor, as we shall see, has been brought by Portugal before the ICJ as an instance of State responsibility because the lack of the necessary procedural requirements has prevented Portugal from raising the question of the possible nullity of the treaty in question).

Let us now turn to the second issue raised above, namely the question of whether the peremptory nature of self-determination is a quality attaching to the aforementioned general principle or to the various customary rules specifying and elaborating this principle. Given the close link and indeed complementarity of the principle and the rules, it would be artificial and improper to attribute a different legal force to each of the two classes of standards. Furthermore, it is no coincidence that whenever States have referred to self-determination as belonging to *jus cogens*, they have not specified either the areas of application of self-determination, the means or methods of its implementation, or the permissible outcome of self-determination. States have generically adverted to the 'principle' (*lato sensu*) or, more simply, to self-determination. It follows that the whole cluster of legal standards (the general principle and the customary rules) on self-determination should be regarded as belonging to the body of peremptory norms.

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Note Verbale from the High Commission of India in Port Louis to the Mauritius Ministry of Foreign Affairs, POR/162/1/97 (9 May 1997)

Cable "HICOMIND"
Louis

भारतीय उच्चायोग
पोर्टलुई – मारीशस
HIGH COMMISSION OF INDIA
PORT LOUIS - MAURITIUS

Phone 208-3775 / 6
Telex : 4523 HICOMIN - IW
Fax 230 / 208-6859

No. POR/162/1/97

09 May 1997

The High Commission of India presents its compliments to the Ministry of Foreign Affairs, International and Regional Cooperation, Government of the Republic of Mauritius, and has the honour to reproduce herewith extracts relating to Chagos Archipelago from the Declaration adopted by the 12th Ministerial Conference of Movement of Non-Aligned Countries held in New Delhi on April 7-8, 1997.

> "133. The Ministers reiterated the support of the Non-Aligned Movement for the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, and called on the former colonial power to pursue the dialogue with the Government of Mauritius for the early return of the Archipelago. In this respect, they noted with satisfaction the initiation of certain confidence-building measures by the two parties."

The High Commission of India avails itself of this opportunity to renew to the Ministry of Foreign Affairs, International and Regional Cooperation, Government of the Republic of Mauritius, the assurances of its highest consideration.

The Ministry of Foreign Affairs,
International and Regional Cooperation,
Government of the Republic of Mauritius,
Port Louis

13 MAY 1997

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Organization of African Unity, Assembly of Heads of State and Government, 36th Ordinary Session, *Decision on Chagos Archipelago*, AHG/Dec.159(XXXVI) (10-12 July 2000)

GANIZATION OF AFRICAN UNITY ORGANISATION DE L'UNITE AFRICAINE
P.O Box 3243, Addis Ababa - ETHIOPIA Telephone 251 1 517700 Fax 251 1 517844

Reference : **CD/DOC/14/18.00**

The General Secretariat of the Organization of African Unity presents its compliments to the Ministries of Foreign Affairs/External Relations of all the Member States and has the honour to draw their attention to and inadvertent typing error in Paragraph 3 of the English and Portuguese versions of Decision AHG/Dec.159(XXXVI) on Chagos Archipelago, adopted by the 36th Ordinary Session of the OAU Assembly of Heads of State and Government, held from 10 to 12 July 2000 in Lome, Togo.

Paragraph 3 of this Decision must read in English and Portuguese as stated in the respective copies attached hereto as follows:

> "URGES the UK Government to immediately enter into direct and constructive dialogue with Mauritius so as to enable the early return of the Chagos Archipelago to the sovereignty of Mauritius."

The French and Arabic texts, being correct, remain unchanged.

The General Secretariat apologizes this typing error and avails itself of this opportunity to renew to the Ministries of Foreign Affairs/External Relations of all the Member States the assurance of its highest consideration.

Addis Ababa, 3 October 2000

ORGANIZATION OF AFRICAN UNITY SECRETARIAT

MAURITIUS RECEIVED 10 OCT 2000

TO: Ministries of Foreign Affairs/External Relations of all Member States

cc: Embassies of all OAU Member States Addis Ababa

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AHG/Dec.159 (XXXVI)

DECISION ON CHAGOS ARCHIPELAGO

Assembly:

1. **EXPRESSES CONCERN** that the Chagos Archipelago was unilaterally and illegally excised by the colonial power from Mauritius prior to its independence in violation of UN Resolution 1514;

2. **NOTES WITH DISMAY** that the bilateral talks between Mauritius and UK on this matter has not yet yielded any significant progress;

3. **URGES** the UK Government to immediately enter into direct and constructive dialogue with Mauritius so as to enable the early return of the Chagos Archipelago to the sovereignty of Mauritius

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Letter from the Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to the Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000)

Ministry of Foreign Affairs and Regional Co-operation
Republic of Mauritius

The Minister

21st December 2000

H.E. Mr. R. Cook
Secretary of State
Foreign & Commonwealth Office
London SW1A 2AG
ENGLAND

Your Excellency

May I thank you for your letter dated 6th December 2000 which was delivered by hand to me in Port Louis on 20th December 2000. I have taken note of its contents.

I wish to express my appreciation for the full, forceful and frank discussions I had with your officials in Gaborone as well as with your colleague, Minister Peter Hain. I am sure they have briefed you fully.

While going through your letter I have noticed some significant departures from the position that Her Majesty's Government has taken in the past.

For the sake of the record I am mindful of the fact that your Government had taken the position that the Chagos Archipelago would be ceded to Mauritius when it was no longer needed for the defence of the West.

It appears that you are now modifying this stand by including new elements.

Mauritius does not subscribe to your "willingness to cede the islands of the Chagos Archipelago subject to the requirement of International Law"

We note also that there is no strategic or defence impediment for the return of those persons of Mauritian origin who were living on the Chagos Archipelago to what you term the "outer islands".

Government Centre, Port Louis — Tel : (230) 201 1416 Fax : (230) 208 8087

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As you are aware, Mauritius has officially announced that we have no objection to the continued presence of the US military base on Diego Garcia and we have informed the United States that there is no risk with regard to their security of tenure on the island.

Mauritius considers that the time has come to engage in constructive negotiations with a view to working out the modalities for an early return of sovereignty on the Chagos Archipelago to Mauritius.

Mauritius and the United Kingdom enjoy excellent bilateral relations and we are sure that we will be able to find a way round this dispute in a friendly and constructive atmosphere.

Yours sincerely

A. K. Gayan
Minister of Foreign Affairs
& Regional Cooperation

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Notes Verbales from the Embassy of the Republic of Mauritius in Brussels to the Commission of the European Communities and Council of the European Union, No. MBX/ACP/5005 (13 Feb. 2001 & 5 Mar. 2001)

32 2 7344021

Embassy of the
Republic of Mauritius

Our Reference:MBX/ACP/5005

The Embassy of the Republic of Mauritius presents its compliments to the Commission of the European Communities – Protocol – and, with reference to the Proposal of the Commission for a Council Decision on the association of the Overseas Countries and Territories with the European Community, has the honour to state the position of the Government of Mauritius regarding the inclusion of the Chagos Archipelago, including Diego Garcia, (the so-called British Indian Ocean Territory) as follows:

The Government of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius. Mauritius has never recognised the so-called British Indian Ocean Territory.

The Government of Mauritius strongly rejects the inclusion of the so-called British Indian Ocean Territory in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland in the **Proposal of the Commission of the European Communities dated 15 November 2000 (bearing reference COM (2000) 732 Final) for a Council Decision on the association of the overseas countries and territories with the European Community.**

The Commission of the European Communities is, therefore, hereby requested to delete the so-called British Indian Ocean Territory as an Overseas Country and/or Territory (OCT) of the United Kingdom of Great Britain and Northern Ireland from the Annex to the Proposal contained in document COM (2000) 732 Final.

The Embassy of the Republic of Mauritius would be grateful to the Commission of the European Communities to kindly acknowledge receipt of this Note Verbale.

The Embassy of the Republic of Mauritius avails itself of this opportunity to renew to the Commission of the European Communities – Protocol - the assurances of its highest consideration.

EMBASSY OF THE REPUBLIC OF MAURITIUS
BRUSSELS

Brussels, 13 February 2001

COMMISSION OF THE EUROPEAN COMMUNITIES
PROTOCOL
RUE DE LA LOI 200
B-1049 BRUSSELS

68, Rue des Bollandistes - 1040 Bruxelles - Tél. 02.733.99.88/89 - Fax 02.734.40.21

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Embassy of the
Republic of Mauritius

Our Reference:MBX/ACP/5005

The Embassy of the Republic of Mauritius presents its compliments to the Council of the European Union – Protocol Directorate General – and, with reference to the Proposal of the Commission for a Council Decision on the association of the Overseas Countries and Territories with the European Community, has the honour to state the position of the Government of Mauritius regarding the inclusion of the Chagos Archipelago, including Diego Garcia, (the so-called British Indian Ocean Territory) as follows:

The Government of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius. Mauritius has never recognised the so-called British Indian Ocean Territory.

The Government of Mauritius strongly rejects the inclusion of the so-called British Indian Ocean Territory in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland in the **Proposal of the Commission of the European Communities dated 15 November 2000 (bearing reference COM (2000) 732 Final) for a Council Decision on the association of the overseas countries and territories with the European Community.**

The Council of the European Union is, therefore, hereby requested to delete the so-called British Indian Ocean Territory as an Overseas Country and/or Territory (OCT) of the United Kingdom of Great Britain and Northern Ireland from the Annex to the Proposal contained in document COM (2000) 732 Final.

The Embassy of the Republic of Mauritius would be grateful to the Council of the European Union to kindly acknowledge receipt of this Note Verbale.

The Embassy of the Republic of Mauritius avails itself of this opportunity to renew to the Council of the European Union – Protocol Directorate General - the assurances of its highest consideration.

Brussels, 05 March 2001

EMBASSY OF THE REPUBLIC OF MAURITIUS
BRUSSELS

COUNCIL OF THE EUROPEAN UNION
PROTOCOL DIRECTORATE GENERAL
RUE DE LA LOI 175
B-1048 BRUSSELS

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Catriona Drew, "The East Timor Story: International Law on Trial", *Eur. J. Int'l L.*, Vol. 12 (2001)

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The East Timor Story: International Law on Trial

Catriona Drew*

Abstract

This article considers the story of East Timor in the light of the international legal rules on self-determination. It is argued that such an analysis is both timely and necessary. For more than 20 years, international lawyers have brought the force of international legal norms to bear upon the 'Question of East Timor'. This article aims to do the reverse: to bring the force of the East Timorese debacle to bear upon international law. Following on from the Introduction, the argument proceeds in three parts. Part 2 considers the legal basis for East Timor's right of self-determination. Part 3 argues that, contrary to its populist characterization as excessively indeterminate, the right of self-determination has a discernible core content which confers on beneficiary peoples, such as the East Timorese, two distinct sets of entitlements: self-determination as process, and self-determination as substance. Finally, having established the basic legal framework, Part 4 compares two moments of high-level institutional engagement with (the two aspects of) East Timor's self-determination entitlement: the case brought by Portugal against Australia before the ICJ in 1995; and the UN-sponsored 'popular consultation' of August 1999. It is argued that the institutional shift from the ICJ to the UN was also characterized by a shift from formalism to pragmatism, and that both institutions failed to uphold the international legal rights of the East Timorese.

* School of Law, University of Glasgow. This is a revised and expanded version of a paper presented at Suffolk Law School, Boston, at the annual dinner of Boston-based international lawyers in October 1999. I benefited greatly from the questions and discussion of the participants. Most of the research was completed while I was a Visiting Fellow at the Human Rights Program, Harvard Law School, 1999/2000. This was a collegiate and challenging environment and I would like to thank all my colleagues at the Human Rights Program as well as elsewhere in the Law School: Abigail Abrash, Yishai Blank, Deborah Cass, Susan Culhane, Rosalind Dixon, Daniela Dohmes-Ockenfels, Michael Ikhariale, Shawqi Issa, Catherine Le Magueresse, Zachary Lomo, Dominic McGoldrick, Moria Paz, Mindy Roseman, Peter Rosenblum, Alvaro Santos, Hani Sayed, Leslie Sebba, Susan Sessler, Gerry Simpson, Christine Soh, Dori Spivak, K. Sritharan, Henry Steiner, Anje Van-Berckelaer and Yosuke Yotoriyama. I would also like to acknowledge a more general debt to David Kennedy's inspirational international law class (1999/2000) which greatly influenced the writing of this article. Particular thanks to John Saul Marco for research assistance, and to Nathaniel Berman, Graeme Laurie and Iain Scobbie for comments and encouragement.

EJIL (2001), Vol. 12 No. 4, 651–684

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It is, by now, a familiar pattern: egregious human rights violations . . . an assertion of international authority . . . a solution of sorts . . . demands for those responsible for atrocities to be brought to account under international law. For East Timor — like Bosnia before it — the closing stages of its self-determination struggle are likely to be played out against the backdrop of formal or informal 'trials': of *individuals* at the hands of some newly established ad hoc tribunal[1] or truth and reconciliation commission;[2] of complicit *states*[3] at the bar of world opinion. East Timor shall have its independence, and the international community shall have its culprits.[4] Or so, one

[1] While there have been calls for the Security Council to establish an ICTY/ICTR-style International Criminal Tribunal (see e.g. Amnesty International, 'Letter to UN Secretary-General on East Timor Commission of Inquiry', 30 September 1999 or, more recently, CAFOD *et al.*, *Justice for East Timor*, 13 June 2001), the Secretary-General and the Security Council early on favoured allowing Indonesia to 'do a credible and transparent job of holding people accountable for their crimes'. See the UN Secretary-General's 'Briefing Report', 29 February 2000. See also 'Letter from the President of the Security Council, Arnoldo Manuel Listre, to the Secretary-General', 18 February 2000, S/2000 137; 'United Nations–Indonesia Accord on Judicial Cooperation in East Timor', 5 April 2000. On 24 April 2001, President Wahid issued a decree establishing an Indonesian ad hoc tribunal to deal with gross human rights abuses committed in the aftermath of the popular consultation on 30 August 1999. In East Timor itself, the Serious Crimes Investigation Unit has begun prosecuting two categories of crimes committed in the September 1999 violence: serious crimes under the Indonesian penal code and crimes against humanity. For details, see 'Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the Period 27 July 2000 to 16 January 2001)', S/2001/42, 16 January 2001, para. 24. On the problems of pursuing a large number of trials in the context of 'transitional' countries such as East Timor, and the proposal to try only 'serious crimes', see Hayner and van Zyl, 'The Challenge of Reconciliation in East Timor', in *Report on a Mission to East Timor June 18–28 2000 on Behalf of the Human Rights Office of UNTAET*, July 2000 (on file with author).

[2] For details of the National Council of Timorese Resistance (CNRT) early proposal for a 'Commission for Reception and National Reconciliation', see Hayner and van Zyl, *supra* note 1. On 13 December 2000, the East Timor Transitional Cabinet agreed to establish a 'Truth, Reception and Reconciliation Commission', with a mandate to facilitate the reintegration of returning refugees, document human rights abuses since 1975 and promote community reconciliation by dealing with low-level offences committed in 1999. See 'Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the Period 27 July 2000 to 16 January 2001)', S/2001/42, 16 January 2001, para. 26.

[3] For criticism of the role of the Western powers (Australia, the United States and the United Kingdom), see Budiardjo, 'A Global Failure of Human Rights in East Timor', in a special issue of the *Human Rights Law Review*, edited by E. Hedman, entitled 'East Timor in Transition: Sovereignty, Self-Determination and Human Rights', 4 *Human Rights Law Review* (1999) 20. Yet revisionist histories are already in the writing. For example, Australia has been praised for 'its leading role . . . in transforming the fortunes and prospects of East Timor'. UN Secretary-General, 'Briefing to the Security Council', New York, 29 February 2000.

[4] Curiously, the international community appears to be interested mainly in pursuing investigations into the violence of 1999 and not the widely documented human rights atrocities of the earlier period since the Indonesian occupation began in 1975. See 'Report of the United Nations International Commission of Inquiry on East Timor' (A/54/726-S/2000/59). Similarly, the 'Report of the Commission to Investigate Violations of Human Rights' established by the Indonesian National Commission for Human Rights deals with the period from January 1999 to the immediate aftermath of the ballot. It is unclear why the genocidal policies of the Indonesians in the earlier period of the occupation should continue to attract immunity. This point was brought to my attention by students at Northeastern Law School during a panel discussion on East Timor in October 1999. In East Timor itself, however, the proposed 'Truth, Reception and Reconciliation Commission' is to have a mandate to create a record of human rights abuses since 1975. For discussions of early proposals to backdate investigations, see Hayner and van Zyl, *supra* note 1.

imagines, the rest of the story will go. Of course, what is suppressed in this Hollywood ending — the triumph of right (self-determination) over might (the Indonesian army), of law over brute politics — is any suggestion that, in revisiting earlier chapters of the East Timor story, international law itself — its doctrines, its institutions — may be cast in a leading role as one of the 'bad guys'.

1 A Formal Analysis of the Right of Self-Determination: Dispensing with Two Preliminary Objections

Before turning to my substantive arguments, it is perhaps necessary to make a pre-emptive strike on what I anticipate are two likely objections to any proposal to embark on a formal analysis of the East Timor Story in the light of the international law of self-determination. First, there could be the 'indeterminacy' objection. According to this — now standard — critique, the right of self-determination is simply one of the most normatively confused and indeterminate principles in the canon of international legal doctrine.[5] Moreover, as commentators have shown,[6] traditionally it was formal legal analysis that was deployed to deny, rather than endorse, the existence of a legal right of self-determination.[7] To adopt a formalist posture in favour of the right of self-determination may thus appear positively oxymoronic.

A second — perhaps more compelling — objection might be on the grounds of political redundancy. The recent history of East Timor is well known.[8] On 30 August 1999, in a United Nations-sponsored 'popular consultation', the people of East Timor voted overwhelmingly[9] to reject the Indonesian offer of 'special autonomy' in favour of a United Nations-supervised transition to independent statehood. From then on, events moved apace. On 15 September 1999, the Security Council authorised the establishment of a multinational force (INTERFET) with a mandate to restore peace

[5] See e.g. Cass, 'Rethinking Self-Determination: A Critical Analysis of Current International Law Theories', 18 *Syracuse Journal of International Law and Commerce* (1992) 21; Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', 43 *International Law and Comparative Law Quarterly* (1994) 241.

[6] Berman, 'Sovereignty in Abeyance: Self-Determination and International Law', 7 *Wisconsin International Law Journal* (1988) 51, at 61–62.

[7] See e.g. Fitzmaurice, 'The Future of Public International Law and the International Legal System in the Circumstances of Today', in Institut de Droit International, *Evolution et Perspectives du Droit International* (1973) 196, at 233, discussed in Berman, *supra* note 6.

[8] For background, see the UN's excellent website, www.un.org/peace/etimor/etimor.htm. For critical reflections in the lead-up to the ballot, see the collection of papers in Hedman, *supra* note 3.

[9] 78.5 per cent. For discussion, see Part 4 below.

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and security in East Timor.[10] On 15 October 1999, the Indonesian People's Consultative Assembly repealed the infamous law of July 1976 under which East Timor had been annexed,[11] paving the way for the United Nations Transitional Administration in East Timor (UNTAET) to assume control of the territory.[12] And by November 1999, the last of the Indonesian troops had, finally, left East Timor.

In short, is not the 'Question of East Timor' passé?[13] Self-determination has 'happened'. It is no longer interesting. To be sure, the actual process of exercising self-determination encountered some regrettable 'operational' difficulties.[14] But these were due to the unpredictable excesses of disgruntled militias and 'rogue' members of the Indonesian security forces. As such, they lie firmly beyond the remit of the international lawyer. Today, there are simply far more pressing and exciting issues to engage the Timor-minded legal scholar. Should there be war crimes trials or a truth commission? How best can we foster Timorese civil society based on the rule of law and human rights?[15] Or what precisely is the legal status of East Timor during the United Nations-administered transitional phase?

[10] This was 'requested' by Indonesia on 12 September 1999 and authorized by Security Council Resolution 1264 (1999), 15 September 1999. Security Council Resolution 1264 is thus an interesting hybrid. In the preamble, the Security Council welcomes Indonesia's readiness to accept an 'international peacekeeping force', yet paragraph 3 makes clear that the establishment of the multinational force is more accurately characterized as a (non-consensual) Chapter VII peace-enforcement action rather than (consensual) peacekeeping. The Australian-led multinational force was deployed on 20 September 1999. It finally handed over to UNTAET peacekeeping troops on 22 February 2000.

[11] 19 October 1999. This was pursuant to Article 6 of the Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor (hereinafter the 'General Agreement'), A/53/951, Annex 1 of the 'Report of the Secretary-General', S/1999/513 (the Agreement is reproduced in Hedman, *supra* note 3; and is available on the UN website, www.un.org/peace/etimor/etimor.htm). Article 6 of the General Agreement provides: 'If the Secretary-General determines, on the basis of the result of the popular consultation and in accordance with this Agreement, that the proposed constitutional framework for special autonomy is not acceptable to the East Timorese people, the Government of Indonesia shall take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976.' The decision of the Indonesian People's Consultative Assembly to repeal the law was welcomed in Security Council Resolution 1272 (1999), 25 October 1999 and in General Assembly Resolution A/54/194, 15 December 1999. For the background to the 1976 law, see e.g. Clark, 'The "Decolonization" of East Timor and the United Nations Norms on Self-Determination and Aggression', in CIIR and IPJET (International Platform of Jurists for East Timor), *International Law and the Question of East Timor* (1995) 65, at 69–73.

[12] UNTAET was established by the Security Council on 25 October 1999. Security Council Resolution 1272 (1999), 25 October 1999. Its initial mandate was to January 2001. On 31 January 2001, the Security Council decided to extend the current mandate of UNTAET until 21 January 2002. Security Council Resolution 1338 (2001), 31 January 2001.

[13] This is certainly the view of the General Assembly which decided to conclude its consideration of the agenda item 'The Question of East Timor' and include a new agenda item entitled 'The Situation in East Timor During its Transition to Independence'. General Assembly Resolution A/54/194, 15 December 1999, para. 3. The question has, of course, been more famously asked of the right of self-determination in general. See Sinha, 'Is Self-Determination Passé?', 12 *Columbia Journal of Transnational Law* (1973) 260.

[14] See Part 4 below.

[15] In November 1999, ECOSOC requested the United Nations High Commissioner for Human Rights to prepare a comprehensive programme of technical cooperation in human rights focusing on capacity-building and reconciliation.

It is the premise of this article, however, that neither the 'indeterminacy' nor the 'politically redundant' objection is well founded. First, by way of a formalist defence, it will be shown that, contrary to its populist characterization as excessively indeterminate, the right of self-determination has a discernible core content which provides a normative yardstick against which to measure the international community's treatment of East Timor's legal claim.

Secondly, it is submitted that, far from being passé, a formal analysis of the East Timor Story in the light of the international legal rules on self-determination is both timely and necessary. For more than 20 years, following in the pioneering footsteps of scholars such as Thomas Franck[16] and Roger Clark,[17] international lawyers[18] have brought the force of international legal norms to bear upon the 'Question of East Timor'.[19] This article aims to do the reverse: to bring the force of the East Timorese debacle to bear upon international law. In other words, I wish to resist the appeal of the imminent, cast a retrospective eye, and explore what, if anything, the unhappy — genocidal[20] — story of East Timor has to tell us about the 'moral hygiene'[21] of the international law of self-determination.

Following on from the introduction, the argument will proceed in three parts. In Part 2, I will consider the legal basis for East Timor's right of self-determination and argue that this should be characterised as a case of decolonization. The applicable legal rules are thus readily identifiable as those that emerged during the decolonization practice of the United Nations. In Part 3, I will confront the 'indeterminacy objection' and argue that, contrary to conventional accounts, the right of self-determination has a discernible core content which confers on beneficiary peoples such as the East Timorese two distinct sets of entitlements: self-determination as process, and self-determination as substance. Finally, having established the basic legal framework, in Part 4, I will compare two moments of high-level institutional engagement with (the two aspects of) East Timor's self-determination entitlement: the case brought by Portugal against Australia before the International Court of Justice in 1995; and the United Nations-sponsored 'popular consultation' of August 1999. It will be argued that the institutional shift from the International Court of Justice to the UN was also characterized by a shift from formalism to pragmatism, and that

[16] Franck and Hoffman, 'The Right of Self-Determination in Very Small Places', 8 *New York Journal of International Law and Policy* (1975–1976) 331.

[17] The seminal article is Clark, '"The Decolonization" of East Timor and the United Nations Norms on Self-Determination and Aggression', 7 *Yale Journal of World Public Order* (1980–1981) 2.

[18] For example, the International Platform of Jurists for East Timor (IPJET) founded in 1991 by Pedro Pinto Leite has organized a number of international law conferences and published two edited collections: CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11; and IPJET, *The East Timor Problem and the Role of Europe* (1998).

[19] For a sceptical account of such efforts in the context of IPJET, see Kennedy, 'An Autumn Weekend: An Essay on Law and Everyday Life', in D. Danielson and K. Engle (eds), *After Identity: A Reader in Law and Culture* (1995) 191.

[20] See e.g. M. Jardine, *Genocide in Paradise* (1999).

[21] The phrase is David Kennedy's, *Lectures* (1999).

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both institutions — the formalist International Court of Justice, the pragmatic United Nations — failed to uphold the international legal rights of the East Timorese.

2 East Timor's Right to Self-Determination: Decolonization in a Secessionist Era

As has been established elsewhere,[22] the existence of East Timor's right to self-determination under international law is unassailable. As a Portuguese colony from 1856[23] and a UN-designated non-self-governing territory since 1960, East Timor qualified under the 'first phase' right of self-determination, which emerged during the decolonization period of the 1960s.[24] Neither the (unlawful) Indonesian invasion in December 1975, nor its subsequent (unlawful) annexation,[25] could dislodge East Timor's vested entitlement. Thus, as affirmed by the International Court of Justice in 1995,[26] despite its *de facto* transition from Portuguese colony to Indonesian province, East Timor remained, *de jure*, a non-self-governing territory[27] with the right of self-determination under the law applicable to decolonization.[28]

But, if it can readily be established that the legal basis for East Timor's right of self-determination lay in its relations with Portugal (colonialism) rather than with

[22] See e.g. Clark, *supra* note 17; Franck and Hoffman, *supra* note 16; and A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995) 223–230.

[23] On the history of Portuguese colonialism in East Timor, see generally J.G. Taylor, *Indonesia's Forgotten War: The Hidden History of East Timor* (1995) 1–15.

[24] See e.g. General Assembly Resolution 1514 (XV) 1960, 'The Declaration on the Granting of Independence to Colonial Countries and Peoples'; United Nations General Assembly Resolution 1541 (XV) 1960, 'Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73(e) of the Charter'. See further *Legal Consequences for States of the Continued Presence of South Africa in Namibia/South West Africa Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) 31.

[25] For discussion of the background to the 'Act of Integration', see e.g. Clark, *supra* note 17; Taylor, *supra* note 23, at 73–74.

[26] *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103, paras 31 and 37. It should be noted that the Court restricts itself to affirming that 'for *both parties* the territory of East Timor remains a non-self-governing territory and its people has the right of self-determination' (emphasis added): *ibid.* The Court itself does not make an independent finding.

[27] *Ibid.*

[28] The ICJ in its Advisory Opinion on Namibia held that: 'The subsequent development of international law in regard to non-self-governing territories as enshrined in the Charter of the United Nations made the principle of self-determination applicable to all of them.' *Legal Consequences for States of the Continued Presence of South Africa in Namibia/South West Africa Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) at para. 52.

Indonesia (secession),[29] the question remains: why does it matter? What purpose does it serve to establish that East Timor was a case of decolonization in a secessionist era?

It is submitted that establishing the correct legal basis for East Timor's right of self-determination is no mere academic exercise, but rather entails three practical consequences. In the first place, as recent events in Kosovo[30] and Chechnya[31] demonstrate, the existence of any legal right of secession under international law — even in situations involving gross human rights abuse[32] — remains highly contentious. Meagre doctrinal development in favour of a limited right of secession[33] has manifestly not been matched by any corresponding shift in state practice. Accordingly, had the East Timorese based their claim on a purported right of secession triggered by, say, Indonesian human rights abuse, they may have faced the initial obstacle that such a right does not in fact exist. Secondly, establishing colonialism as the correct legal basis *should* have allowed the international community and third states to emphasize the *sui generis* nature of the East Timorese claim as a means of countering domestic Indonesian fears/accusations that allowing East Timor to

[29] This point is also dealt with by Gerry Simpson. See Simpson, 'The Politics of Self-Determination in the Case Concerning East Timor', in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 258.

[30] The Security Council resolutions on Kosovo consistently affirmed the territorial integrity of the Federal Republic of Yugoslavia. See e.g. Security Council Resolution 1160 (1998), 31 March 1998, especially para. 5; Security Council Resolution 1244 (1999), 10 June 1999. The resolutions call for 'substantial autonomy', and 'meaningful self-administration' rather than, say, 'secession' or 'meaningful self-determination' (which would require an exercise of free choice including the option of independent statehood; see below). But compare the Report of the Independent International Commission on Kosovo, October 2000. This concludes that 'the Security Council Resolution's commitment to FRY sovereignty and Kosovo autonomy may not be incompatible in theory but they have become incompatible in practice', and recommends that Kosovo be granted 'conditional independence'. The Commission's report, 'Report of the Independent Commission on Kosovo', can be found at www.kosovocommission.org.

[31] See e.g. 'Statement by the High Commissioner for Human Rights on the Situation in Chechnya, Russian Federation', HR/99/104, 16 November 1999.

[32] For the thesis that secession should be available as a remedy of last resort for gross human rights abuse, see e.g. L.C. Buchheit, *Secession: The Legitimacy of Self-Determination* (1978). For an early statement of this possibility in the context of the Aaland Island question, see League of Nations, 'Report Presented to the Council of the League by the Commission of Rapporteurs', Council Doc. B7/21/68/106, 16 April 1921, at 28.

[33] United Nations General Assembly Resolution 2625 (XXV) 1970, 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with Charter of the United Nations', has been interpreted by commentators as providing a possible legal basis for a right of secession. See e.g. White, 'Self-Determination: Time for a Reassessment', 28 *Netherlands International Law Review* (1981) 161. This interpretation has, however, found only limited doctrinal support. See the *obiter* statements in *Katangese Peoples' Congress v. Zaire*, Communication No. 75/92, 3 *International Human Rights Reports* (1996) at 136, para. 6; *Reference Re Secession of Quebec*, Supreme Court of Canada reproduced in (1998) 37 ILM 1340, para. 134; and Part 9, 'The Future Status of Kosovo', of 'Report of the Independent Commission', *supra* note 30, at www.kosovocommission.org/reports/13-future.html.

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exercise its right of self-determination would lead inexorably to the break up of the Indonesian State.[34]

Finally, and perhaps more crucially for present purposes, it is only in the colonial context that there exists a sufficient level of international consensus on the rules governing the exercise of the right of self-determination to protect the East Timorese against the indeterminacy objection outlined earlier. Beyond colonialism, the right of self-determination is plagued by an excess of indeterminacy both in terms of scope and content. By contrast, the rules relating to the exercise of the right of self-determination in the colonial context are — as we shall see — relatively settled. Identifying colonialism as the proper basis for East Timorese self-determination is thus important because it precludes the argument that the right of self-determination is so indeterminate that it provides no meaningful, normative yardstick against which to measure the international community's treatment of the East Timorese claim.

3 The Content of East Timor's Right of Self-Determination

As observed by an international meeting of experts in 1989, the contemporary debate in international law is no longer about the existence of the right of self-determination but about its content.[35] The point appears to be amply borne out if we consider that, in contemporary political discourse, self-determination is variously invoked to mean: independent statehood, autonomy, negotiations, limited self-government, land rights, self-management, and democratic governance (to name but a few). For the East Timorese, however, it is unlikely that this caricature of the right of self-determination as meaning all things to all peoples bears scrutiny. While the post-colonial dialogue unquestionably labours under a high degree of normative confusion, a review of international practice in the decolonization period reveals that the rules relating to the exercise of self-determination by a non-self-governing territory — such as East Timor — are both determinate and discernible. In elucidating this content, it is useful to distinguish between two core sets of entitlements: self-determination as process, and self-determination as substance.

A *Self-Determination as Process*

If we consider the standard definition of self-determination in international law, it is clear that it is depicted as the right of a people to a particular process: the right of all peoples freely to 'determine their political status and freely pursue their economic, social and cultural development'.[36] Thus the most fundamental right conferred on a people by virtue of the right of self-determination is the right of a people freely to

[34] Similarly, West Irian is a *sui generis* case based on a flawed decolonization process. On the failure of the United Nations to ensure a proper act of self-determination in West Irian, see e.g. R. Sureda, *The Evolution of the Right of Self-Determination* (1973) 143–151; Cassese, *supra* note 22, at 82–86.

[35] UNESCO *International Meeting of Experts on the Further Study of the Concept of the Rights of Peoples* (1989) para. 19.

[36] General Assembly Resolution 1514 (XV) 1960, at para. 2.

determine the destiny of its territory. Its essence is free choice.[37] Early resolutions, such as the historic United Nations General Assembly Resolution 1514 on the Granting of Independence to Colonial Countries and Peoples,[38] which stressed objective outcomes (independent statehood)[39] rather than subjective process (free and genuine expression of the will of the people)[40] were thus hastily superseded.

What is striking, however, about the international legal definition of self-determination is how little it tells us about its operational content. Self-determination is depicted as a right to a process — the right of a people freely to choose — yet questions abound as to the procedures to be adopted. What exactly amounts to a *free* choice? How is the 'free choice' to be ascertained? In the context of assessing the international community's treatment of the East Timorese self-determination entitlement, these questions take on a specific guise: does self-determination require a referendum to be held? If so, how widely must the self-determination options be framed? And must they include the option of independent statehood?

Of course, these questions are nothing new. It was precisely such problems of process that dogged United Nations debates over the decolonization of the Western Sahara in 1974–1975 and led the General Assembly to request an Advisory Opinion from the International Court of Justice.[41] Indeed, it was the need to assist the General Assembly in determining the process of self-determination in the Western Sahara that was central to the ICJ's decision to comply with the request for an Advisory Opinion.

This point has long been neglected. According to the standard account,[42] the General Assembly's request for an Advisory Opinion on the legal status of the Western Sahara at the time of its colonization[43] presented the International Court of Justice with a potential stand-off between the historic rights of States on the one hand (Morocco and Mauritania) and a people's right to self-determination on the other (the Western Sahara). Indeed, the Opinion is much vaunted for its pithy pronouncements on the alleged triumph of peoples' rights over states' rights in this normative zero-sum game.[44] But a closer reading of the judgment reveals that, on the Court's own

[37] See e.g. *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, paras 55 and 59; and *infra*.

[38] General Assembly Resolution 1514 (XV) 1960.

[39] *Ibid*, at para. 5. Its sister resolution, United Nations General Assembly Resolution 1541 (XV) 1960, also implicitly favours independent statehood as an outcome. Thus, although it provides that self-determination can be achieved by three means — independent statehood, free association or integration — it is procedurally weighted in favour of independent statehood.

[40] General Assembly Resolution 2625 (XXV) 1970; and *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, para. 55. For discussion of this point, see generally Cassese, *supra* note 22, at 89.

[41] See General Assembly Resolution 3292 (XXIX), 13 December 1974, at para. 3. For discussion of the background to this resolution, see *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, paras 60–69.

[42] See e.g. Cassese, *supra* note 22, at 214–218.

[43] The General Assembly requested an Advisory Opinion on the following two questions: 'I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)? If the answer to the first question is in the negative, II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?'

[44] For example, Judge Dillard famously stated that: 'It is for the people to determine the destiny of the territory and not the territory the destiny of the people.' See Separate Opinion of Judge Dillard, at 122.

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interpretation, what was at issue in the decolonization of the Western Sahara was not so much a choice between the *historic rights of third states* versus the *self-determination of peoples* but, rather, a choice as to the procedures to be adopted in the self-determination process. Ascertaining the existence of historic ties between Western Sahara, and Morocco and the Mauritanian entity was relevant only to the extent that such ties would inform — not supplant — that self-determination process.

This becomes evident if we consider the fate of the Spanish objection that the Court should refuse the General Assembly's request for an Advisory Opinion on the grounds that it lacked object and purpose. Spain argued that, as the United Nations had already determined the method of decolonization applicable to the Western Sahara (a consultation of the indigenous population by means of a referendum), the questions posed by the General Assembly were irrelevant, and any answer by the Court would be to no practical effect.[45]

In dispensing with the Spanish objection, the Court agreed that the decolonization process to be accelerated in the Western Sahara (as envisaged by the General Assembly) was to be based on the right of self-determination: 'the right of the population of Western Sahara to determine their future political status by their own freely expressed will.'[46] Significantly, it also concluded that the right of self-determination was thus 'not affected' by the General Assembly's request for an Advisory Opinion, but, rather, constituted 'a basic assumption of the questions put to the Court'.[47] However, the Court nevertheless went on to reject Spanish claims that the application of the right of self-determination to the decolonization process in the Western Sahara rendered the two questions in the Advisory Opinion without object and purpose.[48] The right of self-determination, said the Court, leaves a 'measure of discretion' to the General Assembly as to the 'forms and procedures' by which it is to be realized.[49] 'Various possibilities' exist with respect to 'consultations between the interested States' and the 'procedures and guarantees' required for ensuring the free expression of the will of a people.[50] The function of an Advisory Opinion on the nature of historic ties between the Western Sahara and Morocco and the Mauritanian entity would thus be to assist the General Assembly in determining the procedures to be adopted in the self-determination process.[51]

[45] *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 48.

[46] *Ibid*, at para. 70.

[47] *Ibid*. The Court's conclusion that it had 'not found ties of such a nature as might affect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the Territory' must be read in the light of these earlier findings that the right of self-determination was not prejudiced by the request for the Advisory Opinion. *Ibid*, at paras 162 and 70.

[48] *Ibid*, at paras 71–73.

[49] See *ibid*, at para. 71.

[50] *Ibid*, at para. 72. See further Separate Opinion of Judge Dillard, at 122.

[51] *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 72. That a finding of the existence of historic ties might, for example, inform the wording of the referendum question was recognized as a possibility by Morocco in the oral pleadings (Hearing, 26 June 1975). See the statements from Moroccan counsel quoted in the Separate Opinion of Judge Singh, at 79. For further discussion of this point, see Separate Opinion of Judge Dillard, at 122.

For present purposes of elucidating the content of the right of self-determination under international law, two points bear emphasis here. First, in concluding that the decolonization process in the Western Sahara was to be based on 'the right of the population of Western Sahara to determine their future political status by their own freely expressed will',[52] it is clear that the Court conceived of the right of self-determination exclusively in terms of a right to a process. Thus, it famously defined the principle of self-determination as 'the need to pay regard to the freely expressed will of peoples'.[53] Similarly, the Separate Opinions reveal an overwhelming judicial consensus that it is the freely expressed will of the people that constitutes the 'basic pillar' of the right of self-determination.

Secondly, while the Advisory Opinion is unequivocal that the right of self-determination requires the freely expressed will of the people, it is less illuminating on the crucial question of *how* that free will is to be ascertained. Indeed, as we have seen, in dispensing with the Spanish objection, the Court made it clear that the question of how to realize the right of self-determination was to be left open as a matter within the discretion of the General Assembly.[54]

It is clear, however, that the Court did not intend the General Assembly's discretion to be unfettered. In the first place, any 'forms and procedures' adopted must be such as to ensure 'a free and genuine expression'[55] of the will of the people. Secondly, the Court expressly endorsed certain provisions of General Assembly Resolution 1541[56] — i.e., 'informed and democratic processes' — as giving effect to the 'essential feature' of the right of self-determination.[57] Finally, the Court expressly stipulated that 'consulting the inhabitants' was a 'requirement' of self-determination with which the General Assembly had dispensed only where 'a certain population did not constitute a "people" entitled to self-determination' or where it was deemed 'totally unnecessary, in view of special circumstances'.[58]

In short, taking the Opinion as a whole, it is difficult to avoid the conclusion that, in the absence of special circumstances, the free choice of a people must be ascertained

[52] *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 70.

[53] *Ibid*, at para. 59. See also *ibid*, at para. 55: 'the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.'

[54] *Ibid*, at para. 71.

[55] *Ibid*, at para. 55.

[56] General Assembly Resolution 1541 (XV) 1960, Principles VII and IX.

[57] *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 57.

[58] *Ibid*, at para. 59. The Court did not elaborate on the meaning of 'special circumstances', but in his Separate Opinion Vice-President Ammoun gave as a prime example of 'special circumstances' the 'legitimate struggle for liberation from foreign domination'. See Separate Opinion of Judge Ammoun, at 99. For Judge Singh, 'the principle of self-determination could be dispensed with only if the free expression of the will of the people was found to be axiomatic in the sense that the result was known to be a foregone conclusion or that consultations had already taken place in some form or that special features of the case rendered it unnecessary'. Separate Opinion of Judge Singh, at 81.

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through 'informed and democratic processes' such as a referendum or a plebiscite.[59] Moreover, while Judge Dillard expressly rejected Spanish arguments that the right of self-determination *necessarily* requires the option of independent statehood,[60] surely all that this means is that what amounts to a 'free choice' is not to be universally predetermined but rather must be judged according to the particular political desires of the particular people.[61] Nonetheless, there is a substantial body of United Nations practice in the decolonization period that favours independent statehood as the preferred self-determination option.[62] And in the particular context of East Timor, where a liberation movement enjoying the support of the majority of its people had been engaged in a 25-year struggle for independent statehood, it seems incontrovertible that the test of 'free choice' could only be satisfied where that referendum or plebiscite offered independent statehood 'as a legal possibility'.[63]

B *Self-determination as Substance*

From a self-determination perspective, it is worth emphasizing that in the *Western Sahara Advisory Opinion*, the ICJ was faced exclusively with questions over process: first, relating to decolonization (to be based on self-determination); and, secondly, self-determination (to be based on a free choice of the population of the Western

[59] But compare, Separate Opinion of Judge Dillard, at 122–123. Since 1954, there has been a substantial United Nations practice of organizing or supervising self-determination referenda and plebiscites in the decolonization context. For a comprehensive list of UN activities, see Cassese, *supra* note 22, at 76–78. More recent self-determination practice outside the colonial context also favours the referendum as a means of ascertaining the free will of the people. The Badinter Arbitration Committee, for example, initially refused Bosnia-Hercegovina's application for recognition as a state, instead recommending a 'referendum of all the citizens of [Bosnia-Hercegovina] without distinction, carried out under international supervision'. See Conference on Yugoslavia, Arbitration Commission, 'Opinion No. 4 on International Recognition of the Socialist Republic of Bosnia-Hercegovina by the European Community and its Member States', (1992) 31 ILM 1501, at 1503. Similarly, in 1991, the provisional government of Eritrea decided to delay issuing a declaration of statehood until a referendum on independence had been held.

[60] Judge Dillard, at 122–123.

[61] 'On the contrary, it may be suggested that self-determination is satisfied by a free choice not by a particular consequence of that choice or a particular method of exercising it.' *Ibid*, at 123.

[62] For a list of relevant practice, see H.G. Espiel, 'The Right of Self-Determination: Implementation of United Nations Resolutions' (Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities), E/CN.4/Sub.2/405/Rev.1, paras 253 and 256.

[63] In French Togoland in 1957, the General Assembly refused to endorse the outcome of a referendum where the referendum question had not included the option of independent statehood. Cf. Southern Cameroons. See Sureda, *supra* note 34, at 51 and 304–306. That the right of self-determination should include the option of independent statehood where a people has been involved in a liberation struggle has been affirmed by the General Assembly which expressly endorsed the right of the Palestinians to self-determination 'without excluding the option of a State'. General Assembly Resolution A/Res./53/136, 9 December 1998. In 1999, the European Union went further and affirmed the right of the Palestinians to self-determination 'including the option of a State'. Declaration of the European Union Summit, Berlin, 25 March 1999. Compare the Declaration of the European Union, Cardiff, 16 June 1998. Early resolutions on East Timor also refer to 'self-determination *and* independence'. See e.g. General Assembly Resolution 32/34, 28 November 1977.

Sahara). It is hardly surprising then that the (soon-to-be-textbook) definitional legacy of the *Western Sahara Advisory Opinion* should also depict self-determination exclusively in terms of a process: the right of a people to a free choice over its political and territorial destiny.

Yet, whatever the Court's definitional emphasis on self-determination as process, it should be obvious that the right to a process does not exhaust the content of the right of self-determination under international law. To confer on a people a right of 'free choice' in the absence of more substantive entitlements — to territory, natural resources, etc. — would simply be meaningless. Clearly, the right of self-determination cannot be exercised in a substantive vacuum.

This is both implicit and explicit in the law. For example, implicit in any recognition of a people's right to self-determination is recognition of the legitimacy of that people's claim to a particular territory and/or set of resources.[64] Despite its textbook characterization as part of human rights law, the law of self-determination has always been bound up more with notions of sovereignty and title to territory than what we traditionally consider to be 'human rights'. More explicitly, the various international instruments make specific provision for additional substantive entitlements beyond the basic right of a people to exercise a free choice. And, while its normative contours are yet to be definitively settled, the following can be deduced as a non-exhaustive list of the substantive entitlements conferred on a people by virtue of the law of self-determination in the decolonization context: (a) the right to exist — demographically and territorially — as a people;[65] (b) the right to territorial integrity;[66] (c) the right to permanent sovereignty over natural resources;[67] (d) the right to cultural integrity and development;[68] and (e) the right to economic and social development.[69]

4 East Timor's Right of Self-Determination: Institutional Engagement

It has thus far been established that, far from being excessively indeterminate, the right of self-determination has a discernible core content which confers two distinct

[64] It is this collective and ancestral attachment to the land that is often deemed to distinguish 'peoples' from 'minorities', and self-determination from minority rights. See e.g. Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation', 16 *Yale Journal of International Law* (1991) 177, especially at 189.

[65] This would include the right not to be expelled from the land and not to be demographically manipulated through, say, the implantation of settlers. For a development of this argument, see Drew, 'Self-Determination, Population Transfer and the Middle East Peace Accords', in S. Bowen (ed.), *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (1997) 119, at 133.

[66] General Assembly Resolution 1514 (XV) 1960, para. 6.

[67] General Assembly Resolution 1803 (XVI) 1962; Article 1(2) of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR); United Nations Council for Namibia, Decree on the Natural Resources of Namibia, (1974) 13 ILM 1513; Australia–Republic of Nauru, Settlement of the Case in the International Court of Justice Concerning Certain Phosphates Lands in Nauru, 20 August 1993, (1993) 32 ILM 1471.

[68] Universal Declaration of the Rights of Peoples, Algiers, July 1976, Articles 2, 9, 13, 14 and 15.

[69] This is expressly included in the standard definition of the right to self-determination.

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sets of entitlements: self-determination as process and self-determination as substance. Thus, as a colonial people, the East Timorese were entitled, not only to a particular process (one that embodied a free choice over their political and territorial destiny), but — pending that process — a number of additional substantive rights (e.g. the right to territorial integrity, demographic integrity, natural resources etc.).[70]

Now, usefully for pedagogical purposes — though not, as it turned out, for the East Timorese — both aspects of the East Timorese self-determination entitlement encountered high-level institutional engagement: *self-determination as substance* (natural resources) in the case brought by Portugal against Australia to the International Court of Justice in 1995; *self-determination as process* in the United Nations-sponsored 'popular consultation' of August 1999. In considering each of these institutional moments by turn, it will be shown that, contrary to popular perception, there was as much a failure to implement the legal rules on self-determination in the United Nations-run popular consultation as in the ill-fated Portuguese application to the International Court of Justice. From a self-determination perspective, an excavation of 'what-went-wrong' in relation to both aspects of the East Timorese self-determination entitlement — in these two distinct institutional settings — reveals deficiencies in the structure of the international legal order with ramifications for the law of peoples[71] that extend beyond the territorial — or moral — boundaries of East Timor.

A *Self-Determination as Substance: The International Court of Justice and the Case Concerning East Timor*

The first moment of institutional engagement to be considered is a highly legalistic one — the *Case Concerning East Timor* (*Portugal v. Australia*) before the International Court of Justice in 1995.[72] The background is well known.[73] In 1989, Australia entered into a treaty with Indonesia — the Timor Gap Treaty[74] — for the purpose of jointly exploring and exploiting the hydrocarbon resources of an area of East Timor's continental shelf lying between East Timor and Australia (the Timor Gap). Portugal, in its capacity as continuing Administering Power (as recognized by some rather dated United Nations resolutions[75]) brought an action against Australia[76] alleging

[70] On the relationship between process and substance pending the realization of self-determination, see Drew, 'The East Timor Popular Consultation: Self-Determination Denied', in Hedman, *supra* note 3, at 5–6.

[71] I use this term to denote the body of international law applicable to *peoples* rather than, say, states, individuals or international organizations. Compare e.g. J. Rawls, *The Law of Peoples* (1999).

[72] *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103.

[73] See the various essays dedicated to discussing the background and prognosis of the *East Timor* case in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11.

[74] Australia/Indonesia Treaty on the Zone of Cooperation in an Area Between the Indonesian Province of East Timor and Northern Australia of 11 December 1989, (1990) 29 ILM 469.

[75] See e.g. General Assembly Resolution 3485 (XXX), 12 December 1975; and Security Council Resolution 384 (1975), 22 December 1975. For discussion, see *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103, para. 15.

[76] No action could be brought against Indonesia as it had not accepted the compulsory jurisdiction of the International Court of Justice.

inter alia a breach both of its own rights as the Administering Power and the rights of the East Timorese people — namely, to self-determination and permanent sovereignty over natural resources. The outcome was as predictable[77] as it was disappointing. The case was dismissed on jurisdictional grounds.[78] The Court held — implicitly applying the *Monetary Gold* doctrine[79] — that it could not entertain the case 'in the absence of the consent of Indonesia', as any determination as to the legality of Australia's conduct would require a prior determination regarding the conduct of a third party not before the Court — Indonesia.[80]

The decision has been the subject of much subsequent discourse and criticism.[81] Elsewhere,[82] for example, it has been argued that the 'configuration' of the *East Timor* case was clearly distinguishable from that of *Monetary Gold Removed from Rome* and that the ICJ erred in departing from its earlier jurisprudence in the *Phosphates Lands* case.[83] There is no intention to re-engage in the jurisdictional niceties of the *Monetary Gold* debate here. Rather, it is my intention to revisit the case from a self-determination perspective — beyond the narrow, statist, jurisdictional framework of the judgment — with a view to assessing what, in its wider aspects, the case reveals about the state of the international law of peoples.

1 The Elevation of Self-Determination as Process Over Self-Determination as Substance

The first issue highlighted by the case, of concern to the self-determination enthusiast, is the tendency to elevate self-determination *as process* over self-determination *as substance*. Consider, for example, the Australian arguments on the merits. In response to the Portuguese claim that, by negotiating and concluding the Timor Gap Treaty, Australia had infringed the rights of the East Timorese to self-determination, Australia argued that its conclusion and implementation did not:

> hinder any act of self-determination of the people of East Timor . . . Whatever the choice made, the conclusion of the Treaty does not prevent the exercise at some later date of the right of the

[77] Early warning of the potential procedural bar to the Portuguese case was given by Iain Scobbie at the IPJET conference in Lisbon in 1991. See Scobbie, 'The East Timor Case: The Implications of Procedure for Litigation Strategy', 9 *Oil and Gas Law and Taxation Review* (1991) 273; and Scobbie, 'The Presence of an Absent Third: Procedural Aspects of the East Timor Case', in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 223.

[78] *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103, para. 28.

[79] *Monetary Gold Removed from Rome in 1943* (*Italy v. France, United Kingdom, and United States of America*), ICJ Reports (1954) 19. For discussion of this doctrine — and the argument that this conclusion could have been avoided — see Scobbie and Drew, 'Self-Determination Undetermined: The Case of East Timor', 9 *Leiden Journal of International Law* (1996) 185, at 195–207.

[80] Indonesia had not lodged an application to intervene under Article 62 of the ICJ Statute.

[81] See e.g. Chinkin, 'The East Timor Case (Portugal *v.* Australia)', 45 *International and Comparative Law Quarterly* (1996) 712, at 724–725; and Scobbie and Drew, *supra* note 79.

[82] Scobbie and Drew, *supra* note 79, at 195–197.

[83] *Certain Phosphate Lands in Nauru* (*Nauru v. Australia*), ICJ Reports (1992) 240. For a discussion, see Scobbie and Drew, *supra* note 79, at 207–208.

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people of East Timor freely to choose their future political status in accordance with arrangements approved by the UN.[84]

In other words, as exploiting oil resources presented no obvious impediment to the process of exercising a future free choice, Australia had breached none of its international duties in relation to East Timor's right of self-determination.

This argument is clearly misconceived. It portrays self-determination as no more than a one-off right of a people to participate in a *process* — a free, political choice — and ignores its core content of *substantive* entitlements (in this instance, the right of the Timorese to their oil). As Higgins argued in the oral pleadings, the effect of the Australian argument would be to empty the right of self-determination of any meaningful content.[85] Clearly, once it is recognized that self-determination entails substantive entitlements beyond the basic right to exercise a free choice, arguments that rely on such an artificial separation of process from substance are rendered logically untenable.

Now, it could, of course, be countered that the Australian arguments tell us more about the litigation strategy of a particular respondent state than they do about any general trend in the international practice relating to the law of peoples. A wider review of state practice, however, reveals that the tendency to see *self-determination as process* as exhaustive of the legal content of the right of self-determination is confined neither to Australian courtroom posturing nor to East Timor. For example, Israeli settlements in the West Bank and Gaza Strip, which strike at the very core of the Palestinian self-determination entitlement — territory, resources, demography — are routinely debated in institutional fora without any recourse to the law on self-determination. Instead, Israeli settlement activity has been variously characterized as contrary to the Fourth Geneva Convention,[86] individual human rights[87] and the all-important peace process.[88]

It is my contention that the institutional failure to characterize settlements as a violation of the Palestinian right of self-determination belies a general misconception of self-determination as a right to a process devoid of substantive content. The consequences for the discourse on the peace process are manifest. Once the right of

[84] Australian Counter Memorial, para. 374. Australia further argued that 'a State can only breach the obligation to respect the right of a people to self-determination if its conduct prevents or hinders the exercise of the people of a non-self-governing territory of their right freely to determine their political status'. *Ibid*, at para. 375.

[85] Judge Higgins refers to this as 'legal deconstructionism'. See R. Higgins, Final Oral Argument, CR 95/13.

[86] See e.g. Security Council Resolution 452 (1979), 20 July 1979; Security Council Resolution 465 (1980), 1 March 1980; General Assembly Resolution A/Res/ES-10/6; United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory Including Jerusalem, Cairo, 14 and 15 June 1999, http://domino.un.org/UNSIPAL.

[87] See e.g. Commission on Human Rights Resolution E/CN4/Res./2000/8, 17 April 2000. For state practice, see e.g. the view of the United Kingdom at UKMIL, 59 *British Yearbook of International Law* (1988) 574–575; UKMIL, 64 *British Yearbook of International Law* (1993) 724.

[88] For numerous views of states to this effect, see e.g. Security Council debates, 'The Situation in the Occupied Arab Territories', 30 June 1998, S/PV 3900, 30 June 1998; General Assembly Resolution 53/55, 3 December 1998; and the European Union Declaration, Brussels, 22 May 2000.

self-determination has been conceptually stripped of its core entitlements to territory and resources, it becomes possible — for states, institutions and commentators alike — to assert both the *inalienable, jus cogens* character of the Palestinian right to self-determination, *and* declare the future of Israeli settlements as a matter for political negotiation;[89] to affirm the primacy of the right of self-determination, including the option of a state, *and* envisage a future for Israeli settlements on the West Bank.[90]

Viewed in this contemporary light, how then as international lawyers do we respond to the Australian argument that the East Timorese right of self-determination emerged unscathed from the negotiation and conclusion of a treaty dedicated to the exploration and exploitation of East Timorese oil? Do we dismiss it as the courtroom strategy of a creative litigation team charged with representing a miscreant state? Or do we acknowledge that it reflects a more general trend in contemporary practice that unduly and selectively elevates self-determination as process over self-determination as substance, with deleterious consequences for the territory and resources of peoples from East Timor to the West Bank?

2 The Elevation of the Substantive Rights of Peoples over the Procedural Rights of Peoples

A second issue highlighted by the *East Timor* case concerns the relationship between the substantive rights of peoples and procedural rights of access (for peoples).[91] As noted earlier, the decision to dismiss the East Timor case on jurisdictional grounds has drawn criticism from many quarters. Christine Chinkin, for example, has argued, rightly, that the outcome of the case reveals an inherent structural bias in the international law system that favours procedural requirements over substantive principles — i.e. the procedural rights of absent third states over the substantive rights of peoples.[92] I want to take this analysis one step further and argue that from a self-determination perspective the case highlights a second structural bias in the international system: the elevation of *substantive* rights of *peoples* over *procedural* rights of *peoples*. Thus, while on a normative level, the right of self-determination has been declared by the International Court of Justice to be an obligation *erga omnes*,[93] and is

[89] For an astonishing example of this, see e.g. Special Rapporteur Felber, 'Report on the Human Rights Situation in the Occupied Palestinian Territories Occupied Since 1967', E/CN.4/1995, 19 December 1994.

[90] See e.g. Cassese, 'The Israel–PLO Agreement and Self-Determination', 4 *European Journal of International Law* (1993) 564, at 569.

[91] It should be stressed at the outset that here I am using the terms 'substantive' and 'procedural' to distinguish substantive legal principle from procedural rights such as *locus standi*. This is not to be confused with my earlier characterization of the content of the right of self-determination as comprising two distinct elements: *self-determination as process* and *self-determination as substance*. I am grateful to Thomas Franck for pointing out the potential for terminological confusion here.

[92] Chinkin, *supra* note 81, at 724–725.

[93] *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, para. 29.

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frequently cited as a candidate for the elusive *jus cogens* status,[94] when it comes to issues of enforcement or procedural rights of access, the law on self-determination remains resolutely impoverished.[95]

Now it may, of course, simply be regarded as trite to point out that the East Timorese did not themselves have standing under the ICJ Statute to bring their case to the International Court of Justice: that behind the case of *Portugal v. Australia* there was the shadow case of *the East Timorese People v. the Republic of Indonesia*. But, as international lawyers, are our critical faculties bound by the non-precedential injunctions of the ICJ Statute?[96] How then do we regard Portugal's efforts to frame a case about East Timor in terms of its own — and vicarious — interests? Do we applaud the legal creativity of the Portuguese litigation team while admiring the sheer *chutzpah* of a state with a dubious colonial past? Or do we lament the strictures of an international legal order that make resort to such legal acrobatics necessary? In his separate opinion, Judge Vereshchetin argues that the East Timorese people constituted an equally absent 'third party'.[97] Do we muse on the irony that in *this* particular case the rights of an absent *state* (Indonesia) were upheld while those of the absent *people* (the East Timorese) remained *per force* beyond the jurisdictional reach of the Court? Or does it remind us that peoples have perennially been absent from the cases bearing their names — from *South West Africa* to the *Western Sahara*?[98]

Perhaps we console ourselves that the explanation for the procedural exclusion of peoples lies in international law's statist past as reflected in the (now outdated) 1945 Statute of the International Court of Justice. But what then of other ostensibly non-statist institutions? The current spate of litigation against Turkey in the European Court of Human Rights arising out of the systematic persecution of the Kurdish people[99] demonstrates the limitations of litigating violations of peoples' rights through the prism of a human rights convention dedicated solely to the protection of the individual. On the standard account, the omission of a substantive provision on

[94] The *jus cogens* nature of self-determination was not argued by Portugal in the *East Timor* case, as this would have inevitably called into question the validity of the Timor Gap Treaty — thus (properly) triggering the application of the *Monetary Gold* doctrine. Article 53 of the 1969 Vienna Convention on the Law of Treaties. For the view that self-determination has attained *jus cogens* status, see e.g. Espiel, *supra* note 62, at paras 70–87; and Commission on Human Rights, Resolution E/CN.4/RES/2000/4, 7 April 2000.

[95] For the opposite view, that procedural rights of peoples (participation and process) are elevated over substantive rights in the context of the indigenous debate, see Tennant, 'Indigenous Peoples, International Institutions, and the International Legal Literature 1945–1993', 16 *Human Rights Quarterly* (1994) 1, at 45–55.

[96] Article 59 of the ICJ Statute 1945.

[97] *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103, Judge Vereshchetin, Separate Opinion, at 135.

[98] Thus, even in Advisory Opinions, the directly affected people — the Sahrawi — were excluded from the Court whereas even the most indirectly affected states were eligible to take part in the oral proceedings. See the Letter from the Registrar, 25 March 1975. In the end, Morocco, Mauritania, Zaire, Algeria and Spain elected to be represented in the oral proceedings before the Court.

[99] For a critical account of Western inaction in the face of 'ethnic cleansing' against the Kurds in Turkey, see N. Chomsky, *The New Military Humanism: Lessons from Kosovo* (1999) 51–63.

peoples' rights in early human rights instruments such as the European Convention on Human Rights, has been remedied in later, third generation provisions such as the pivotal Article 1 — on self-determination of peoples — in the International Covenant on Civil and Political Rights.[100] Yet, the ill-fated attempts of representatives of indigenous peoples — the Grand Captain of the Mikmaq[101] and the Chief of the Lubicom Lake Band[102] — to bring claims against Canada under the Optional Protocol in respect of alleged violations of Article 1, remind us that the absence of an effective procedural mechanism for peoples to enforce the substantive right of self-determination is as much a feature of (third generation) human rights instruments[103] as of the (statist) International Court of Justice.

Alternatively, if responsibility for the procedural exclusion of peoples from international fora lies as much with our human rights present as with our statist past, perhaps we seek comfort in the prospect of an inevitably more people-inclusive future. On this reasoning, just as the substantive law of self-determination of peoples made its pilgrim's progress from political postulate to legal super-norm,[104] so too, with time, our international legal structures can be reformed to accommodate, procedurally, the claims of peoples. All we need is more — and better — law.[105] In *Katangese Peoples' Congress v. Zaire*[106] for example, a communication submitted by a representative of a people (the President of the Katangese Peoples' Congress) alleging a denial of self-determination under Article 20(1) of the African Charter on Human and Peoples' Rights[107] was received and considered (albeit negatively) by the African Commission on Human and Peoples' Rights.[108] Could not the procedure of the African Commission be mobilized in support of a more general reform project?

Yet the critical scholarship of Nathaniel Berman teaches us to treat with caution the view of history as the inexorable march of legal progress.[109] In his body of work on

[100] Article 1 of the ICCPR. For commentary, see D. McGoldrick, 'Commentary on Article 1', in *The Law of the Covenant* (2002 forthcoming).

[101] Communication No. 78/1980, in *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. 2, *October 1982–April 1988*, at 23.

[102] *Ominayak v. Canada*, Communication No. 167/1984, Views of the Human Rights Committee, 26 March 1990, UN Doc. CCPR/C/38/D 167/1984 (1990).

[103] For criticism, see e.g. Turpell, 'Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition', 25 *Cornell International Law Journal* (1992) 579, at 583–590.

[104] A. Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* (1981) 17–24.

[105] Kennedy, *supra* note 21.

[106] *Katangese Peoples' Congress v. Zaire*, Communication No. 75/92, *supra* note 33.

[107] Article 20(1) of the African Charter of Human and Peoples' Rights 1981.

[108] Rules of Procedure of the African Commission on Human and Peoples' Rights, 6 October 1995, at www.oau-oua.org/oau__info/rules.htm. The Commission considered that there were no violations under the African Charter.

[109] Contesting the 'progress narrative' is a characteristic of the so-called 'New Approaches to International Law' (NAIL) stream of international legal scholarship. Cass, 'Navigating the New Stream: Recent Critical Legal Scholarship in International Law', 65 *Nordic Journal of International Law* (1996) 337. For a critique of 'history as progress' see e.g. Kennedy, 'The Disciplines of International Law and Policy', 12 *Leiden Journal of International Law* (1999) 9, at 91–101.

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the legal history of nationalism,[110] Berman demonstrates the perennial ambivalence with which the international community has engaged the nationalist passions of peoples.[111] On this account, it is surely worth recalling that the system of minority protection under the League of Nations was criticized *inter alia*[112] for its failure to provide *locus standi* to minority groups both at the Council of the League of Nations[113] and at the Permanent Court of International Justice.[114] Viewed in this historical light, how then do we regard the procedural exclusion of peoples such as the East Timorese from international law fora such as the ICJ?[115] Is it merely an oversight on the part of an international legal order otherwise dedicated to building a normative law of peoples? Or does it reflect a more deep-rooted ambivalence[116] about the place of

[110] See e.g. Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', 4 *Yale Journal of Law and Humanities* (1992) 351; Berman, '"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law', 106 *Harvard Law Review* (1993) 1792; Berman, 'Between Alliance and Localisation: Nationalism and the New Oscillationism', 26 *New York University Journal of International Law and Politics* (1994) 449; and Berman, 'The International Law of Nationalism: Group Identity and Legal History', in D. Wippman (ed.), *International Law and Ethnic Conflict* (1998) 25.

[111] Berman, 'Perilous Ambivalence: Nationalist Desire, Legal Autonomy, and the Limits of the Interwar Framework', 33 *Harvard Journal of International Law* (1992) 353.

[112] The view of the minorities states was of course the opposite: that the League system had conceded 'too much to minority groups'. I.L. Claude, *National Minorities* (1955) 33.

[113] Although the League established procedures to allow minority groups to petition the Council directly, this was of no legal effect unless endorsed by a member of the League Council. See Tittoni Report of 22 October 1920, Report 1, *League of Nations Official Journal* 8, 9 (1920). For an explanation of the decision not to accord *locus standi*, see Report of the Committee Instituted by the Council Resolution of 7 March 1929, *League of Nations Official Journal* Spec. Supp. (1929) 73. An important exception was the Geneva Convention Concerning Upper Silesia 1922. For discussion, see Berman, '"But the Alternative is Despair"', *supra* note 110, at 1897.

[114] A draft Article of the Polish Treaty, proposed by Lord Robert Cecil in 1919, which would have allowed Polish national minorities a direct right of appeal to the Permanent Court of International Justice, was rejected by the UK and France. See J. Robinson, O. Karback *et al.*, *Were the Minorities Treaties a Failure?* (1943) 135–138. See also, on this point, Berman, '"But the Alternative is Despair"', *supra* note 110, at 1860, especially note 295; and P. Thornberry, *International Law and the Rights of Minorities* (1991) 38–54.

[115] An important exception is of course the Working Group on Indigenous Populations established by ECOSOC Resolution 1982/34, 7 May 1982. For discussion, see Maivan Clech Lam, 'Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims for Self-Determination by Nations', 25 *Cornell International Law Journal* (1992) 603, at 619–620. It was precisely this lack of institutional access for peoples generally in the international system that led to the founding of the Unrepresented Peoples' Organization (UNPO) in 1991. See http://www.unpo.org.

[116] Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', *supra* note 110. This is also reflected in the proposal of the Committee on Economic, Social and Cultural Rights to exclude questions relating to the right of self-determination from the individual right to submit communications under the proposed draft optional protocol to the International Covenant on Economic Social and Cultural Rights. It was stated that this could involve a 'grave danger of the procedure being misused'. 'Report of the Committee on Economic, Social and Cultural Rights to the Commission on Human Rights on a Draft Optional Protocol for the Consideration of Communications in Relation to the International Covenant on Economic, Social and Cultural Rights', Annex to E/CN.4/1997/105, 18 December 1996, para. 24. Chris Tennant's argument, that in the context of indigenous rights the opposite is true and there is a prioritization of procedural rights — participation and process — over substantive rights (i.e. no recognized right to self-determination), merely confirms the existence of the ambivalence. Tennant, *supra* note 95.

nationalist claims in international law that has survived ostensible 'progress' at both doctrinal and institutional levels: from minority rights, to peoples' rights; and from the paternalistic League of Nations, to the more 'enlightened' United Nations?

B *Self-Determination as Process: The United Nations and the August 1999 Popular Consultation*

The second institutional encounter I wish to consider is between East Timor's right to self-determination as process, and the United Nations-sponsored popular consultation of August 1999.[117] This may seem a strange choice of moment for critical scrutiny. If the encounter with the International Court of Justice was widely hailed as a disappointment, the popular consultation has been generally celebrated as the implementation of East Timor's long overdue right of self-determination.[118] On this, now standard, account the image of the East Timorese turning out in their droves to vote at United Nations polling stations in the face of threats from marauding militias[119] and Indonesian security forces bears testimony to the tenacity, not only of the East Timorese people, but of the international community faced with a suppression of the 'irrepressible'[120] right of self-determination.

Yet for the self-determination formalist, the United Nations chapter of the East Timor Story is as troubling as its judicial counterpart. Questions abound. Why did the East Timorese require to be tenacious? Why were there 'marauding militias' and illegally occupying Indonesian security forces? In the era of the much-vaunted right of democratic governance[121] are not votes — especially United Nations-sponsored ones — supposed to be conducted in an atmosphere which is 'free and fair'? And given the presence of marauding militias and the Indonesian army, why did the United Nations deploy a civilian mission and not, for example, a military peace-keeping force?

1 The Background to the New York Accords

For international lawyers, the background to the August 1999 popular consultation should be well known. Since July 1983,[122] the good offices function of the United Nations Secretary-General had been deployed — to little avail — to assist Portugal and Indonesia to find an 'acceptable solution' to the Question of East Timor.

[117] I have argued elsewhere, in advance of the popular consultation, that the proposed arrangements failed to accord with international law. Drew, *supra* note 70.

[118] Portugal, for example, stated that the New York Accords met Portugal's objectives by recognizing the right of self-determination of the East Timorese. See Note Verbale, 2 June 1999 from *Charge d'affaires* of the Permanent Mission of Portugal to the United Nations addressed to the Secretary-General, A/54/121, 3 June 1999.

[119] On the deleterious effects of the militia campaign of intimidation from January 1999 to August 1999, see e.g. 'Question of East Timor, Progress Report of the Secretary-General', A/54/654, 13 December 1999, paras 18–20.

[120] *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, para. 29.

[121] Franck, 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* (1992) 46.

[122] The General Assembly requested the Secretary-General to initiate consultation with all parties directly concerned with a view to exploring avenues for achieving a comprehensive settlement of the problem. See General Assembly Resolution 37/30, 23 November 1982.

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With the fall of General Suharto in Indonesia in May 1998,[123] negotiations intensified,[124] and in October 1998 the United Nations Secretary-General presented Indonesia and Portugal with a detailed draft constitutional framework for 'wide-ranging autonomy' in East Timor within the Republic of Indonesia.[125] Dispute over the autonomy plan centred less on the constitutional details than on whether East Timor's autonomy within Indonesia would constitute a final status (the Indonesian position) or an interim status pending a future act of self-determination by the East Timorese people (the Portuguese and East Timor leadership position).[126]

The deadlock was resolved when — in an astonishing turnaround — on 27 January 1999, President Habibie announced that, if the people of East Timor declined the Indonesian offer of autonomy, Indonesia would be prepared to 'let East Timor go'.[127] It was this Habibie-led[128] *volte face* in Indonesian policy that paved the way for the conclusion of the historic New York Accords of 5 May 1999 between Portugal, Indonesia and the United Nations.[129]

2 The Structure of the New York Accords

Hailed by the United Nations Secretary-General as providing an historic opportunity for a 'just, comprehensive and internationally acceptable solution to the question of East Timor',[130] the New York Accords comprised three separate agreements. First, the General Agreement,[131] between Portugal and Indonesia, set forth the lynchpin principle: to request the United Nations Secretary-General to conduct a 'popular consultation' to ascertain whether the East Timorese people would accept or reject a constitutional framework for autonomy[132] within the Republic of Indonesia. To assist in this task, the Secretary-General was requested to establish an 'appropriate' United Nations Assistance Mission for East Timor (UNAMET).[133] UNAMET was duly established by the Security Council on 11 June 1999.[134]

The two supplementary agreements were tripartite — between Portugal, Indonesia and the United Nations — and dealt with the modalities for the popular consultation

[123] Suharto was forced to resign on 21 May 1998. On the economic and political background to the resignation, see Taylor, 'Indonesia and the Transition in East Timor', in Hedman, *supra* note 3, at 13.
[124] In June 1998, President Habibie offered a 'special status' to East Timor within the Republic of Indonesia. This was rejected by Bishop Belo and Xanana Gusmao. See Taylor, *supra* note 123, at 15.
[125] For background, see 'Question of East Timor, Progress Report', *supra* note 119, at para. 3.
[126] *Ibid*, at para. 2.
[127] 'Sudden Impact', *Far Eastern Economic Review*, 11 February 1999, at 19; Taylor, *supra* note 123; 'Question of East Timor, Progress Report', *supra* note 119, at para. 4.
[128] On the background to Habibie's decision, see Taylor, *supra* note 123, at 16.
[129] For further details on the steps leading to the signing ceremony in New York, see 'Question of East Timor, Progress Report', *supra* note 119, at paras 5–9.
[130] Report of the Secretary-General, 'The Question of East Timor', S/1995/513, 5 May 1999, para. 1.
[131] General Agreement, *supra* note 11.
[132] *Ibid*, Article 1. The Constitutional Framework was appended to the General Agreement.
[133] *Ibid*, Article 2.
[134] Security Council Resolution 1246 (1999), 11 June 1999, para. 1.

(the 'Modalities Agreement'[135]) and the security arrangements (the 'Security Agreement'[136]). The Modalities Agreement regulated such operational issues as the date of the ballot, the question to be put to the voters, voter entitlement, the timetable for the consultation process and so forth.[137] The Security Agreement crucially laid down a second lynchpin principle: that a 'secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a fair and free ballot'.[138] Curiously, however, given their penchant for human rights abuses against the East Timorese, responsibility for ensuring the security environment was assigned, not to the United Nations, but to the 'appropriate' Indonesian security authorities.[139]

3 The New York Accords: Legal Rights or Pragmatic Compromise?

It is my contention that with the shift from the ICJ to the UN — from self-determination as substance, to self-determination as process — the East Timor Story took, what David Kennedy might call, an 'anti-formalist turn'[140] — from legal formalism to institutional pragmatism. This becomes clear if we contest two standard assumptions that underpin discussion/analysis of the popular consultation and the violence that erupted in the wake of the announcement of the pro-independence results on 3 September 1999: first, that the popular consultation amounted to an exercise of the right of self-determination in accordance with the rules of international law; secondly, that the violence of September/October was aberrational and arose only in violation — rather than as a predictable consequence — of the New York Accords.

4 The New York Accords and the Right to Free Choice

We have seen that the 'essential feature' of self-determination as process is the right of a people to exercise a free choice. Thus, in order to be certified 'self-determination-compliant' it must be shown that the New York Accords met the test of providing the

[135] Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot (Modalities Agreement), A/53/951, Annex II of the Report of the Secretary-General, S/1999/513, *supra* note 11.

[136] East Timor Popular Consultation Agreement Regarding Security (Security Agreement) A/53/951, Annex III of the Report of the Secretary-General, S/1999/513, *supra* note 11.

[137] For discussion, see Secretary-General Report, S/1999/531, para. 4.

[138] Security Agreement, Article 1.

[139] Article 1 of the Security Agreement provided, *inter alia*, that responsibility for the security environment 'as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI [the Indonesian armed forces] and the Indonesian Police is essential in this regard.' Article 3 of the General Agreement, *supra* note 11, provided that: 'The Government of Indonesia will be responsible for maintaining peace and security in East Timor in order to ensure that the popular consultation is carried out in a fair and peaceful way in an atmosphere free of intimidation, violence or interference from any side' (emphasis added). Part G of the Modalities Agreement provided that 'the Indonesian authorities will ensure a secure environment for a free and fair popular consultation and will be responsible for the security of the United Nations personnel'.

[140] Kennedy, *supra* note 21.

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people of East Timor with a true free choice as required by international law. And, while the precise meaning of 'free choice' is not expressly defined, it seems obvious that in order to be meaningful the designation 'free' must relate to both the *range* of choices offered and the *conditions* under which the choice was to be exercised.

(a) The range of choices: the ballot question

The question of the range of choices has been touched on earlier. We have seen that General Assembly Resolution 1541[141] provides for three weighted options: independent statehood, free association, or integration with an independent state. The 1970 Declaration Concerning Friendly Relations[142] reiterates these three options and adds a fourth: 'or the emergence into any other political status freely determined by a people'.[143] By contrast, on any reasonable interpretation, the question put to the East Timorese people seems unduly circumscribed and weighted in favour of one particular option: autonomy. As provided by the Modalities Agreement,[144] the question put to the East Timorese voters on 30 August 1999 was:

> Do you accept the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia? ACCEPT
>
> OR
>
> Do you reject the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia? REJECT

Thus, rather than present the East Timorese with a range of positive choices in neutral terms — say, integration with Indonesia, autonomy within Indonesia or independent statehood — the ballot question effectively offered a single choice — autonomy — on a take-it-or-leave-it basis. Independent statehood was not offered as a positive option in its own right, but rather put in a cameo appearance as 'East Timor's separation from Indonesia', and as a negative consequence of rejecting 'special autonomy'.

But perhaps it will be objected that this line of argument is excessively formalistic. It cannot seriously be suggested that the East Timorese were unaware of the true self-determination options on offer: *the Republic of Indonesia* (*integration*) *v. the Republic of East Timor* (*independence*). UNAMET ran a faultless electoral educational programme[145] and the East Timorese themselves clearly grasped the point and voted in their droves. Yet, as international lawyers, how do we view the United Nations Secretary-General's decision to sign up to an agreement where a 'popular consultation' on 'special autonomy' displaced the traditional 'referendum' on 'self-

[141] United Nations General Assembly Resolution 1541 (XV) 1960. Resolution 1541 is expressly recalled in the preamble of Security Council Resolution 1236 (1999), 7 May 1999.

[142] United Nations General Assembly Resolution 2625 (XXV) 1970.

[143] *Ibid.*

[144] Modalities Agreement, Part B.

[145] On UNAMET public information activities in advance of the ballot, see e.g. UN Secretary-General Report, Question of East Timor, S/1999/803, 20 July 1999, para. 8. On 12 October 2000, UNAMET was (deservedly) awarded the Elie Wiesel Ethics Award for its role in facilitating the popular consultation.

determination',[146] and where the positive desire for independent statehood of the vast majority of East Timorese was expressed in the negative language of rejection? Are we pragmatic in the face of *realpolitik*? Do we point out that the actual wording of the ballot question isn't what is important, that for Indonesia a 'popular consultation' was the only politically palatable option, and that in any event it all came right in the end? Or do we at least acknowledge that self-determination is about *process*, not outcomes, and that in signing up to the New York Accords the United Nations departed from its own decolonization practice, which, as we have seen, favours independent statehood as a self-determination option?

(b) The conditions for the choice: the security environment

But even if we accept that, while the language may have been disappointing, the ballot question put to the East Timorese on 30 August 1999 nonetheless offered a range of political options sufficient to constitute a 'free choice' under international law (though we would have to agree that those East Timorese who favoured the *status quo* — full integration without autonomy — were effectively disenfranchised) the New York Accords manifestly failed at the second free choice hurdle: the conditions under which that choice was to be exercised.

It is axiomatic that the exercise of a free choice through a referendum or a plebiscite requires conditions conducive to a fair and free vote.[147] And, *prima facie*, this is recognized by the New York Accords. As we have seen, Article 1 of the Security Agreement provided that the prerequisite for holding a 'fair and free ballot' was a 'secure environment devoid of violence or other forms of intimidation'.[148] The task of vouchsafing that secure environment fell to the United Nations Secretary-General. Thus Article 3 of the Security Agreement provided that, prior to the start of registration of voters, the Secretary-General shall 'ascertain, based on the objective evaluation of the United Nations mission, that the necessary security situation exists for the peaceful implementation of the consultation process'.[149] Guidance as to what exactly would constitute 'the necessary security situation' was provided in the accompanying Secretary-General's report:

> the bringing of armed civilian groups under strict control and the prompt arrest and prosecution of those who incite or threaten to use violence, a ban on rallies by armed groups while ensuring the freedom of association and expression of all political forces and tendencies, the redeployment of Indonesian military forces and the immediate institution of a process of laying down of arms by all armed groups to be completed well in advance of the holding of the ballot.[150]

[146] In her study of the inter-war plebiscites, Sarah Wambaugh draws a distinction between 'popular consultations' and the 'regular plebiscite'. See S. Wambaugh, *Plebiscites Since the World War* (1933) Preface and Appendix.

[147] See e.g. Security Council Resolution 628 (1989), 16 January 1989, in relation to Namibia.

[148] Security Agreement, Article 1.

[149] *Ibid*, Article 3.

[150] Report of the Secretary-General, The Question of East Timor, S/1999/513, *supra* note 11, para. 6. UNAMET was also mandated to monitor 'the fairness of the political environment' and to ensure 'the freedom of all political and other non-governmental organizations to carry out their activities'. Security Council Resolution 1246 (1999) 11 June 1999, para. 4.

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The ballot was originally scheduled for Sunday 8 August 1999.[151] However, on 22 June, following reports of widespread intimidation and violence against pro-independence supporters by pro-integration militias, the Secretary-General rightly determined that the 'necessary security situation' did not exist and postponed the start of the registration process for three weeks.[152] Indonesia and Portugal agreed to a two-week postponement of the ballot.[153] On 14 July 1999, following reports of further militia violence and intimidation, including a series of attacks against UNAMET convoys and personnel, the Secretary-General again determined that he was unable to attest to the necessary security situation.[154] But this time, 'undeterred by the intimidation', he decided that the registration process should nevertheless begin.[155] Finally, on 28 July 1999, the Secretary-General informed the Security Council that the date of the consultation had been postponed to 30 August 1999.[156] No subsequent determination that the 'necessary security situation' existed was ever made.

But if, for the Secretary-General, the thorny political question[157] in the lead-up to the ballot was whether the security situation on the ground measured up to Article 1 of the Security Agreement (and, if not, whether to go ahead anyway), for the self-determination formalist the question is whether the security arrangements in the Accords measured up to what is required by international law. In other words, did the terms of the New York Accords provide for conditions conducive to an exercise of a *free* choice? And it is my contention, as argued in advance of the ballot,[158] that the

[151] Modalities Agreement, Part A. This was later moved to Saturday, 7 August 1999 at the behest of the Indonesians.

[152] Report of the Secretary-General Question of East Timor, S/1999/705, 22 June 1999, paras 12 and 19; 'Question of East Timor, Progress Report', *supra* note 119, at para. 21.

[153] *Ibid*, at para. 20.

[154] See Letter to Security Council, 14 July 1999, S/1999/788. For details of the various attacks against UNAMET, see 'Question of East Timor, Progress Report', *supra* note 119, at para. 21.

[155] Letter to Security Council, 14 July 1999, S/1999/788. Registration began on 16 July 1999. See UN Secretary-General Report, Question of East Timor, S/1999/803, 20 July 1999, para. 1. The Secretary-General states that the decision to commence registration was based on 'positive assurances' by the Indonesians that the security situation would improve. *Ibid*, at para. 25. On 26 July 1999, the Secretary-General again wrote to the Security Council: 'The security conditions remained inadequate with ongoing intimidation by armed militia groups . . . and the inability of tens of thousands of internally displaced persons to return to their homes in safety. Further action to bring armed groups under control is essential.' But he nonetheless took the decision to continue with the registration of voters. See Letter Dated 26 July 1999 from the Secretary-General Addressed to the President of the Security Council, S/1999/822, 26 July 1999.

[156] See Letter Dated 28 July 1999 from Secretary-General Addressed to the President of the Security Council, S/1999/830, 28 July 1999. As a consequence, the Security Council authorized a one-month extension of UNAMET's mandate until 30 September 1999. Security Council Resolution 1257 (1999), 3 August 1999.

[157] The Secretary-General made explicit the dilemma: 'The prospect of achieving greater security through delaying the process or indeed halting it had to be weighed carefully against the risk of depriving the people of East Timor of the historic opportunity afforded by the Agreements. It was by no means certain that should the timetable shift by too great a margin the consultation would be held at all.' 'Question of East Timor, Progress Report', *supra* note 119, at para. 24.

[158] Drew, *supra* note 70.

Accords' injunction that there be an environment 'devoid of intimidation'[159] was always going to be thwarted, not only by the *external* situation on the ground — the marauding militias, the Indonesian military — but also by two failings integral to the Agreements.

First, there was no obligation on Indonesia to withdraw[160] — or even to redeploy — its military forces in the lead-up to the ballot. Although Indonesian troop redeployment was listed by the Secretary-General as one of the main elements of the 'necessary security situation'[161] any corresponding treaty provision in the New York Accords is conspicuous only by its absence. That the 'neutralization' of a territory — including the removal of the armed forces of the former power — is an essential condition for a free vote has long been established in international practice — from the League of Nations supervised plebiscites of the inter-war period[162] to the more recent decolonization practice of the United Nations. As regards the latter, for example, the UN settlement plan for Namibia[163] provided for a reduction in South African Defence Forces (SADF) to 1,500 troops (who were to be confined to base), and the withdrawal of SADF troops began seven months ahead of the elections.[164] Similarly, MINURSO's mandate in Western Sahara includes verifying Moroccan troop reduction and monitoring the confinement of Moroccan and POLISARIO troops to designated areas ahead of the self-determination referendum.[165] By contrast, in East Timor, Indonesia retained a military presence of an estimated 18,000 troops throughout the period of the popular consultation.[166]

The second failing of the New York Accords was that there was no provision for the deployment of a United Nations peacekeeping force to ensure security and monitor the vote. Rather, as we have seen, Article 1 of the Security Agreement, paradoxically, assigned responsibility for the security situation to the 'appropriate Indonesian

[159] Security Agreement, Article 1.

[160] A recommendation for withdrawal of 'some' Indonesian forces from East Timor in the period leading up to the consultation was rejected by Indonesia. See 'Question of East Timor, Progress Report', *supra* note 119, at para. 11.

[161] Report of the Secretary-General, The Question of East Timor, S/1999/513, *supra* note 11, para. 6.

[162] Thus Wambaugh wrote of the inter-war plebiscites that: 'It is . . . a great advance that in all European plebiscites . . . the principle of neutralization was so far recognized that in *every case the troops of the former owner were evacuated and an international commission was established to administer the plebiscite*, with complete power over the administration of the area.' Wambaugh, *supra* note 146, at 443. Even before the Second World War, Wambaugh reports that troop evacuation — though not the neutral commission — had become established practice in conducting plebiscites. *Ibid*, at 444. See also for discussion, Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', *supra* note 110.

[163] Approved in Security Council Resolution 435 (1978), 29 September 1978.

[164] 26 *UN Chronicle* (June 1989) 12.

[165] Similarly, MINURSO's mandate in the Western Sahara includes verifying Moroccan troop reduction and monitoring the confinement of Moroccan and POLISARIO troops to designated areas ahead of the referendum. MINURSO's mandate was most recently extended in Security Council Resolution 1349 (2001), 27 April 2001.

[166] According to Xanana Gusmao, 12 battalions of Indonesian troops entered East Timor from West Timor in the aftermath of the announcement of the vote in favour of independence. Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, S/1999/976, para. 3. Phased Indonesian troop withdrawal began only after the deployment of INTERFET on 20 September 1999.

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authorities'. This is simply unfathomable.[167] As a matter of historical record, the Indonesian military's penchant for human rights abuse against the East Timorese had been matched only by its flagrantly pro-integrationist agenda. Although official confirmation[168] was lacking at the time of concluding the New York Accords, there was nonetheless a wealth of evidence[169] to support the claims of East Timorese and other observers[170] that the Indonesian military was responsible for the pro-integration militias, which, from January 1999, had been wreaking such havoc in the territory. In short — as borne out by the direct involvement of the Indonesian military and police in the September 1999 violence[171] — to assert the need for a security environment devoid of intimidation and violence, and then to assign responsibility for securing that environment to Indonesia, was positively oxymoronic.[172]

Moreover, again it is out of step with United Nations practice in self-determination situations involving military occupation and armed conflict, which favours the deployment of a United Nations peacekeeping force to monitor the ballot.[173] In Namibia, for example, UNTAG included a 4,900-strong military contingent with a mandate *inter alia* to monitor the reduction of SADF, disarm militias and monitor the confinement of arms and ammunition.[174] It is simply unimaginable that the United Nations would have agreed to hold elections in Namibia in the absence of a

[167] The explanation given by the Secretary-General was that Indonesia made it clear that 'it could not accept any dilution of its overall responsibility for security'. See 'Question of East Timor, Progress Report', *supra* note 119, at para. 11.

[168] The Security Council Mission that was deployed in the immediate aftermath of the September 1999 violence reported that it was in no doubt that 'large elements' of Indonesian military and police authorities 'had been complicit in organizing and supporting the action of the militias'. Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, S/1999/976, para. 3. See also KPP-HAM's report which reveals the existence of a cable sent on 5 May 1999 (the day of the signing of the New York Accords) by the Deputy Chief of Staff of ABRI, Brigadier-General Jhoni Lumintang, instructing the commander of the regional military command in Bali to be prepared to take repressive measures if the decision went in favour of independence, and to prepare for the evacuation of the population. For discussion of this and other documentary evidence collected by Komnas HAM, see Tapol, the Indonesian Human Rights Campaign, 'Ending the Cycle of Impunity: Can the East Timor Investigations Pave the Way?', 24 January 2000.

[169] See generally Hedman, 'The Rise of the Paramilitaries: Violence and the Vote in East Timor', in Hedman, *supra* note 3, at 26. See also Report of the Secretary-General, S/1999/595, 22 May 1999, para. 23.

[170] See e.g. Amnesty International, 'Paramilitary Attacks Jeopardize East Timor's Future', ASA 21/26/99, 16 April 1999; Amnesty International, 'East Timor: ABRI Must Stop the Paramilitary Units', ASA 21/30/99, 17 April 1999. In June 1999, the *Far Eastern Economic Review* revealed the contents of a letter classified as 'very secret' in which the head of a militia requested the local military commander to 'release' 530 million rupah (US$71,000) for the purchase of 100 automatic rifles. *Far Eastern Economic Review*, 24 June 1999.

[171] Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, para. 3.

[172] Drew, *supra* note 70.

[173] See e.g. Security Council Resolution 435 (1978), 29 September 1978, establishing UNTAG to oversee the Namibian independence process and Security Council Resolution 690 (1991), 29 April 1991 establishing MINURSO to administer the — much postponed — Western Sahara referendum. Even outside the decolonization context, there is a growing practice of United Nations deployment of peacekeeping missions to monitor elections.

[174] For details, see 43 *Yearbook of the United Nations* (1989) 789.

peacekeeping force — far less to assign the principal security role to the 'appropriate' South African security authorities. Was there a principled basis for distinguishing the situation in East Timor?

As international lawyers, how then do we respond to the news that the United Nations signed up to an agreement that was per se inimical to a free vote 'devoid of intimidation and violence'? Perhaps we focus on what actually happened: 98.6 per cent of registered East Timorese[175] turned out to vote and the day itself was relatively violence-free.[176] Are we *post facto* pragmatists who applaud[177] the bravery of the East Timorese who — like the United Nations Secretary-General — were clearly 'undeterred by the intimidation'?[178] Or do we reflect that given the consequences of a vote in favour of special autonomy within Indonesia — the removal of East Timor from the list of non-self-governing territories, its deletion from the international agenda[179] — it was simply unacceptable that a United Nations-sponsored ballot should be conducted under less than optimal conditions? The outcome of the vote was 78.5 per cent in favour of rejecting autonomy.[180] Do we celebrate the pro-independence result, relieved that in the end there was no doubt that it reflected the 'genuine free expression of the will'[181] of the East Timorese people? Or, do we remind ourselves once again that self-determination is about process not outcomes, and that, in any event, to focus exclusively on the ballot result as the one 'happy ending' to the East Timor Story is distorting as it diverts attention away from the other — less happy — outcomes[182] on the ground. The violence that erupted on 3 September 1999 had been predicted by human rights groups and by the East Timorese as the inevitable consequence of the United Nations failure to secure Indonesian troop withdrawal or

[175] 446,953.

[176] While there was no widespread violence, two East Timorese UNAMET staff members were killed by pro-integration militias.

[177] 'I congratulate the people of East Timor ... for the perseverance and courage they have shown, particularly in the face of large-scale intimidation and violence that characterized the decisive final stages of the process.' Secretary-General, 'Question of East Timor, Progress Report', *supra* note 119, at para. 47.

[178] Letter to Security Council of 14 July 1999, S/1999/788.

[179] According to Article 5 of the General Agreement, *supra* note 11, in the event that the Secretary-General had determined that the East Timorese had voted for special autonomy: 'the Government of Portugal shall initiate within the United Nations the procedures necessary for the removal of East Timor from the List of Non-Self-Governing Territories of the General Assembly and the deletion of the question of East Timor from the agendas of the Security Council and the General Assembly.'

[180] 344,580; 21.5 per cent voted for autonomy.

[181] This is the test laid down for self-determination by the ICJ in the *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12. For the East Timor popular consultation, an Independent Electoral Commission (consisting of 'three eminent jurists with extensive experience in the field of electoral processes') was established to observe the entire consultation process. After a judicial review following complaints of irregularities, it concluded that 'the popular consultation had been procedurally fair and in accordance with the New York Agreements and consequently provided an accurate reflection of the will of the people of East Timor'. See 'Question of East Timor, Progress Report', *supra* note 119, at paras 17 and 31.

[182] It is estimated that 250,000 refugees fled to West Timor. For further details of the 'humanitarian catastrophe' that resulted from the September 1999 violence, see 'Report of the Secretary-General on the United Nations Transitional Administration in East Timor', 2/2000/53, 26 January 2000, paras 29–39.

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deploy peacekeepers.[183] The death of East Timorese and UNAMET personnel, the wholesale destruction of villages and towns, and the 'humanitarian catastrophe' of 250,000 East Timorese refugees are directly attributable to these failings of the New York Accords.

5 *From Formalism to Pragmatism: Dispensing with Two Possible Defences*

It can thus be seen that the New York Accords failed to provide for a free choice sufficient to comply with the international legal rules on self-determination as process.[184] As such, contrary to the standard account, it is my contention that they are more accurately viewed as a product of pragmatic compromise rather than any principled application of the rules on self-determination of peoples.[185] Yet perhaps as international lawyers we will only be comforted to learn that the East Timor Accords represented an abdication rather than an application of the international legal rules. Once it is established that the institutional move from the International Court of Justice to the United Nations was characterized by a shift from (legal) formalism to (more political?) pragmatism, could it not be argued that the burden of responsibility for 'what-went-wrong' also shifts — from law onto, say, politics? On this analysis, the New York Accords could be seen, not so much as a failure *of* law, but rather a failure to implement law.

One can imagine the following line of argument could be marshalled by international lawyers in defence of our discipline: the failure of the UN and Portugal to ensure Indonesian troop withdrawal or the deployment of United Nations peacekeeping troops under the terms of the New York Accords as required by law, was due to a lack of political will on the part of Indonesia and/or powerful/influential states[186] who were in a position to bring pressure to bear upon Indonesia. Similarly, the Security Council's eventual decision to deploy a multilateral force in accordance with international law (with Indonesian consent) was due to a change in the political will of Indonesia and/or those same key states (in turn, of course, brought about by the September violence and its extensive media coverage[187]). *Ergo*, international law was no more than an innocent bystander at the Timorese slaughter.[188]

In short, does not establishing that in the United Nations chapter of the East Timor Story there was a failure to comply with the rules on self-determination as process,

[183] The United Nations Secretary-General has stated that the United Nations anticipated 'some difficulties, some violence' but not the 'total and wanton destruction of everything in sight'. See the interview with Kofi Annan in *Far Eastern Economic Review*, 24 February 2000, at 25.

[184] Notwithstanding the references in the New York Accords which 'recall' General Assembly Resolutions 1514 (XV) 1960, 1541 (XV) 1960, 2625 (XXV) 1970 and other resolutions affirming East Timor's right of self-determination.

[185] Compare Note Verbale, 2 June 1999 from Charge d'Affaires of the Permanent Mission of Portugal to the United Nations addressed to the Secretary-General, A/54/121, 3 June 1999.

[186] For example, the United States, the United Kingdom and Australia. On the historical failure of these states in relation to East Timor see Budiardjo, *supra* note 3.

[187] What Kennedy terms 'the CNN effect': Kennedy, *supra* note 21.

[188] For the view that East Timor had been a failure of politics rather than law, see Bowring, 'Self-Determination and the Jurisprudence of the International Court of Justice', in CIIR/IPJET, *supra* note 11, at 151.

merely serve to absolve international law of any responsibility for the catastrophic consequences of non-compliance?

Yet, even if we accept the existence of a discernible law/politics distinction,[189] it is unclear why the acts (or omissions) of the United Nations Secretary-General or Portugal acting in its capacity as Administering Power under Chapter XI of the United Nations Charter should be characterized as 'political' rather than 'legal' if the purpose is to remove the responsibility of the international legal order. To paraphrase Berman, politics cannot always give international law its alibi.[190] Rather, it is my contention that the failure to adhere to the strict letter of the law in the New York Accords should be viewed, not so much as some aberrational departure *from* international law, but as part of an unacknowledged trend *within* contemporary practice, which (selectively) favours pragmatic negotiation over formal legal entitlement — the all-important *peace process* over self-determination as process.

From the Middle East to the Western Sahara, peace processes are much in vogue. As the New York Accords demonstrate, however, for a people struggling for the right of self-determination the onset of a peace process may be paradoxical. On the one hand, the peace process may work hand in hand with the international legal principles, leading to the implementation of the legal rules on self-determination. On the other hand, the peace process may be invoked to *trump* rather than *translate* the legal framework.[191] Thus, once a peace process is in train, reliance by a people on formal legal entitlements may seem contrary to its pragmatic spirit, which tends to disavow predetermined outcomes in favour of negotiated settlement. Similarly, the peace process may serve to treat the parties as legal — and moral — equivalents, ignoring prior illegalities as much as prior entitlements. For example, since the signing of the Israel/Palestinian Declaration of Principles in 1993,[192] the Security Council has repeatedly failed to adopt resolutions on issues such as Israeli settlement activity, on the basis that this would be to prejudge issues reserved for the final status negotiations.[193] Similarly, Security Council resolutions endorsing the East Timor peace process in advance of the August 1999 popular consultation significantly omitted earlier injunctions in favour of East Timorese self-determination and

[189] For the contrary view, see e.g. Koskenniemi, 'The Politics of International Law', 1 *European Journal of International Law* (1990) 1.

[190] Berman, 'In the Wake of Empire', 14 *American University International Law Review* (1999) 1515, at 1537 and 1545.

[191] After signing the Declaration of Principles on Interim Self-Government, (1993) 32 ILM 1525–1546, in 1993, Israel has consistently argued that the settlements are permitted — not as a matter of international law — but under the terms of the Declaration of Principles. See e.g. General Assembly Plenary Tenth Emergency Special Session, G/A 9399, 17 March 1998.

[192] Declaration of Principles, *supra* note 191.

[193] The final status issues are defined in Article V of the Declaration of Principles, *supra* note 191. The failure of the Security Council to act in the face of ongoing Israeli settlement activity prompted the General Assembly in 1997 to exercise its powers under the Uniting for Peace Resolution 377 (V), 3 November 1950, and convene an emergency session to examine and adopt a resolution calling for a Conference of the High Contracting Parties to the Fourth Geneva Convention of 1949 to be held on 15 July 1999. A/RES/ES-10/6, 9 February 1999, para. 6. This contrasts sharply with the General Assembly's post-1982 neglect of the question of East Timor.

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Indonesian troop withdrawal.[194] The failure of the United Nations to comply with the international legal rules in the New York Accords thus flags up an issue of more general concern to the self-determination formalist: the potential for conflict between the commitment to a 'peace process' and the formal rules of international law.[195]

Alternatively, however, perhaps among international lawyers, there are others who would view the departure from formal legal rules in the New York Accords as cause for celebration rather than consolation. Have we not already seen from the *Case Concerning East Timor* that the formal legal rules and structures are inhospitable to the claims of peoples struggling for the implementation of the legal right of self-determination? On this analysis, the adoption of a flexible, more pragmatic approach to nationalist conflict could be seen, not so much as a violation of peoples' rights, but rather as a welcome or necessary corrective to the statist strictures of the formal international legal order.[196]

But, whatever the limitations of the existing legal structures, the moral of the East Timor Story is that the 'pragmatic' may be every bit as statist and procedurally exclusive of peoples as the 'formal'. Notably, there was no direct participation of the East Timorese leadership in the UN-sponsored peace process.[197] The signature of Xanana Gusmao or any other representative of the East Timorese people on the New York Accords is conspicuous only by its absence.[198] By contrast, Indonesia — the

[194] Compare e.g. Security Council Resolution 384 (1975), 22 December 1975; and Security Council Resolution 1236 (1999), 7 May 1999.

[195] This tension was also evident in the breakdown of the Israel/Palestinian negotiations at the Camp David summit in July 2000.

[196] Brilmayer, 'The Institutional and Instrumental Value of Nationalism', in Wippman, *supra* note 110, at 58.

[197] For details of the negotiations leading to the New York Accords, see 'Question of East Timor, Progress Report', *supra* note 119, at paras 2–13. Prior to January 1999, 'consultations' with the East Timorese leadership took place *outside* the framework of the tripartite 'negotiations' between the UN, Indonesia and Portugal. According to the Secretary-General's own account of events, the UN intensified its consultations with East Timorese leaders, including Xanana Gusmao in October 1998. But the historical record is silent as to consultations with the East Timorese in the lead-up to the May Accords following the Indonesian change in policy in January 1999. Rather, talks were between Foreign Minister Gama of Portugal, Foreign Minister Alatas of Indonesia and the UN Secretary-General. See generally 'Question of East Timor, Progress Report', *supra* note 119, at paras 3 and 6–9. The East Timorese leadership was not present at the signing ceremony in New York on 5 May 1999. The feeling of exclusion on the part of the East Timorese leadership was reflected in a number of public statements in the lead-up to the signing of the New York Accords. For example, in March 1999, in a radio interview, Ramos Horta, the exiled Nobel Laureate, openly questioned 'how it was possible to carry out an open and democratic direct consultation where the Indonesian Army is still on the ground'. He went further in a press conference in Hong Kong: 'I will publicly oppose it, denounce it, if the UN, the international community, wants to impose a vote on the future of the country with Indonesian troops on the ground.' These and statements to similar effect by Bishop Belo are quoted in Merson, 'Reversing the Tide' (student research paper, School of Law, University of Glasgow, 1999, on file with the author). Allegations of exclusion of the East Timorese leadership have persisted during the United Nations Transitional phase. See Xanana Gusmao, Letter of Resignation as President of East Timor's National Council, 28 March 2001.

[198] Compare e.g. Agreement Between the Kingdom of Morocco and the Frente Popular para la Liberacion de Saguia el-Hamra y de Rio de Oro; Settlement Plan for the Western Sahara approved by Security Council Resolutions 658 (1990) of 27 June 1990 and 690 (1991) 21 April 1991. See also the Israel/Palestinian Declaration of Principles, *supra* note 191.

UN-designated aggressor state with its illegitimate interests in the fate of East Timor — was directly represented.[199] With the institutional shift from the International Court of Justice to the United Nations, — from self-determination as substance to self-determination as process, from formalism to pragmatism — how ironic that the 'presence of the absent third'[200] (the East Timorese people) should continue to cast its shadow.

5 Conclusion

What then does East Timor have to tell us about the 'moral hygiene'[201] of international law? Its story is not a happy one. Since the beginning of the Indonesian occupation in 1975, an estimated 200,000 of its people have died. At time of writing, approximately 100,000 refugees remain stranded in Indonesian refugee camps in West Timor,[202] and Indonesian-backed militias continue to operate in the camps.[203] Such was the level of destruction in the aftermath of the popular consultation[204] that it

[199] Thus preambular paragraph 6 of the General Agreement, *supra* note 11, notes the Portuguese position that an 'autonomy regime should be transitional not requiring recognition of Indonesian sovereignty over East Timor or the removal of East Timor from the list of Non-Self-Governing Territories of the General Assembly pending a final decision on the status of East Timor by the East Timorese people through an act of self-determination under United Nations auspices'. But, clearly, Article 5 of the General Agreement, *supra* note 11, endorsed the Indonesian position that autonomy was to be implemented as an 'end solution'.

[200] Scobbie, 'The Presence of the Absent Third: Procedural Aspects of the East Timor Case', in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 223.

[201] Kennedy, *supra* note 21.

[202] On 6–7 June 2001, Indonesia held a two-day registration exercise in which all refugees in the camps in West Timor were offered the choice between repatriation to East Timor and permanent resettlement in Indonesia. According to the Indonesians, 98.02 per cent of the refugees voted for permanent resettlement in Indonesia. Given the presence of the Indonesian military and pro-Indonesian militias in the camps in West Timor, however, this result cannot safely be regarded as reflecting the free will of the East Timorese refugees. For an expression of concern regarding the effect of militia activity on East Timorese refugees, see Security Council Resolution 1338 (2001), 31 January 2001.

[203] In September 2000, following the murder of three UN personnel by militias operating in the camps in West Timor, the Security Council adopted a resolution 'insisting' that Indonesia take immediate steps to disarm and disband the militias, and calling on Indonesia to take immediate measures to allow the repatriation of refugees to East Timor. Security Council Resolution 1319 (2000), 8 September 2000. For an update on the humanitarian and political situation in both East Timor and West Timor, see Report of the Security Council Mission to East Timor and Indonesia, 9–17 November 2000, S/2000/1105. See also e.g. Report of the Secretary-General on the United Nations Transitional Administration in East Timor, S/2000/738; Statement of the President of the Security Council, 3 August 2000, S/PRST/2000/26; Security Council Resolution 1272 (1999), 25 October 1999. In January 2001, the Security Council again underlined the need for UNTAET 'to respond robustly to the militia threat in East Timor'. Security Council Resolution 1338 (2001), 31 January 2001.

[204] For a bleak picture of life in East Timor six months after the popular consultation, see e.g. Mayman, 'Fighting for Survival', *Far Eastern Economic Review*, 24 February 2000, at 34.

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was always anticipated it would take at least two years before East Timor would at last be able to assert full independence.[205]

I have dealt with only two institutional moments in the struggle to protect and implement the East Timorese right of self-determination under international law. In the International Court of Justice it failed because of law — too much procedural law for states and not enough procedural law for peoples. With the institutional shift to the United Nations, East Timorese rights were not implemented due to a failure to comply with law — the international legal rules on self-determination as process — and a willingness to subsume legal entitlements to the vagaries of institutional pragmatism and the much vaunted peace process.

If decolonization is the normative high point of the law on self-determination, what future for an international law of peoples?

[205] August 2001 was the original target date for independence but at time of writing the timetable is under review and there is currently no agreed date (though elections for a Constituent Assembly are scheduled for 30 August 2001). In January 2001, UNTAET's initial mandate (to January 2001) was extended to 31 January 2002. See Security Council Resolution 1338 (2001), 31 January 2001, at para. 2. Indeed, the Secretary-General has been consistent in warning against arbitrary timetables for independence. In February 2000, he instructed his Special Representative to draw up criteria in consultation with the Timorese leadership to determine when 'The East Timorese are ready to assume full control of their destiny'. He added, however, that 'they and we must be patient, for that moment is still some way off'. See 'Brieling to the Security Council', 29 February 2000. The very existence of such criteria signals an implicit return to the ideology of the trusteeship in the UN Charter. See e.g. 'Report of the Secretary-General on the United Nations Transitional Administration in East Timor', S/2000/53, 26 January 2000, at para. 41, which states: 'A key objective is to ensure that the East Timorese themselves become the major stakeholders in their own system of governance and public administration, first by intensive consultation through NCC and district advisory councils, and then through *early and progressive development* of their capacity to carry out all necessary functions' (emphasis added). Similarly, in May 2001, the Secretary-General comments: 'East Timor has continued to make progress on the path to independence. Nevertheless, a great deal remains to be done until that objective is reached and more will need to be accomplished thereafter to ensure that the new State can exist on its own . . . I would favour a prudent approach, which seeks to safeguard the international community's considerable investment in East Timor's future.' See 'Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor', S/2001/436, 2 May 2001. Such statements are at odds with the more radical injunctions of the 'Colonial Declaration', which, for example, states that: 'Inadequacy of political preparedness shall not be used as a pretext for delaying independence.' General Assembly Resolution 1514 (1960) (the 'Colonial Declaration'), at para. 5.

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Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26(LXXIV) (5-8 July 2001)

COUNCIL OF MINISTERS
Seventy-fourth Ordinary Session/
Ninth Ordinary Session of the AEC
5 – 8 July, 2001
Lusaka, ZAMBIA

CM/ Dec.1-46 (LXXIV)

DECISIONS ADOPTED BY THE SEVENTY-FOURTH ORDINARY SESSION OF THE COUNCIL OF MINISTERS

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CM/ Dec.26 (LXXIV)

DECISION ON THE CHAGOS ARCHIPELAGO INCLUDING DIEGO GARCIA

Council:

1. REITERATES its unflinching support to the Government of Mauritius in its endeavours and efforts to restore its sovereignty over the Chagos Archipelago, which forms an integral part of the territory of Mauritius and CALLS UPON the United Kingdom to put an end to its continued unlawful occupation of the Chagos Archipelago and to return it to Mauritius thereby completing the process of decolonization;

2. FURTHER EXHORTS the United Kingdom authorities not to take any steps or measures likely to adversely impact on the sovereignty of Mauritius;

3. ENJOINS the international community to support the legitimate claim of Mauritius and extend all assistance possible to it to secure the return of the Chagos Archipelago to its jurisdiction thereby enabling it to exercise its rightful sovereign responsibilities on the totality of its territory.

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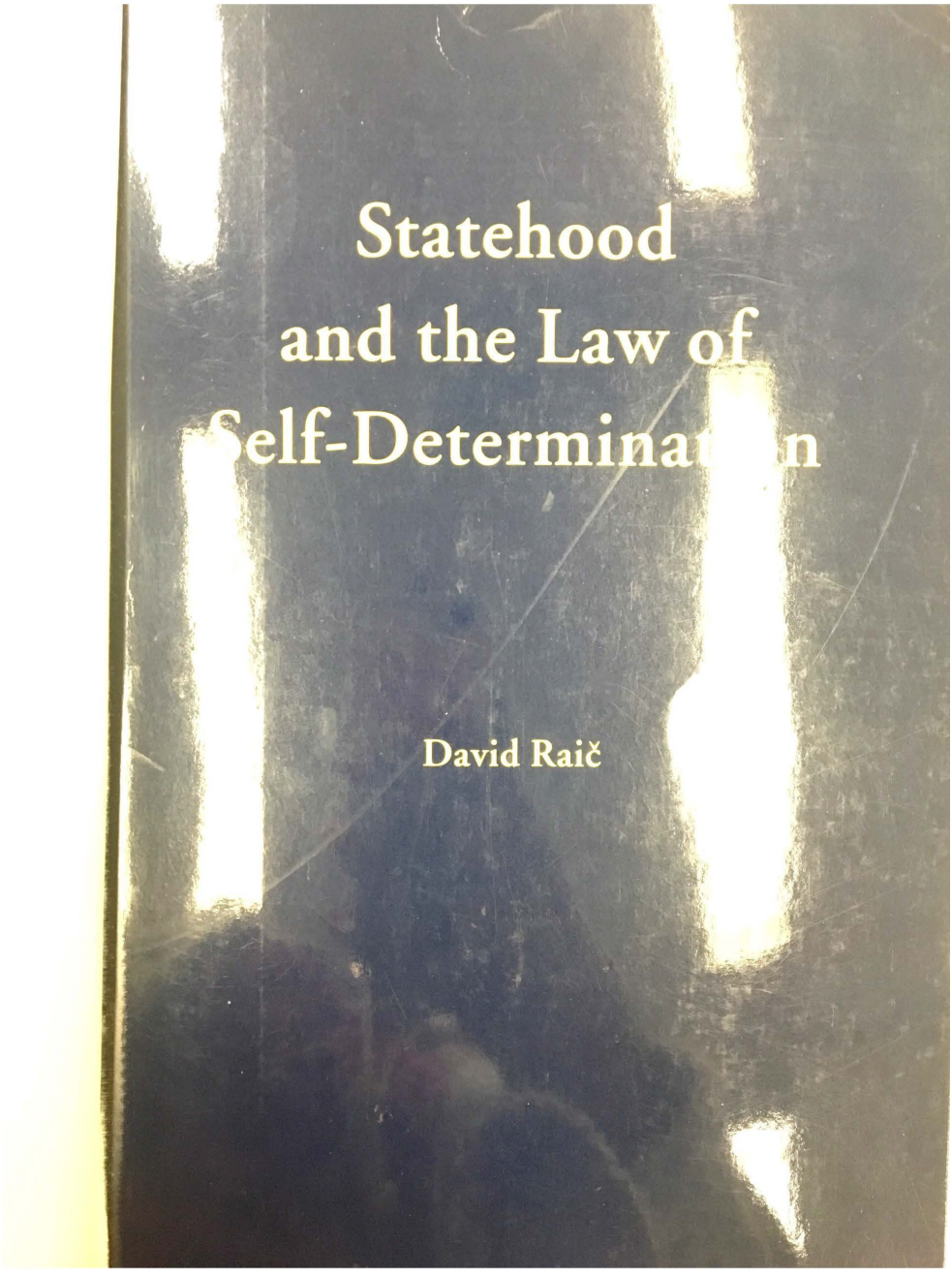
David Raic, *Statehood and the Law of Self-Determination* (2002)


Statehood
and the Law of
Self-Determination
David Raič

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Statehood and the Law of Self-Determination

Statehood and the Law of Self-Determination

PROEFSCHRIFT

ter verkrijging
van de graad van Doctor aan de Universiteit Leiden,
op gezag van de Rector Magificus Dr. D.D. Breimer,
hoogleraar in de faculteit der Wiskunde en Natuurwetenschappen,
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Commission, the Commission of Rapporteurs, held that

> [t]his principle [of self-determination] is not, properly speaking a rule of international law and the League of Nations has not entered it in its Covenant [...]. It is a principle of justice and of liberty, expressed by a vague and general formula which has given rise to most varied interpretations and differences of opinion [...]. Is it possible to admit as an absolute rule that a minority of the population of a State, which is definitely constituted and perfectly capable of fulfilling its duties as such, has the right of separating itself from her in order to be incorporated in another State or to declare its independence? The answer can only be in the negative. To concede to minorities, either of language or religion, or to any fractions of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity [...]. The separation of a minority from the State of which it forms part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.[119]

The Commission of Rapporteurs eventually considered that the culture of the inhabitants of the Aaland Islands, who were qualified as a 'minority' rather than a 'people', could be effectively preserved and protected through autonomy arrangements under Finnish sovereignty. Only if the State would clearly fail to meet these safeguards, separation (of the Islands) would be an option pursuant to a plebiscite in the Aaland Islands.

It is thus beyond a doubt that in the aftermath of World War I self-determination did not develop into a rule of international customary law. It was only after the establishment of the United Nations that this development took shape, initially in the context of decolonization. This development will now be addressed.

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§ 3.4. The United Nations and decolonization

§ *3.4.1. The liberation of colonial peoples and territories: towards a right of self-determination*

Although self-determination was proclaimed by the United States and the United Kingdom during World War II in the Atlantic Charter,[120] it was mainly

119. Report of the Commission of Rapporteurs, LN Doc. B7.21/68/106, 1921, pp. 22-23.

120. President Roosevelt and Prime Minister Churchill stated that "they desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned" and that "they respect the right of all peoples to choose the form of government under which they will live; and wish to see sovereign rights and self-government restored to those who have been

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because of Soviet pressure that self-determination was included in the Charter of the United Nations.[121] The principle of self-determination is referred to twice in the Charter. Article 1(2) mentions as one of the purposes and principles of the United Nations

> [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

The second reference to self-determination is in Article 55(c), which is included in Chapter IX on "International economic and social cooperation".[122] Despite the fact that self-determination in the Charter is referred to 'only' as a "principle" and not as a legal right,[123] its appearance in a conventional instrument establishing an international organization which would be open to universal membership was a very important step in the evolution of self-determination into a positive right under international law.

Although self-determination was not explicitly mentioned, the principle underlies Chapter XI ("Declaration Regarding Non-Self-Governing Territories") and Chapter XII ("International Trusteeship System") of the Charter,[124] of which Chapter XII may be seen as the substitute of the League's Mandate System and having essentially similar purposes.[125] Chapter XI, on the other

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forcibly deprived of them". L.M. Goodrich and E. Hambro, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS, 1946, pp. 305-306. The Atlantic Charter was subscribed to in the Declaration by United Nations of 1 January 1942 which was signed by 26 States. *See* Goodrich and Hambro, *id.*, at pp. 306-307. *See also* M.M. Whiteman, DIGEST OF INTERNATIONAL LAW, Vol. 5, 1965, p. 44.

121. Cassese, SELF-DETERMINATION, pp. 37-43. I. Brownlie, *An Essay in the History of the Principle of Self-Determination*, Grotius Society Papers, 1968, p. 90; R.B. Russel, A HISTORY OF THE UNITED NATIONS CHARTER, 1958.

122. Article 55 reads: "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: [...] (c) universal respect for, and observance of, human rights and fundamental freedoms [...]".

123. It is remarkable that the English and French versions of the Charter do not coincide in this respect. The French text speaks of "le principe de l'égalité de droits des peuples et leur *droit* à disposer d'eux mêmes", *see* Chartre des Nations Unies, Paris Impremerie nationale, Ministrère des Affaires Etrangères, 26 May 1945 (emphasis added).

124. Pomerance, *supra* note 46, at p. 9; A. Cristescu, The Historical and Current Development of the Right to Self-Determination, Study Prepared by the Special Rapporteur, UN Doc. E/CN.4/Sub.2/404 (Vol. 1), 3 July 1978, p. 8; D. Bowett, *Problems of Self-Determination and Political Rights in Developing Countries*, PASIL, 1966, p. 134. *See also* Art. 1(3) ICCPR.

125. Under Article 73, United Nations members administering "territories whose peoples have not yet attained a full measure of self-government" undertook "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement". Article 76 states that "the basic objectives of the trusteeship system [...] shall be [...] to promote [...] progressive

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hand, laid down a rather new regime on Non-Self-Governing Territories which were referred to as "territories whose peoples have not yet attained a full measure of self-government". In this way, the scope of application of the notion of self-determination was substantially expanded in comparison to the League era.

Opinions differ as to what the drafters had in mind when the concept of self-determination was included in the Charter. As was stated above, before the drafting of the Charter the notion of self-determination could be identified in the Atlantic Charter in the context of the free choice of rulers and territorial changes. However, the language used in the Atlantic Charter is not found in the Charter of the United Nations. With regard to Articles 1 and 55, it has been suggested that "in each the context was clearly the rights of the peoples of one state to be protected from interference by other states or governments. It is revisionism to ignore the coupling of 'self-determination' with 'equal rights' – and it was the equal rights of *states* that was being provided for, not of individuals".[126]

However true this may be, it is clear that the Charter did not define the content of the principle of self-determination and the same applies with respect to the term 'peoples'. It was therefore only through the adoption of numerous resolutions in the following years, in particular by the General Assembly, that some insights were given into the content and the subject of the 'right', although this practice was primarily confined to the context of decolonization.

After the establishment of the United Nations, the Soviet Union and its communist allies continued to demand decolonization by the Western imperialist States in accordance with communist theory.[127] In that effort they were, of course, supported by the Afro-Asian States. Because, although not expressly mentioned, the principle of self-determination was most prominently present in the context of Chapters XI and XII of the Charter, these Chapters formed the background for the evolution of self-determination from a principle into a positive legal right in the field of decolonization in the first two decades

development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned [...]".

126. R. Higgins, *Postmodern Tribalism and the Right to Secession, Comments*, in: Brölmann *et al.* (Eds.), *supra* note 5, p. 29, at p. 29 (emphasis in original). The phrase "equal rights" may indeed be regarded as a normative substitute for 'equality of states'. *See also* Goodrich and Hambro, *supra* note 120, at p. 61. But it may also be argued from the perspective that World War II had been fought against an ideology of conquest and racial superiority, that it has a broader meaning in that it also refers to the inherent equality of peoples (whether or not organized as States) and the respective rights recognized to them. *See, e.g.*, Dissenting Opinion Judge Kreca, Genocide case, ICJ Rep. 1996, p. 595, at p. 737.

127. Musgrave, *supra* note 30, at p. 93. *And see* p. 184 *ff. supra.*

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after the establishment of the United Nations. There is a considerable amount of literature on this topic.[128] The discussion will therefore be limited to those issues and developments which, for this study at least, cast light on the status, content and scope of self-determination under international law.

Until 1960, the General Assembly adopted a series of resolutions in which much effort was devoted to asserting its authority with regard to Non-Self-Governing Territories listed by the colonial powers as Territories on which information had to be transmitted to the Secretary-General in accordance with Article 73(e) of the Charter.[129] The common characteristic of these territories was that they corresponded to the somewhat classical notion of a colonial territory.[130]

Both Chapter XI and XII provided for a *gradual* development of Non-Self-Governing Territories towards self-government, or, in the case of Trust Territories, towards independence "as may be appropriate". But in the early 1950s, this policy of progressive and gradual development towards increased self-government was put under pressure more and more by the General Assembly.[131] Eventually the Assembly set aside the policy of gradual develop-

128. *See, e.g.*, M.A. Ajomo, *International Law, the United Nations, and Decolonization*, in: ESSAYS IN HONOUR OF JUDGE TASLIM OLAWALE ELIAS, Vol. 1, 1992, p. 77; F. Abdulah, *The Right to Decolonization*, in: M. Bedjaoui (Ed.), INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS, 1991, pp. 1205-1218; J.D. Hargreaves, DECOLONIZATION IN AFRICA, 1988; F. Ansprenger, THE DISSOLUTION OF THE COLONIAL EMPIRES, 1989; *See also* Cassese, SELF-DETERMINATION, p. 74, n. 15, and the references mentioned there.

129. *See, e.g.*, UN Doc. A/Res/334 (IV), 2 Dec. 1949. Seventy-four Territories constituting territories under Article 73 of the Charter were listed in UN Doc. A/Res/66 (I), 14 Dec. 1946, which was the result of a reply by the member States to an invitation by the Secretary-General to give their opinion with regard to the factors that should be taken into account in determining whether or not a territory constituted a NSGT. *See* UN Docs. A/47, 29 June 1946, and A/47, Ann. I to VIII and Add. 1 and Add. 2. In 1946, the following countries were recognized as colonial powers: Australia, Belgium, Denmark, France, New Zealand, the Netherlands, the United Kingdom, and the United States. Abdulah, *supra* note 128, at p. 1206, n. 3. In 1960, four Spanish and nine Portuguese territories were added to the list by the Assembly and in 1962 Southern Rhodesia was added by the Assembly despite efforts by both the government of Portugal and the United Kingdom to prevent these territories from being listed. *See* UN Docs. A/Res/1542 (XV), 15 Dec. 1960 (Portugese territories), and A/Res/1747 (XVI), 28 June 1962 (Southern Rhodesia).

130. The classical, that is the nineteenth century notion of a colony, which was still very much the same in 1945, was narrowly understood as a territory not geographically located in the metropolitan area of the parent State, lawfully incorporated into the parent State's territory, inhabited by a native population that is ethnically distinct from the population in the metropolitan area and the relationship of which is one of domination by the parent State. *See* R. Ranjeva, *Peoples and Liberation Movements*, in: Bedjaoui (Ed.), *supra* note 128, p. 101, at p. 103; A. Blackmann, *Decolonization*, EPIL, Vol. 10, 1987, p. 75; OPPENHEIM'S INT'L LAW, p. 281.

131. *Cf.* UN Doc. A/Res/637 (VII) of 16 Dec. 1952, entitled "The right of peoples and nations to self-determination". The Resolution states in its final operative paragraph: "States Members of the United Nations responsible for the administration of Non-Self-Governing and Trust Territories shall take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legislative and executive organs of government of those Territories, *and to prepare them for*

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ment and replaced it with a policy which asserted that subject and dependent or colonial territories should *immediately* be granted *independence*.[132] As has been observed, this dramatic change of policy was actually a break with

> the prewar framework of international law which drew a sharp distinction between Europeans or people of European descent and non-Europeans: only the former were unquestionably entitled to sovereign statehood. The latter were assumed not to be qualified at least *prima facie*, and the burden of proof was on them to justify it in terms of standards defined by Western civilization.[133]

What caused this radical shift of opinion? A number of influential factors can be mentioned. A first important factor was the emergence of an anti-discrimination doctrine taking place at both the international and national level. Whereas the Mandate System marked the "beginning of systematic international intrusion into the workings of colonialism",[134] widespread attack upon the very existence of the colonial system had gathered momentum by the end of World War II.[135] To some extent this development parallelled national developments. In that respect one may think of the revolution in the United States during which formal racial discrimination was abolished in the course of the 1950s, which culminated in the 1964 Civil Rights Act.[136] Secondly, the slow progress of Non-Self-Governing Territories towards self-government was undoubtedly an important reason for the change.[137] As early as 1949, France, the United Kingdom and the United States ceased the transmission of information under Article 73 with regard to a substantial amount of territories listed in General Assembly Resolution 66 (I).[138] In addition, when Spain and

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complete self-government or independence" (emphasis added).

132. *See* UN Doc. A/Res/1514, *supra* note 2, Para. 5. In this respect compare the following statement by the representative of Saudi Arabia during the debates preceding the adoption of Resolution 1514. With reference to a number of African colonies he stated: "the argument has often been adduced that these peoples are now under tutelage and that their economic and social advancement requires that such tutelage should continue for some time. Well this is an antiquated argument not worthy of the spirit of the day [...]. These peoples have been under the tutelage for decades and some of them for ages. How long should we wait for this weary ordeal – for this painful trial – for this bitter experiment [...]? If the past tutelage has not been able, thus far, to raise these people from dependence to independence, then the tutelage is a failure, and the United Nations should put an end to this failure". *See* UN GAOR 15th Sess., (Part I), Plenary mtgs., Vol. 2, 27 Oct. - 20 Dec. 1960, p. 1017 (paras. 118-119).
133. R.H. Jackson, QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD, 1990, p. 16.
134. I.L. Claude, Jr., SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION, 1964, p. 3.
135. *Id.*, at p. 329.
136. Jackson, *supra* note 133, at p. 74.
137. By 1959, ten of the seventy-two Territories listed in Resolution 66 (I) (*supra* note 129) had become independent.
138. *Id.*

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Portugal were admitted to the United Nations in 1955, these States denied that they administered territories in the sense of Article 73 of the Charter.[139] A third factor, closely linked with the former, is that no territories were voluntarily placed under the Trusteeship System pursuant to Article 77(1)(c) of the United Nations Charter.[140] Finally, the continued insistence on decolonization by the Soviet Union, East-European States and Afro-Asian countries in particular, was of essential importance.[141] The latter, while increasing their numerical strength in the United Nations, launched a major diplomatic offensive in the Bandung Conference which was held in 1955 and which declared that "colonialism in all its manifestations is an evil which should speedily be brought to an end".[142]

The much celebrated Resolution 1514 (the 'Declaration on Decolonization') adopted by the General Assembly on 14 December 1960,[143] one of the main objectives of which is "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations", is without a doubt the clearest expression of the revolutionary change of policy with respect to Non-Self-Governing Territories and Trust Territories. The title of the resolution is revealing: "Declaration on the Granting of *Independence* to Colonial Countries and Peoples".[144] The categorical character of the resolution features throughout its text:

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.
2. *All* peoples have the *right* to self-determination; by virtue of that right they freely determine their political status [...].
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* [...].
5. *Immediate* steps shall be taken, in Trust and Non-Self-Governing Territories *or all other territories which have not yet attained independence*, 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

139. Abdulah, *supra* note 128, at pp. 1206-1207.
140. J.L. Kunz, *Chapter XI of the United Nations Charter in Action*, AJIL, Vol. 48, 1954, p. 103, at pp. 106-107; Falkowski, *supra* note 8, at p. 226.
141. *See* D.A. Kay, *The Politics of Decolonization, The New Nations and the United Nations Political Process*, International Organization, Vol. 21, 1967, p. 786; Cassese, SELF-DETERMINATION, p. 71.
142. S.M. Finger and G. Singh, *Self-Determination: A United Nations Perspective*, in: Alexander and Friedlander (Eds.), *supra* note 89, p. 333, at p. 335.
143. Resolution 1514, *supra* note 2, (vote: 89 to 0, with 9 abstentions).
144. *Id.* (emphasis added).

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> distinction as to race, creed or colour, in order to enable them to enjoy *complete independence and freedom*.[145]

One day later, the General Assembly adopted Resolution 1541.[146] Principle VI mentions three results on the basis of which it could be said that a Non-Self-Governing Territory had reached a full measure of self-government:

> *(a)* Emergence as a sovereign independent State;
> *(b)* Free association with an independent State; or
> *(c)* Integration with an independent State.

Although the concepts are discussed in more detail in the following chapters, at this point it must be noted that this mode of implementation[147] of self-determination through the realization of any of the three options mentioned, is often referred to as *external* self-determination, because it generally denotes the determination of the *international* status of a territory and a people, as opposed to *internal* self-determination, which generally refers to the relationship between the government of a State and the people of that State.[148]

Principles VII and IX of Resolution 1541 emphasize that 'free association' should be the result of a "free and voluntary choice by the peoples of the territory concerned" and 'integration' should be based on "the freely expressed wishes of the territory's peoples". Both provisions refer to impartial democratic processes as the technique for determining the will of the people.[149]

In view of the vast amount of dependent territories which became independent after 1960, the 1960 resolutions and in particular Resolution 1514 must be considered as catalytic agents for the dismantling of the dependency system and the liberation of colonial peoples.

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145. *Id.* (emphasis added).
146. UN Doc. A/Res/1541 (XV), 15 Dec. 1960.
147. Pomerance, *supra* note 46, at p. 37; O. Kimmenich, *A Federal Right of Self-Determination?*, in: C. Tomuschat (Ed.), MODERN LAW OF SELF-DETERMINATION, 1993, p. 83, at p. 88. *See also* UN Doc. A/Res/2625, *supra* note 3, Principle V, Para. 4.
148. This distinction is often made in the context of self-determination, but not always in a consistent manner. Cassese claims that Wengler was probably one of the first to use the distinction. *See* Cassese, SELF-DETERMINATION, p. 70, n. 6, referring to W. Wengler, *Le Droit à la Libre Disposition des Peuples Comme Principe de Droit International*, Revue Hellénique de Droit International, Vol. 10, 1957, p. 27. However, the distinction already appears in the Report on the First Part of the Seventh Session of the General Assembly (Dutch Ministry of Foreign Affairs Publication No. 32, The Hague, 1953), which was written (in Dutch) by the Dutch representative in the Third Committee, Beaufort. *See also* P.J. Kuyper and P.J.G. Kapteyn, *A Colonial Power as Champion of Self-Determination: Netherlands State Practice in the Period 1945-1975*, in: H.F. van Panhuys *et al.* (Eds.), INTERNATIONAL LAW IN THE NETHERLANDS, Vol. 3, 1980, p. 149, at p. 184. *See further* Chapter 6, *infra*.
149. It should be noted, however, that the formula of "freely expressed will" as the basis for a legitimate exercise of self-determination is also referred to in operative Paragraph 5 of Resolution 1514 with respect to "complete independence". *See further* p. 212 *ff.*

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§ *3.4.2. The subject of the right of self-determination and the principle of territorial integrity*

Although the Charter refers to self-determination of "peoples", and Resolution 1514 proclaims that "all peoples" have the right to self-determination, an analysis of United Nations practice until the mid-1960s reveals that it was mainly the decolonization aspect of self-determination which was developed during that period.[150] That is to say, the actual application of the right to self-determination by the United Nations was mainly confined to colonial peoples and territories.[151]

As was affirmed by the International Court of Justice in the *Namibia* case, self-determination developed into a right for Trust Territories.[152] But the development was not limited to these territories. The Court continued by stating that

> the subsequent development of international law in regard to non-self-governing territories [...] made the principle of self-determination applicable to all of them.[153]

An indication of what constitutes a Non-Self-Governing Territory as the subject of the right to self-determination was given in Resolution 1541 which defines a Non-Self-Governing Territory in Principle IV as a "territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it". Reference is often made to this phrasing as the 'salt

150. As has been argued in Chapter 4, the South African *Apartheid* system cannot, strictly speaking, be regarded as a colonial situation in the sense of Resolution 1541, but as a 'colonial type' situation. The case is therefore more properly treated as a situation concerning the denial of internal self-determination.

151. In the 1950s Belgium challenged the restrictive interpretation of the subject of self-determination. The delegation pointed out that the Charter did not prohibit 'colonialism' but Non-Self-Governing Territories. It was maintained that "a number of States were administering within their own frontiers territories which were not governed by the ordinary law; territories with well-defined limits, inhabited by homogeneous peoples differing from the rest of the population in race, language and culture. These populations were disfranchised; they took no part in national life; they did not enjoy self-government in any sense of the word". The Belgian delegation stressed therefore that it was not clear why these territories should not be qualified as NSGT in the sense of Chapter XI of the Charter. Thus, the Belgian thesis expanded the scope of applicability of self-determination beyond the classical definition of colonies. The thesis was not accepted, however. It was pointed out that at San Francisco, Article 73 was not considered to apply to groups within established States. *See* UN GAOR, 8th Sess., Fourth Comm., 326th mtg., paras. 60-69 (esp. para. 62); UNCIO, Summary Report of the 11th mtg. of Comm. II/4, Doc. 712, II/4/30, 31 May 1945, pp. 2-3. *See also* Rigo Sureda, *supra* note 15, at pp. 103-104; Thornberry, *supra* note 16, at pp. 873-875.

152. Namibia case, *supra* note 106, at p. 31.

153. *Id.*

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water barrier' or 'salt water' theory.[154] Principle IV is supplemented by Principle V which lays down possible additional criteria for the determination of a Non-Self-Governing Territory which may be placed under the more general heading of 'political subordination'. Thus with the requirement that territories must be 'geographically separate', the application of the provision on Non-Self-Governing Territories was effectively limited to "overseas colonial countries and peoples ruled by alien whites".[155] Indeed, it should be noted that the rather strict definition set down in Resolution 1541 proceeded from the basic principle that "[t]he authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were *then* known to be of a colonial type",[156] although Chapter XI leaves room for Non-Self-Governing Territories created after 1945.[157]

United Nations decolonization practice was almost entirely along the lines of the 'salt water barrier'. Thus, the identified subject or holder of the right of self-determination during this period of history was – in addition to Trust Territories – a territory, as the International Court noted, "under a colonial régime".[158] It should be noted that this development meant a rejection of the position that only States could be subjects of international law. Indeed, it was explicitly recognized, or, in other words 'positivized', that in addition to States, a certain group of people could be, and actually was, the direct holder of a right under international law.[159]

Resolution 1514 of the General Assembly stipulates in Paragraph 6 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.[160]

The practice of the United Nations suggests that this provision regarding the principle of territorial integrity in the context of decolonization is a reflection of international customary law, or at least of United Nations law. Four remarks should be made in this respect. Firstly, neither the General Assembly Resolution

154. *See, e.g.*, Rigo Sureda, *supra* note 15, at p. 105.

155. R. Emerson, *Self-Determination*, PASIL, Vol. 60, 1966, p. 135, at p. 138; Falkowski, *supra* note 8, at p. 226.

156. Resolution 1541, Principle I (emphasis added).

157. *Cf.* Art. 73 of the Charter: "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 [...]" (emphasis added). *See also* Crawford, CREATION OF STATES, pp. 94, 358-560.

158. Namibia case, *supra* note 106, at p. 31.

159. *See* pp. 14-16, *supra*. *See also* H. Bokor-Szegö, NEW STATES AND INTERNATIONAL LAW, 1970, pp. 39-43.

160. UN Doc A/Res/1514, *supra* note 2, Para 6.

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nor subsequent state practice in the field of decolonization should be interpreted in a way that the title of the metropolitan State to the colonial territory became illegal or void *ab initio*.[161] What it did mean was that a positive legal rule was developed which held that colonial powers were under an obligation to decolonize in accordance with the wishes of the inhabitants of the colonial territory. In those cases where, in violation of this obligation, metropolitan States did not transfer sovereignty to the authorities of the colonial territory, the right of self-determination of the colonial territory *prevailed* over any claim by the metropolitan State to the maintenance of its sovereignty over the colonial territory.[162] Therefore, no violation of the principle of territorial integrity occurred when a colonial territory chose to dissolve the bonds with the metropolitan State without the latter's consent. Secondly, the principle of territorial integrity meant that third States (including Trustees) were under an obligation to respect the territorial integrity of the colonial territory.[163] Thirdly, in practice the right of self-determination was interpreted *in the light of* the principle of territorial integrity, which meant that the fragmentation of the colonial territory before the realization of independence (or integration or association) as a result of secession by a segment of the colonial population was not accepted by the United Nations and the international community at large.[164] Finally, after the accession to independence, the governments of the new States did invoke the principle of territorial integrity against secessionist demands by minority groups within that State. This, however, concerns the question of the existence or non-existence of a right of unilateral secession in the post-colonial era and will therefore be discussed in Chapter 7.

It will be noted that in the context of decolonization, the result of the interpretation of the right of self-determination in the light of the principle of territorial integrity was that a 'people' as the holder of the right of self-

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161. The Charter of the United Nations does not regard the existence of colonies or colonial regimes as being in violation of international law. *See also* OPPENHEIM'S INT'L LAW, p. 282.

162. *Cf., e.g.,* the cases of Algeria and Guinea-Bissau which were discussed in Chapter 4, Sections 2.2.1.(a) and 2.2.1.(b), respectively, *supra*. *See also* K.N. Blay, *Self-Determination Versus Territorial Integrity in Decolonization Revisited*, Indian JIL, Vol. 25, 1985, p. 386; H. Hannum, *Rethinking Self-Determination*, Va. JIL, Vol. 34, 1993, p. 1, at p. 32.

163. Hence the rejection by the United Nations of the South African's attempt to fragment Namibia by creating a number of 'bantustans' in the territory. *See* UN Doc. S/Res/ 264, 20 March 1969; UN Doc. S/Res/301, 20 Oct. 1971; UN Doc. S/Res/366, 17 Dec. 1974; UN Doc. S/Res/385, 30 Jan. 1976. And *see* UN Doc. A/Res/2372 (XXII), 12 June 1968; UN Doc. A/Res/2403 (XXIII), 16 Dec. 1968; UN Doc. A/Res/31/146, 20 Dec. 1976. *See also* Dugard, RECOGNITION, p. 122.

164. *See also* R. Higgins, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS, 1963, p. 104; Blay, *supra* note 162, at pp. 389-391; Pomerance, *supra* note 46, at pp. 18-19; Cassese, SELF-DETERMINATION, p. 72. Sometimes, the principle of territorial integrity has been equated erroneously with the principle of *uti possidetis*. The point is discussed in Chapter 6, Section 6, *infra*.

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determination was primarily *territorially* defined.[165]

In sum, the right of self-determination, which in this context has been referred to as "a right to decolonization",[166] was applied to *all inhabitants* of a *colonial territory* and not to minority groups or segments of the population within that territory. Obviously, this (United Nations) policy was predicated on the fear of territorial fragmentation and international destabilisation in view of the often complex ethnic structure of the territories in question. Therefore, as a general rule, self-determination had to be granted to Trust Territories and Non-Self-Governing Territories as a whole. But exceptions were accepted. The United Nations' insistence on the preservation of the territorial integrity of a dependent or colonial territory did not form a bar to partition, but only if that was the clear wish of the majority of all inhabitants of the territory in question. For instance, in the case of the Non-Self-Governing Territory of the Gilbert and Ellice Islands, the Assembly first agreed to an administrative division of the colonial territory and subsequently approved the partition of the colony as a result of the express wishes of the inhabitants of the Ellice Islands, which became the State of Tuvalu.[167] Furthermore, mention should be made of the separation of Ruanda-Urundi in two separate States, Rwanda and Burundi,[168] and the division by Britain of the British Cameroons into a southern and northern region, of which the former acceded to Cameroon and the latter to

165. Pomerance, *supra* note 46, at p. 18; Hannum, *supra* note 82, at p. 36; Thornberry, *supra* note 16, at p. 872; Falkowski, *supra* note 8, at p. 226 ("[i]n the overwhelming majority of cases the United Nations has not applied the international trust provisions to 'peoples' but has applied it to 'colonial units'"). *Cf also* J.P. Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, in: M. Bos (Ed.), THE PRESENT STATE OF INTERNATIONAL LAW, 1973, p. 75, at p. 103 (according to Humphrey the United Nations had adopted the questionable position that although "all peoples have the right of self-determination, only colonial *countries* are peoples" (emphasis added)).

166. *See* Abdulah, *supra* note 128.

167. *See* UN Doc. A/Res/32/407, 28 Nov. 1977. Arguably, another example is found in the partition of the Federation of Rhodesia and Nyasaland, also called the Central African Federation, which was formed at the initiative of the British in 1953. It was composed of the self-governing British colony of Southern Rhodesia, and the territories of Northern Rhodesia and Nyasaland. The Africans, fearing continued domination by the white minority, demonstrated (1960-1961) against the Federation, and in 1962 there was a strong movement for its dissolution, particularly from the new African-dominated regime in Northern Rhodesia. The British at first tried to keep the Federation intact, but finally realized that this was impossible. Britain approved a gradual process towards secession and independence of Nyasaland beginning on 1 February 1963. The Federation was dissolved on 31 December 1963. Nyasaland became independent as Malawi on 6 July 1964 and Northern Rhodesia as Zambia on 24 October 1964. *See, generally*, L.J. Butler, *Britain, the United States and the Demise of the Central African Federation, 1959-63*, in: K. Fedorowich and M. Thomas (Eds.), INTERNATIONAL DIPLOMACY AND COLONIAL RETREAT, 2001, p. 131.

168. *See* UN Doc. A/Res/1746 (XVI), 27 June 1962. The General Assembly initially aimed at preventing the separation of the Trust Territory. *See, e.g.*, UN Doc. A/Res/1743 (XVI), 23 Feb. 1962.

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Nigeria.[169] Another example is formed by the division of the 'strategic' Trust Territory of the Pacific Islands in 1978 with the agreement of the inhabitants and the Trusteeship Council.[170] Four separate entities were created, three of which became independent States, namely the Federated States of Micronesia, Palau and the Marshall Islands, and one – the Northern Mariana Islands – came to be associated with the United States.[171]

§ *3.4.3. Implementation and legal status of self-determination*

The first point that needs to be examined is what specific territorial status chosen by the inhabitants of a dependent territory (or their representatives) in their exercise of self-determination was considered to be an actual realization of the right of self-determination. As was stated by Pomerance

> [i]n innumerable [...] resolutions of the General Assembly, self-determination has been bracketed together with independence – so much that it is popularly

169. *See* UN Doc. A/Res/63 (I), 13 Dec. 1946. Another case worthy of mention is the approved partition of the Palestine Mandate into an Arab and a Jewish State by the General Assembly in 1947. *See* UN Doc. A/Res/181, 19 Nov. 1947. For a discussion of that partition, *see* T.G. Fraser, PARTITION IN IRELAND, INDIA AND PALESTINE, 1984.

170. In this respect, the United States Permanent Representative to the United Nations stated: "[t]he United States regrets that the exercise of full self-determination by the peoples of the Territory has led to the decision to divide the Territory into more than one entity. However, both the United States and the Trusteeship Council are in agreement that it is ultimately for the Micronesians themselves to decide upon their political relations with one another. To take any other position, for example, that unity should be imposed upon the people of the Trust Territory, would make a mockery of the concept of self-determination as democratically conceived". *See* Letter from the Permanent Representative of the United States of America to the United Nations, addressed to the President of the Trusteeship Council, 25 Apr. 1979, *quoted in:* R.S. Clark, *Self-Determination and Free Association; Should the United Nations Terminate the Pacific Islands Trust?*, Harv. ILJ, Vol. 21, 1980, p. 1, at p. 81.

171. Under Article 83 of the Charter, the Trust Territory was administered by the United States after 1947 as a 'security Trusteeship' the ultimate disposition of which was to be determined by the Security Council. In the period of 1979-1986, after the inhabitants had opted for the division of the Territory through plebiscites and referenda, the United States gradually transferred governmental functions. The Marshall Islands, the Federated States of Micronesia and Palau entered into a so-called Compact of Free Association with the United States, which entered into force on 21 October 1986, 3 November 1986 and 1 October 1994, respectively. On the same dates, these entities became independent States. *See* L.A. McKibben, *The Political Relationship Between the United States and Pacific Islands Entities: The Path to Self-Government in the Northern Mariana Islands, Palau, and Guam*, Harv. ILJ, Vol. 31, 1990, p. 257; Department of State United States of America, *Trust Territory of Pacific Islands*, 39th Annual Report, 1986; Clark, *supra* note 170. *See also* UN Doc. S/Res/956 (1994), 10 Nov. 1994; *and see* S.O. Roth, Assistant Secretary for East Asian and Pacific Affairs, US Department of State, Compacts of Free Association with the Marshall Islands, Federated States of Micronesia and Palau, Joint Oversight Hearing Before the Committee on Resources and Subcommittee on Asia and the Pacific of the Committee on International Relations, House of Representatives, 105th Congress, 2nd Sess., 1 Oct. 1998, Y 4.R 31/3:105-107, pp. 52-55.

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> (and incorrectly) assumed that the terms are synonymous in theory or, at least, that they are so in UN practice.[172]

Indeed, independence is mentioned in Resolution 1541 as one of three optional results of the implementation of self-determination,[173] that is, in addition to integration and association.[174]

Another point is that Resolution 1514 states that the political status should be "*freely*" determined by a people.[175] This is clarified in Resolution 1541 which maintains that association

> should be the result of the free and voluntary choice by the peoples of the territory concerned expressed through informed democratic processes,[176]

and that integration

> should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes [...].[177]

This principle, which may be called the 'free choice principle', has been confirmed by the International Court of Justice in the *Western Sahara* case,[178] where, on the basis of Resolution 1514 and its own statements in the *Namibia* case, the Court stated that "the application of the right to self-determination requires a free and genuine expression of the will of the people concerned".[179] In practice, "the will of the people" meant the will of the *majority* of the

172. Pomerance, *supra* note 46, at p. 25.

173. *Cf. also* UN Doc. A/Res/2625, *supra* note 3, which states that "[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people".

174. *See also* Separate Opinion Judge Dillard, Western Sahara case, Advisory Opinion, ICJ Rep. 1975, p. 13, at pp. 122-123 ('it may be suggested that self-determination is satisfied by a free choice, not by a particular consequence of that choice or a particular method of exercising it"); Pomerance, *supra* note 46, at pp. 25-28. *And see* UN Doc. A/Res/2625, *supra* note 3, which, under the heading of Principle V ("the principle of equal rights and self-determination of peoples"), repeats the wording of Resolution 1541 and adds "or the emergence into any other political status freely determined by a people". For a detailed discussion of Resolution 2625, *see* Chapter 6, *infra*.

175. UN Doc. A/Res/1514, *supra* note 2, Para. 2.

176. UN Doc. A/Res/1541, *supra* note 146, Principle VII.

177. *Id.*, Principle IX (b).

178. Western Sahara case, *supra* note 174, at pp. 31-33.

179. *Id.*, at p. 32 (para. 56).

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inhabitants of a colonial territory.[180] And according to the Court in the *Western Sahara* case, only in those cases where a collectivity did not constitute a people for the purpose of decolonization or in cases where, for instance, the wishes of the people were so obvious as to render superfluous any act of consultation, this requirement could be dispensed with.[181]

It must therefore be concluded that in the context of decolonization the element of '*free* choice' was regarded by the United Nations as being of essential importance for a genuine exercise of self-determination,[182] that is, at least for those situations where self-determination would be implemented through association or integration.[183] This was especially so when the selected option was union or association with the "former colonial parent", which was, as Pomerance observes, "viewed with a jaundiced eye and deemed to be inherently reversible, rather than final".[184] In fact, it was more or less assumed that the exercise of self-determination by colonial populations would in most cases result in independence, as appears from the title of the Declaration on Decolonization itself. Hence the demand in Resolution 1541 for guarantees and specific procedures geared to establishing the wishes of the people in those cases where independence was apparently not preferred.

United Nations practice with respect to the principle of 'free choice' is practically uniform. Compliance with the principle was sought to be guaranteed through the organization and supervision of elections, referenda and/or

180. Higgins, *supra* note 164, at p. 104; H. Gros Espiell, Implementation of United Nations Resolutions Relating to the Right of Peoples Under Colonial and Alien Domination to Self-Determination, Study Prepared by the Special Rapporteur, UN Doc. E/CN.4/Sub.2/405 (Vol. 1), 20 June 1978, pp. 10-11.

181. Western Sahara case, *supra* note 174, at p. 33 (para. 59); Pomerance, *supra* note 46, at p. 27. *See also* Declaration Judge Nagendra Singh, Western Sahara case, *supra* note 174, at p. 73.

182. *See also* UN Doc. A/Res/54/90, 4 Feb. 2000 ("Resolution Adopted by the General Assembly on the Report of the Special Political and Decolonization Committee"). While recalling Resolution 1514, the General Assembly observes that "referendums, free and fair elections and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people" and it recognizes "that all available options for self-determination of the Territories are valid as long as they are in accordance with the freely expressed wishes of the peoples concerned [...]".

183. As was stated by Judge Nagendra Singh: "the consultation of the people of the territory awaiting decolonization is an inescapable imperative whether the method followed on decolonization is integration or association or independence [...]. Thus even if integration of territory was demanded by an interested State, as in this case, it could not be had without ascertaining the freely expressed will of the people – the very *sine qua non* of all decolonization". Declaration Judge Nagendra Singh, Western Sahara case, *supra* note 174, at p. 81.

184. Pomerance, *supra* note 46, at p. 25. She refers to the decision of the Cook Islands to maintain ties with New Zealand and the General Assembly's assurance that independence remained a future option. *See* UN Doc. A/Res/2064 (XX), 16 Dec. 1965. In that respect it will be noted that Resolution 1541 suggests that "free association" is open to subsequent revision.

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plebiscites, especially in cases where association or integration[185] would presumably be the result of the exercise of self-determination.[186] Thus, as a matter of principle, strict democratic standards were required for association or integration, while the choice for independence had to be free,[187] but not necessarily based on *democratic* verification standards, that is, in accordance

185. When, apparently, the population would opt for independence, the wishes of the people were normally to be established by the usual political processes of the territory, save for those special cases where it was considered necessary to make special arrangements as, for example, with regard to the Ellice Islands in 1974 where a referendum – leading to independence – was held in the presence of United Nations observers. *See* UN Doc. A/Res/3288 (XXIX), 13 Dec. 1974; UN GAOR, 29th Sess., Supp. No. 23 (A/9623/Rev.1), Ch. XXI, Ann.

186. *See* Cassese, SELF-DETERMINATION, pp. 76-78, and the examples given there. *See also* OPPENHEIM'S INT'L LAW, pp. 713-714. The fact that in some circumstances the principle of 'free choice' was not applied, does not detract from the general and universal character of the principle. For instance, a referendum was not held in Gibraltar, but this was premised on the fact that the inhabitants were not considered to constitute a people for the purpose of external self-determination. *See* UN Doc. A/Res/2353 (XXII), 19 Dec. 1967. Another example of a situation where the principle of 'one man, one vote' through the instrument of a referendum or plebiscite was not used is West Irian (West New Guinea), but here the decision to deviate from the general rule is highly debatable and thus criticized (*cf.* Cassese, SELF-DETERMINATION, p. 84: "this 'act of free choice' [...] amounted to a substantial denial of self-determination"). In this case the Secretary-General's representative in West Irian observed that "geographical and human realities in the territory required the application of a realistic criterion", which would be different from "the orthodox and universally adopted method of 'one man one vote'". Report of Mr. Ortiz Sanz, UN Doc. A/7723, 6 Nov. 1969, Ann. 1, p. 9, para. 82. Accordingly, the will of the people was established on the basis of the Indonesian *musjawarah* system ("a process in which decisions are reached by collective discussion and consensus rather than by individual votes"). Despite the fact that the Dutch government eventually did not object against the validity of the exercise of self-determination in West Irian (judging from the adoption of General Assembly Resolution 2504 (XXIV) of 19 Nov. 1969, which was co-sponsored by the Netherlands and which took note of the outcome of the 'act of free choice', acknowledged "with appreciation the fulfilment by the Secretary-General and his representative of the tasks entrusted to them under the Agreement of 15 August 1962"), it made clear that according to the Netherlands the standard for *how* to establish the will of a people for the purpose of exercising self-determination remained that of 'free choice' based on informed democratic processes based on universal adult suffrage, because this standard was in conformity with international practice. *See* Kuyper and Kapteyn, *supra* note 148, at pp. 198-199. During the debates in the General Assembly leading up to the adoption of Resolution 2504, which extended over three plenary sessions, several delegations expressed reservations regarding the procedures used, and questioned whether the people of West New Guinea had been allowed to exercise the right of self-determination. *Cf.* the statement by the Indian government, UN GAOR, 24th Plenary Sess., 1813th mtg., 19 Nov. 1969, para. 24 (the method of *musjawarah* is "appropriate for the special circumstances of West Irian but cannot under any circumstances be considered a precedent for the process of the exercise of the right of self-determination under completely different conditions in territories still under colonial domination"). *See also* W. Henderson, WEST NEW GUINEA, THE DISPUTE AND ITS SETTLEMENT, 1973, esp. pp. 226-240; Pomerance, *supra* note 46, at p. 33. It has been suggested that the majority stand in the General Assembly with regard to Resolution 2504 (XXIV) (vote: 84 to 0, with 30 abstentions) should be explained in the sense that West Irian was regarded by that majority as an integral part of Indonesia and that there was therefore no need to meet the required standards for exercising self-determination. *See* Rigo-Sureda, *supra* note 15, at p. 151.

187. *See* Resolution 1514, *supra* note 2, Para. 5. *See also* the statement by Judge Nagendra Singh, *supra* note 184.

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with (the Western view of) the principle of 'one man one vote'.[188] However, in those cases where serious doubts existed as to the genuine expression of the wish for independence, additional safeguards were required. The situation of Southern Rhodesia under the Smith régime serves as a prime example.[189] But, as was observed earlier, although 'free choice' was required, it is not clear whether or not the States concerned were of the opinion that they were under a legal obligation to ascertain "the will of the people" specifically through either a referendum or a plebiscite.[190]

It should be noted that although the technique by which the will of the

188. Pomerance, *supra* note 46, at p. 32. *See also* Crawford, CREATION, pp. 101-102. For instance, an acceptable procedure of consultation with leaders of opinion and organizations took place in Bahrain pursuant to an agreement between Iran and the United Kingdom in 1970. The latter had been a protecting power and the former had claimed sovereignty. Under their agreement, a representative of the United Nations Secretary-General consulted representative leaders in Bahrain in the course of March - April 1970 and concluded in his report that "the Bahrainis [...] were virtually unanimous in wanting a fully independent sovereign State". *See* UN Doc. S/9772, 30 Apr. 1970, p. 11. The report was unanimously endorsed by the Security Council in Resolution 278. *See* UN Doc. S/Res/278 (1970), 11 May 1970. *And see* O. Schachter, *The United Nations and Internal Conflict*, in: K.V. Raman (Ed.), DISPUTE SETTLEMENT THROUGH THE UNITED NATIONS, 1977, pp. 301-364, at pp. 333-334; E. Gordon, *Resolution of the Bahrain Dispute*, AJIL, Vol. 65, 1971, pp. 560-568. Another example is formed by the case of Malaysia where it was deemed acceptable by the United Nations that the wish for independence was expressed by traditional authorities which enjoyed general support among the population. *See* T.E. Smith, THE BACKGROUND TO MALAYSIA, 1963, pp. 25-32.

189. Reference can be made to the Security Council's determination of the invalidity of the proclamation of independence by the white minority régime in Southern Rhodesia in 1965 (UN Doc. S/Res/216, 12 Nov. 1965) and the Council's subsequent demand for "arrangements [...] for a peaceful and democratic transition to genuine majority rule and independence", which arrangements "include the holding of free and fair elections on the basis of universal adult suffrage under United Nations supervision" in order to "effect the genuine decolonization of the Territory [...]"(UN Doc. S/Res/423, 14 March 1978). *See also, e.g.,* UN Doc. A/Res2138 (XXI), 22 Oct. 1966, Para. 2 ("reaffirming the obligation of the administering Power to transfer power to the people of Zimbabwe on the basis of universal adult suffrage, in accordance with the principle of 'one man, one vote'"); UN Doc. A/Res/2877, 20 Dec. 1971, Para. 2 ("no settlement which does not conform strictly to the principle of 'no independence before majority rule' on the basis of one man, one vote, will be acceptable"). The Lancaster House Agreement of 12 Dec. 1979 called for elections and a transition period under British rule. The Agreement was endorsed by the Security Council (UN Doc. S/Res/463, 2 Feb. 1980), which no longer demanded United Nations supervision of the elections, but which did require the United Kingdom to create conditions in Southern Rhodesia to ensure free, democratic and fair elections resulting in genuine majority rule, calling upon "all Member States to respect only the free and fair choice of the people of Zimbabwe" (Para. 9). Pre-independence elections were held from 27-29 February 1980 under the supervision of the British government and monitored by hundreds of observers of the OAU. The report of the OAU Observer Team concluded that under the prevailing circumstances, the elections were free and fair and reflected the will of the people. *See* OAU Doc. ECM/Res. 25 (XIII), adopted at the 13th Extraordinary Sess. in Addis Ababa, Ethiopia, from 10-12 March 1980, Para. 1 (endorsing the outcome of the elections). Robert Mugabe's ZANU party (PF) won absolute majority and formed Zimbabwe's first representative government. The British government formally granted independence to Zimbabwe on 18 April 1980. On 26 August 1980, Zimbabwe was admitted to membership in the United Nations. As to the elaboration upon the Southern Rhodesian attempt to secede, *see* pp. 128-134, *supra.*

190. Cassese, SELF-DETERMINATION, p. 79.

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people had to be ascertained in a way echoes the concept of the 'consent of the governed', the internal dimension of self-determination was completely disregarded in the process of decolonization. There is no case in which it was required that the subsequent political system or form of government of the former colony should be based on the continued 'consent of the governed'.[191]

The next point which needs to be addressed, is the legal status of self-determination in the context of decolonization. In Resolution 1514 the General Assembly refers without hesitation to self-determination as a *right* and not as a principle. Does that mean that the Assembly regarded self-determination as a right under international customary law at the time of the adoption of the Resolution? This may very well be the case. It must be recalled that, as early as 1952, the General Assembly adopted a number of resolutions under the title of "The right of peoples and nations to self-determination". In these resolutions it was stated that "the States Members of the United Nations shall recognize and promote the realization of the right of self-determination of peoples of Non-Self-Governing and Trust Territories who are under their administration".[192] And in 1953 the Assembly adopted a resolution containing factors which should be used by the Assembly as a guide in determining whether a territory is still or no longer within the scope Chapter XI of the Charter. The resolution declared that "each concrete case should be considered and decided upon in the light of the particular circumstances of that case and taking into account the right of self-determination of peoples".[193] In addition, Resolution 1188 (XII), adopted by the General Assembly in 1957, reaffirms in its first operative paragraph that those member States bearing responsibility "for the administration of Non-Self-Governing Territories shall promote the realization and facilitate the exercise of the right [of self-determination] by the

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191. That is not to say that the transfer of sovereignty by the colonial power would be approved by the United Nations with regard to any, that is, even an unrepresentative government of a previous dependent entity. Again, Southern Rhodesia could be mentioned as an example, in which case it was made clear by the Security Council that not only the *outcome* of the exercise of self-determination should be the result of a 'free choice', but also that only in the case of a 'majority' government genuine independence could be considered to be achieved. In general, the United Nations was concerned about whether the choice for independence, integration or association was a reflection of the will of the population of a dependent territory. Therefore, the demand for a genuine exercise of external self-determination should be distinguished from the issue of whether or not the United Nations required the future political and constitutional system of former colonies to be in conformity with the internal dimension of self-determination. Because immediate *external* self-determination of *all* dependent territories and peoples was considered to be of primary importance, no requirement of continued internal self-determination was formulated in this context. *See also* Crawford, CREATION OF STATES, pp. 219-220.

192. UN Doc. A/Res/637 A-B-C, 16 Dec.1952.

193. UN Doc. A/Res/742 (VIII), 27 Nov. 1953.

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peoples of such Territories".[194] If the terminology used in these resolutions is compared with the terminology used in Resolution 1514, it is clear that the latter is formulated in a much more mandatory manner by which the impression at least is created that the Resolution aims at expressing the applicable law.[195] Moreover, the character of self-determination as a right under customary

194. UN Doc. A/Res/1188 (XII), 11 Dec. 1957 (vote: 54 to 0, with 13 abstentions). Operative Paragraph 1 was voted on separately before the vote on the draft resolution as a whole. This Paragraph was adopted by 51 votes to 9, with 7 abstentions. The thirteen States *abstaining* from voting with respect to the draft resolution as a whole, included those States which voted *against* Para. 1 of the draft: the Netherlands, New Zealand, Portugal, the United Kingdom, Australia, Belgium, Canada, France and Italy (the remaining States abstaining from voting on the entire resolution were Denmark, Norway, Spain and Sweden). It has been suggested that if the principal colonial powers voted against or abstained from voting with regard to resolutions proclaiming self-determination as a right of peoples, it seems impossible to state that a rule of customary law had emerged at the relevant time. *See* R. Emerson, *Self-Determination*, AJIL, Vol. 65, 1971, p. 459, at p. 462. However, this conclusion must be rejected upon further analysis. As comes to the fore from the debates, for many (colonial) States the principal reason for voting against or abstaining from voting in 1957 was not so much the use of the term 'right' but the fact that according to these States self-determination was *not confined* to the populations of NSGT. *See* UN GAOR, 12th Sess., Third Comm., 821st mtg., 26 Nov. - 3 Dec. 1957: United Kingdom (pp. 303, para. 4 and 325, para. 62: "[the United Kingdom] had voted against operative paragraph 1, since even in independent States the principle of self-determination could be disregarded [...]"), France (p. 308, para. 13), the Netherlands (p. 313, para. 4), Canada (p. 319, para. 2: "the discussion has shown that the question of self-determination was not confined to situations relating to traditional colonialism"), New Zealand (p. 321, para. 21: "it had been suggested that self-determination was a practical question only in cases of NSGT's. Article 1 of the draft Covenants [on Human Rights] had however not been adopted on such premises. It could hardly be explained to a large segment of the world public, including the subjects of police States, that the right of self-determination was in their cases a kind of constitutional fiction. Such an interpretation would deprive the [draft] Covenants [on Human Rights] and the United Nations of all moral authority"), Australia (p. 322, para. 26), Belgium (p. 324, para. 54). Only the United Kingdom publicly questioned the existence of a legal right, but did not put forward this position in explaining its vote. This position was not supported by the other colonial powers and rejected publicly and outright by the vast majority of the non-colonial States, many of which referred to the draft International Covenant on Human Rights where self-determination was explicitly recognized as a right in draft Paragraph 1(1). As to the latter, *see* UN GAOR, 10th Sess., Ann., agenda item 28 (part I), Doc. A/3077, para. 77.

195. *Cf.* Cristescu, *supra* note 124, p. 79 ("represents a legal and political formulation, by the international community, of the principle of equal rights and self-determination of peoples"). It is an entirely different thing, however, to state that the resolution is an authoritative interpretation of the Charter. For this view *see* H. Waldock, *General Course on Public International Law*, HR, 1962 II, p. 5, at pp. 31-34; Brownlie, PRINCIPLES, p. 600. This view cannot be maintained, at least not in the sense that the entire resolution would be an authoritative interpretation of the Charter in view of such formulations as "*immediate* steps shall be taken to transfer all powers" to NSGT and "*all other territories which have not yet attained independence*" (emphasis added), which go well beyond that what is stated in the Charter. *See also* B. Roth, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW, 1999, pp. 208-209; Pomerance, *supra* note 46, at pp. 11-12; Crawford, CREATION, p. 90; Bokor-Szegö, *supra* note 159, at p. 29. In this respect it should be noted that the General Assembly does not have the power to adopt binding resolutions except for those resolutions adopted under the heading of a number of very specific provisions in the Charter. The resolutions normally have recommendatory force only. It is, however, generally accepted that the recommendatory resolutions may either reflect existing international customary law or influence the creation of a new international customary rule. In both cases the resolutions may be evidence of *opinio juris*. *See, generally*, B. Sloan, *General*

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international law appears to be reflected in the fact that some thirty Non-Self-Governing and Trust Territories[196] achieved independence prior to the adoption of the Resolution on 14 December 1960.[197] It therefore seems tenable that Resolution 1514 reflected an existing rule of customary law as far as a right of self-determination for colonial countries and peoples is concerned.[198] In any event, it is beyond doubt that the right of self-determination in the sense of a right of Non-Self-Governing Territories and Trust Territories to choose either independence, association or integration developed into a rule of customary

Assembly Resolution Revisited (Forty Years Later), BYIL, Vol. 58, 1987, p. 39. *But see* B. Cheng, *United Nations Resolutions on Outer Space: 'Instant' International Customary Law*, Indian JIL, Vol. 5, 1965, p. 23.

196. Benin (1 Aug. 1960), Burkina Faso (5 Aug. 1960), Burma (4 Jan. 1948), Cambodia (9 Nov. 1953), Cameroon (1 Jan. 1960), Chad (11 Aug. 1960), Congo (15 Aug. 1960), Côte d'Ivoire (7 Aug. 1960), the Democratic Republic of Congo (15 Aug. 1960), Gabon (17 Aug. 1960), Ghana (6 March 1957), Guinea (28 Sept. 1958), India (15 Aug. 1947), Indonesia (17 Aug. 1945 proclaimed/27 Aug. 1949 devolution), Laos (19 July 1949), Libya (24 Dec. 1951), Madagascar (26 June 1960), Malaysia (21 Aug. 1957), Mali (20 June 1960), Mauritania (28 Nov. 1960), Morocco (2 March 1956), Niger (3 Aug. 1960), Nigeria (1 Oct. 1960), Philippines (4 July 1946), Senegal (20 June 1960), Somalia (1 July 1960), Sri Lanka (4 Feb. 1948), Sudan (1 Jan. 1956), Togo (27 Apr. 1960), and Tunisia (20 March 1956).

197. Between 1945 and 1957 some 700,000,000 people had seen their countries attain independence. Resolution 1514 refers explicitly to this development in its Preamble. This significant development was already observed and stressed by numerous delegations during the discussions leading to the adoption of Resolution 1188 (XII) in 1957, which was referred to above. *See* UN GAOR, 12th Sess., *supra* note 194, at pp. 299 (United States), 307 (Romania), 311 (Panama), 316 (Czechoslovakia). An interesting remark was made by the Netherlands with regard to the Indonesian quest for independence. Several years before the adoption of the 1960 resolutions, self-determination was at the core of the Dutch-Indonesian conflict in 1947-1949. In 1949, the Dutch government, after several efforts to crush the independence movement in Indonesia and in the context of the Round Table Conference which led to the formal transfer of sovereignty to the Republic of Indonesia, stated that "self-determination was an internationally recognized right which accrued to the people [of the Republic of Indonesia] irrespective of whether it had be laid down in an agreement or not". Kuyper and Kapteyn, *supra* note 148, at p. 166.

198. *Cf.* OPPENHEIM'S INT'L LAW, p. 286, n. 17, stating that "the observations of the ICJ [in the Namibia case and the Western Sahara case] come close to attribution to the resolution the status of customary international law". *See also* Hannum, *supra* note 82, at pp. 33-34; Cristescu, *supra* note 124, at p. 79; Sloan, *supra* note 195, at pp. 99-100. During the discussions leading to the adoption of Resolution 1514 none of the delegations questioned the character of self-determination as a right for colonial countries and peoples. If the matter was referred to at all, it was to *affirm* the legal character of the right. *See* UN GAOR, 15th Sess., (Part I), Plenary mtgs., Vol. 2, 27 Oct. - 20 Dec. 1960: *e.g.*, Ethiopia (928th mtg., p. 1022, para. 31); Poland (*id.*, p. 1023, para. 50); United States (937th mtg., p. 1158, para. 19); France (945th mtg., p. 1259, para. 141). As in the case of Resolution 1188 which was discussed above, some States which abstained from voting explained their abstention by raising objections with regard to the fact that the resolution appeared to confine self-determination to colonial peoples (*see, e.g.,* United States (947th mtg., p. 1283, paras. 143, 145)) or by objecting against the requirement of *immediate* transfer of sovereignty which would not be to the benefit of the peoples concerned (*see, e.g.,* Australia (933rd mtg., p. 1093, paras. 73, 83); United States (937th mtg., p. 1160, para. 29 and 947th mtg., p. 1283, para. 151); United Kingdom (925th mtg., pp. 983-986, paras. 32-62 and 947th mtg., p. 1275, para. 54)).

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law in the course of the 1960s.[199] This is reflected in the numerous resolutions adopted both by the Security Council[200] and by the General Assembly[201] affirming the existence of a right of self-determination, as well as in the dismantling of almost the entire dependency system in terms of Non-Self-Governing Territories and Trust Territories in the course of the 1960s and 1970s.

Yet another point which must be examined is whether or not the prohibition of the denial of self-determination for the inhabitants of dependent territories is to be qualified as a norm of *jus cogens*. In this respect, the categorical and absolute formulation in numerous resolutions of the General Assembly of the obligation of States responsible for colonies to end this colonial relationship is significant. Moreover, as has been discussed elsewhere in this study,[202] States have repeatedly emphasized the obligation to respect the right of self-determination as a fundamental premise for the maintenance of the international legal order. Furthermore, the fundamental character of the right of self-determination has been stressed with regard to the process of decolonization, and in that respect it has been explicitly qualified by States as a norm of *jus cogens*.[203] Although the International Court of Justice did not explicitly use the term *jus cogens*, it did stress the fundamental and special character of the norm in the *East Timor* case. The Court observed that the right of self-determination "is one of the essential principles of contemporary international

199. *Cf.* Namibia case, *supra* note 106, at p. 31 (para. 52) ("the last fifty years [...] have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the *corpus iuris gentium* has been considerably enriched [...]"). *Cf. also* the later remark by Judge Dillard, who concluded that "the pronouncements of the Court thus indicate that a norm of international law has emerged applicable to the decolonization of those non-self-governing territories which are under the aegis of the United Nations". Separate Opinion Judge Dillard, Western Sahara case, *supra* note 174, at pp. 121-122.

200. *See, e.g.*, UN Docs. S/Res/183, 11 Dec. 1963 and S/Res/218, 23 Nov. 1965 and the Security Council resolutions on Southern Rhodesia, (*see* p. 131, *supra)* and on the territories formerly under Portuguese administration (*see* UN Doc. S/Res/163, 9 June 1961; UN Doc. S/Res/180, 31 July 1963; UN Doc. S/Res/183, 11 Dec. 1963; UN Doc. S/Res/218, 23 Nov. 1965; UN Doc. S/Res/273, 9 Dec. 1969; UN Doc. S/Res/275, 22 Dec. 1969; UN Doc. S/Res/290, 8 Dec. 1970; UN Doc. S/Res/312, 4 Feb. 1972; UN Doc. S/Res/321, 23 Oct. 1972; UN Doc. S/Res/322, 22 Nov. 1972).

201. *See, e.g.,* UN Doc. A/Res/2037 (XX), 7 Dec. 1965; UN Doc. UN Doc. A/Res/2105 (XX), 20 Dec. 1965; UN Doc. A/Res/2189 (XXI), 13 Dec. 1966; UN Doc. A/Res/2326 (XXII), 16 Dec. 1967; UN Doc. A/Res/2465 (XXIII), 20 Dec. 1968; UN Doc. A/Res/2548, (XXIV), 11 Dec. 1969; UN Doc. A/Res/2708 (XXV), 14 Dec. 1970; UN Doc. A/Res/2878 (XXVI), 20 Dec. 1971; UN Doc. A/Res/2908 (XXVII), 2 Nov. 1972.

202. *See* pp. 145-146, *supra*.

203. *See, e.g.*, Spain, Western Sahara case, ICJ Pleadings, Vol. I, pp. 206-208; Algeria, Western Sahara case, ICJ Pleadings, Vol. IV, pp. 497-500; Morocco, Western Sahara case, ICJ Pleadings, Vol. V, 179-80; Guinea-Bissau, Case Concerning the Arbitral Award of 31 July 1989, (Guinea-Bissau *v.* Senegal), ILR, Vol. 83, p. 1 at p. 24; Romania, UN Doc. A/AC.125/SR.70, 4 Dec. 1967, p. 4. *And see* the references given by Cassese, SELF-DETERMINATION, pp. 136-137, nn. 67-72.

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law" and, furthermore, that "the assertion [by Portugal] that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable".[204] In addition, the International Law Commission – with reference to, among others, the statements of the International Court of Justice in the *East Timor* case – has qualified the obligation of respect for the right of self-determination as *jus cogens*.[205] Finally, there is considerable doctrinal support for the view that the prohibition of the denial of the right of (external) self-determination in the colonial context is *jus cogens*.[206] For these reasons it is concluded that, at least, the prohibition of the denial of the right of (external) self-determination for colonial territories and peoples, or put differently, the prohibition of the maintenance or establishment of colonial domination, is a rule of customary international law having the character of *jus cogens*, and must consequently be respected *erga omnes*.[207]

In sum, after the establishment of the United Nations, self-determination was primarily applied as an anti-colonial concept. In most colonial situations it was clear that Wilson's idea of 'consent of the governed' could not be realized unless the colonial people were given the opportunity to choose their external political status. With the Soviet Union and its allies as its principal supporters on the one hand – essentially repeating Lenin's anti-colonial ideas – and the Afro-Asian States on the other, self-determination evolved into a positive legal right for the inhabitants of dependent territories, which entitled them to freely choose between independence, integration or association.

§ *3.4.4. Decolonization and statehood*

What actually happened during the era of decolonization was a shift in the

204. East Timor case, ICJ Rep. 1995, p. 90, at p. 102 (para. 29).

205. Report of the ILC, 53rd sess., 23 Apr.-1 June and 2 July-10 Aug. 2001, UN GAOR, 56th sess., Supp. No. 10, A/56/10, ch. IV.E.2 (Commentaries to the Draft Articles on Responsibility of States for International Wrongful Acts Adopted by the Drafting Committee on Second Reading, UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001), pp. 208, 284.

206. *See* the literature mentioned at p. 147, note 258, *supra*. In addition, *see* M. Bedjaoui, *Article 74*, in: J.-P. Cot and A. Pellet (Eds.), LA CHARTE DES NATIONS UNIES, 1991, p. 1077, at pp. 1082-1083; Cassese, SELF-DETERMINATION, pp. 133-140; A. Goméz Robledo, *Le Jus Cogens International; Sa Nature, Ses Fonctions*, HR, 1981 III, p. 17, pp. 172-185; Sloan, *supra* note 195, at p. 81; H. Gros Espiell, *Self-Determination and Jus Cogens*, in: A. Cassese (Ed.), UN LAW/FUNDAMENTAL RIGHTS, TWO TOPICS IN INTERNATIONAL LAW, 1979, p. 167; H. Bokor-Szegö, *The International Legal Content of the Right of Self-Determination as Reflected by the Disintegration of the Colonial System*, in: QUESTIONS OF INTERNATIONAL LAW, 1966, p. 39. *See also* the references given by Judge Skubiszewski, East Timor case, *supra* note 204, at p. 266. *But see* Cristescu, *supra* note 124, at p. 80.

207. *See also* Separate Opinion Judge Ammoun, Barcelona Traction case, ICJ Rep. 1970, p. 4, at p. 304

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Annex 146

United Kingdom, *"British Indian Ocean Territory (Constitution) Order 2004"* (10 June 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**(a)** 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;

"the *Gazette*" means the Official Gazette of the Territory;

"the Territory" means the British Indian Ocean Territory specified in the Schedule.

Revocation

3. - (1) The British Indian Ocean Territory Orders 1976 to 1994**(b)** ("the existing Orders") are revoked.

(a) 1978 c.30.
(b) S.I. 1976/893; 1981 III, p.6524; see also the British Indian Ocean Territory (Amendment) Order 1994 made on 8th February 1994.

(2) Without prejudice to the generality of sections 15,16 and 17 of the Interpretation Act 1978 (as applied by section 2(1) of this Order)-

(a) the revocation of the existing Orders does not affect the continuing operation of any law made, or having effect as if made, under the existing Orders and having effect as part of the law of the Territory immediately before the commencement of this Order; but any such law shall thereafter, without prejudice to its amendment or repeal by any authority competent in that behalf, have effect as if made under this Order and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Order;

(b) the revocation of the existing Orders does not affect the continuing validity of any appointment made, or having effect as if made, or other thing done, or having effect as if done, under the existing Orders and having effect immediately before the commencement of this Order; but any such appointment made or thing done shall, without prejudice to its revocation or variation by any authority competent in that behalf, continue to have effect thereafter as if made or done under 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 instructions given through a Secretary of State and who 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 on 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, 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 required by any law to be stamped therewith.

Constitution of offices

7. The Commissioner, in Her Majesty's name and on Her Majesty's behalf, 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) terminate any such appointment, or 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; and

(b) that person shall, for the purposes of any functions attaching to that office, be deemed to be the sole holder of that office.

No right of abode in the Territory

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.

Commissioner's powers to make laws

10. - (1) Subject to the provisions of this Order, the Commissioner may make laws for the peace, order and good government of the Territory.

(2) It is hereby declared, without prejudice to the generality of subsection (1) but for the avoidance of doubt, that, in the exercise of his powers under subsection (1), 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 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**(a)**.

(3) All laws made by the Commissioner in exercise of the powers conferred by subsection (1) shall be published in the *Gazette* in such manner as the Commissioner may direct.

(4) Every law made by the Commissioner under subsection (1) shall come into force on the date on which it is published in accordance with subsection (3) unless it is provided, either in that law or in some other such law, that it shall come into operation on some other date, in which case it shall come into force on that other date.

Disallowance of laws

11. - (1) Any law made by the Commissioner in exercise of the powers conferred on him 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 the disallowance to be published in the *Gazette* in such manner as he may direct, and the law shall be annulled with effect from the date of that publication.

(a) 1865 c.63.

(3) Section 16(1) of the Interpretation Act 1978 shall apply to the annulment of a law under this section as it applies to the repeal of an Act of Parliament, save that a law repealed or amended by or in pursuance of the annulled law shall have effect as from the date of the annulment as if the annulled law had not been made.

Commissioner's powers of pardon, etc

12. 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 law of the Territory a pardon, 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 passed 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 such offence.

Courts and judicial proceedings

13. - (1) Without prejudice to the generality of section 3(2), all courts established for the Territory by or under a law made under the existing Orders and in existence immediately before the commencement of this Order shall continue in existence thereafter as if established by or under a law made under this Order.

(2) All proceedings that, immediately before the commencement of this Order, are pending before any such court may be continued and concluded before that court thereafter.

(3) Without prejudice to the generality of section 3(2), the provisions of any law in force in the Territory as from the commencement of this Order that relate to the enforcement of decisions of courts established for the Territory or to appeals from such decisions shall apply to such decisions given before the commencement of this Order in the same way as they apply to such decisions given thereafter.

(4) The Supreme Court may, as the Chief Justice may direct, sit in the United Kingdom and there exercise all or any of its powers or jurisdiction in any civil or criminal proceedings.

(5) Subject to subsection (6), the Chief Justice may make a direction under subsection (4) where it appears to him, having regard to all the circumstances of the case, that to do so would be in the interests of the proper and efficient administration of justice and would not impose an unfair burden on any party to the proceedings.

(6) A direction under subsection (4) may be made at any stage of the proceedings or when it is sought to institute the proceedings and may be made on the application of any party to the proceedings or of any person who seeks to be or whom it is sought to make such a party or of the Chief Justice's own motion.

(7) Subject to any law made under section 10 (and without prejudice to the operation of section 3(2)), the Chief Justice may make rules of court for the purpose of regulating the practice and procedure of the Supreme Court with respect to the exercise of the Court's powers and jurisdiction in the United Kingdom.

(8) Without prejudice to the operation of section 3(2), a sub-registry may be established in the United Kingdom for the filing, sealing and issue of such documents relating to proceedings in the Supreme Court (whether or not they are proceedings in which the Court exercises its powers and jurisdiction in the United Kingdom) as may be prescribed by rules of court made by the Chief Justice.

(9) Anything done in the United Kingdom by virtue of subsections (4) to (8) shall have, and have only, the same validity and effect as if done in the Territory.

(10) In this section, "the Supreme Court" means the Supreme Court of the Territory as established by or under a law made, or having effect as if made, under section 10 and "the Chief Justice" means the Judge (or, if there is more than one, the presiding Judge) of that Court.

Disposal of land

14. Subject to any law for the time being in force in the Territory and to any instructions given to the Commissioner by Her Majesty 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 land or other immovable property within the Territory that may lawfully be granted or disposed of by Her Majesty.

Powers reserved to Her Majesty

15. - (1) There is hereby reserved to Her Majesty full power to make laws for the peace, order and good government of the Territory, and it is hereby declared, without prejudice to the generality of that expression but for the avoidance of doubt, that-

(a) any law made by Her Majesty in the exercise of that power may make any such provision as Her Majesty considers expedient for or in connection with the administration of the Territory; and

(b) no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or otherwise as provided by the Colonial Laws Validity Act 1865.

(2) Without prejudice to the generality of the power to make laws reserved to Her Majesty by subsection (1), any such law may make such provision as Her Majesty considers expedient for the purposes for which the Territory was constituted and is set aside, and accordingly and in particular, to give effect to section 9(1) and to secure compliance with section 9(2), including provision for the prohibition and punishment of unauthorised entry into, or unauthorised presence in, the Territory, for the prevention of such unauthorised entry and the removal from the Territory of persons whose presence in the Territory is unauthorised, and for empowering public officers to effect such prevention or, as the case may be, such removal (including by the use of such force as is reasonable in the circumstances).

(3) In this section-

(a) "public officer" means a person holding or acting in an office under the Government of the Territory; and

(b) for the avoidance of doubt, references in this section to the prevention of unauthorised entry into the Territory include references to the prevention of entry into the territorial sea of the Territory with a view to effecting such unauthorised entry and references to the removal from the Territory of persons whose presence there is unauthorised include references to the removal from the territorial sea of the Territory of persons who either have effected an unauthorised entry into the Territory or have entered the territorial sea with a view to effecting such an unauthorised entry.

(4) There is hereby reserved to Her Majesty full power to amend or revoke this Order.

A K. Galloway

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THE SCHEDULE Section 2(2)

Diego Garcia	Three Brothers Islands
Egmont or Six Islands	Nelson or Legour Island
Peros Banhos	Eagle Islands
Salomon Islands	Danger Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes new provision for the Constitution and administration of the British Indian Ocean Territory.

Annex 147

Letter from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004)

Prime Minister
Republic of Mauritius

22 July 2004

Prime Minister,

I acknowledge receipt of your letter of 9 July by which you informed me that you were sorry your diary commitments have not allowed you so far to meet with me in London.

We have been following the debates in the House of Commons on the Diego Garcia base and the Chagos issue generally. We wish to remind you that whilst the existence of the base was challenged by many countries of the region during the Cold War, such is no longer the case now and we, in Mauritius, have made it clear on numerous occasions that we do not object to Diego Garcia's use as a military base in the larger interest of the security of the international community. I would wish to reiterate this to you.

I now take the liberty of raising a matter of crucial importance for Mauritius and the sixteen other ACP countries which are signatories to the ACP-EU Sugar Protocol.

We have noted with deep concern the Communication of the European Commission to the EU Council of Ministers of Agriculture & Fisheries on the proposed reform of the EU Sugar Regime. We have been given to understand that, whilst acknowledging the need for reform, a number of delegations on the Council have commented on the schedule of the reform envisaged, the level and the stages proposed for reducing the intervention price for sugar, considering them to be too drastic. The proposals, if implemented tel quel would have a devastating effect on our vulnerable economies because they call for substantial price reductions implemented over a very short period. The severity of the proposals baffles us and we appeal for your support and intervention so that we can preserve a viable sugar industry in our countries.

Export earnings from sugar have underpinned our socio-economic development and have, through their stabilizing effect, enabled the upholding of the fundamental principles of democracy which your country and ours cherish.

... .../

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Reform in our countries is a difficult process, yet we have over the years embarked on an ambitious reform programme to reduce costs of production and enhance competitiveness. We still have a long way to go. The suddenness of the change coupled with the unpredictability of the 2008 review proposed would be terribly damaging to our industry.

We therefore consider that the price reduction should be moderate and the time-frame for its application longer. Moreover, we believe that ACP countries should benefit from compensation through a dedicated budget line with sufficient funds enabling us to benefit from treatment similar to the one meted out to the outermost regions of the EU.

Our situation is very similar to that prevailing in these outermost regions of the EU, namely the Departments d'Outre Mer (DOM). And, it is no surprise that the Commission has all along recognized that the maintenance of a viable sugar sector in these regions is essential for socio-economic and environmental reasons. We understand that in view of the constraints of agriculture in the Departments d'Outre Mer, special treatment is envisaged which includes production-linked support.

We have ever since 1975 been a close ally of the EU and have been engaged in an exemplary North-South cooperation that has stood the test of time. We have always, through dialogue and understanding, been able to iron out our differences and moved ahead. Once again, we stand ready to embrace a meaningful dialogue with the Commission, the EU Member States and the European Parliament so as to safeguard this longstanding partnership. We are convinced that we can rely on your support and solidarity to ensure that our development programmes and our fight against poverty are not undermined.

Please accept, Prime Minister, the assurances of my highest consideration.

Paul Raymond Bérenger, GCSK, GONM
Prime Minister

HE Mr Tony Blair, MP
Prime Minister of the United Kingdom
Office of the Prime Minister
10, Downing Street
London
United Kingdom

Annex 148

Letter from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004)

Minister of Foreign Affairs, International Trade and Regional Co-operation
Republic of Mauritius

22 October 2004

Rt Hon Jack Straw MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign & Commonwealth Office
LONDON

Jack

Dear Foreign Secretary,

I meant to write to you immediately upon my return following our meeting in London on 4th October but my heavy schedule did not allow that.

I hasten to say that it was indeed a pleasure to meet with you and discuss issues of mutual interest. I have reported to Prime Minister Bérenger that our talks were held in a very cordial and frank manner.

As a follow-up to these discussions I await confirmation from you as to the projected meeting between our two Prime Ministers in the very near future.

I also look forward to hearing from you on the outcome of your discussions with the US with respect to the outer islands. I should like to reiterate that, from our perspective, we see no real or perceptible threat to security, having made it clear repeatedly that we have no problem whatsoever with the military and naval base on Diego Garcia.

As regards your proposal that we could envisage entering into a Treaty regarding the Chagos Archipelago, I should be pleased to receive your proposals so that we could have them studied here.

Finally, let me again say that this is a matter of utmost importance to us and we look forward to registering progress on this *dossier*.

J. Cuttaree

Government Centre, Port Louis — Tel : (230) 201 1416 Fax : (230) 208 8087

Annex 149

Notes Verbales from the Mauritius Ministry of Foreign Affairs to the General Secretariat of the Council of the European Union, Nos. 1197/28/8 & 1197/28 (21 July 2005 & 19 Apr. 2010)

No. 1197/28/8 19 April 2010

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the General Secretariat of the Council of the European Union and has the honour to state as follows:

The Government of the Republic of Mauritius has noted with concern that the Chagos Archipelago (the so-called "British Indian Ocean Territory"), including Diego Garcia, has been included in the list of Overseas Countries and Territories to which the provisions of Part Four of the Treaty on the Functioning of the European Union (Lisbon Treaty) apply.

The Government of the Republic of Mauritius reiterates its position, as conveyed in the Ministry's Note (No. 1197/28) dated 21 July 2005 addressed to the General Secretariat, that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius as defined in the Constitution of the Republic of Mauritius. A copy of the Note is enclosed for ease of reference.

The Government of the Republic of Mauritius does not recognize the so-called "British Indian Ocean Territory". The Chagos Archipelago, including Diego Garcia, was illegally excised from Mauritius by the British Government before granting independence in violation of the United Nations Charter and 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 unreservedly rejects the inclusion of the Chagos Archipelago (the so-called "British Indian Ocean Territory"), including Diego Garcia, in the list of Overseas Countries and Territories contained in Annex II to Part Four of the Lisbon Treaty.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the General Secretariat of the Council of the European Union the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE
MAURITIUS

The General Secretariat of the Council of the European Union
Rue de la Loi 175
B-1048 Brussels
Belgium

cc. **Delegation of the European Union in Mauritius**
Mauritius Embassy, Brussels

DESPATCH ON
20 APR 2010

CONFIDENTIAL REGISTRY
TRANSMITTED BY FAX
19 APR 2010

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REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE AND COOPERATION

No. 1197/28 21 July,2005

The Ministry of Foreign Affairs, International Trade and Co-operation of the Republic of Mauritius presents its compliments to the Secretariat of the Council of the European Union and has the honour to refer to the inclusion of the Chagos Archipelago, including Diego Garcia (the so-called "British Indian Ocean Territory") in Annex II related to Title IV, Part III of the European Union Constitutional Treaty.

The Government of the Republic of Mauritius reiterates its position stated in the Note MBX/ACP/5005 dated 5 March 2001 from the Embassy of the Republic of Mauritius addressed to the Council of the European Union wherein it rejected the inclusion of the so-called "British Indian Ocean Territory" in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland.

The Government of the Republic of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius as defined in the Constitution of the Republic of Mauritius.

The Government of the Republic of Mauritius does not recognise the so-called "British Indian Ocean Territory" which was established by the unlawful excision in 1965 of the Chagos Archipelago from the territory of Mauritius, in breach of the Charter of the United Nations and of the United Nations General Assembly Declaration 1514 (XV) of 14 December 1960, Resolution 2066 (XX) of 16 December 1965, and Resolution 2357 (XXII) of 19 December 1967.

The Government of the Republic of Mauritius unreservedly rejects the inclusion of the Chagos Archipelago including Diego Garcia (the so-called "British Indian Ocean Territory") in Annex II related to Title IV, Part III of the European Union Constitutional Treaty.

The Ministry of Foreign Affairs, International Trade and Co-operation of the Republic of Mauritius avails itself of this opportunity to renew to the Secretariat of the Council of the European Union the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, I.T. & C.C. MAURITIUS

The Secretariat of the Council of the European Union
Brussels
Belgium

Government Centre, Port Louis-- Tel : (230)..... Fax : (230) 208 8087, (230) 212 6764 Email : mfa@mail.gov.mu

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

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The Creation of States in International Law

SECOND EDITION

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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.

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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.

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.

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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.

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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

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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.

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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 *S AfYBIL* 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

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.'

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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).

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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.

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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.

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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.

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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

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"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.

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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.

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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.

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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

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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]

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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

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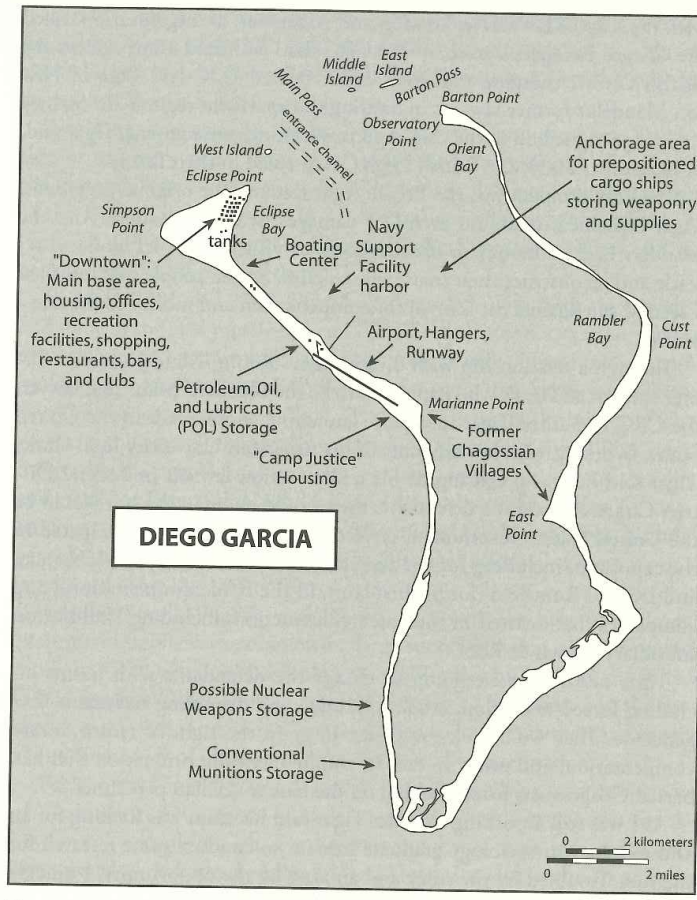

Figure 0.2 Diego Garcia, with base area at left.

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-

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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

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.

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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

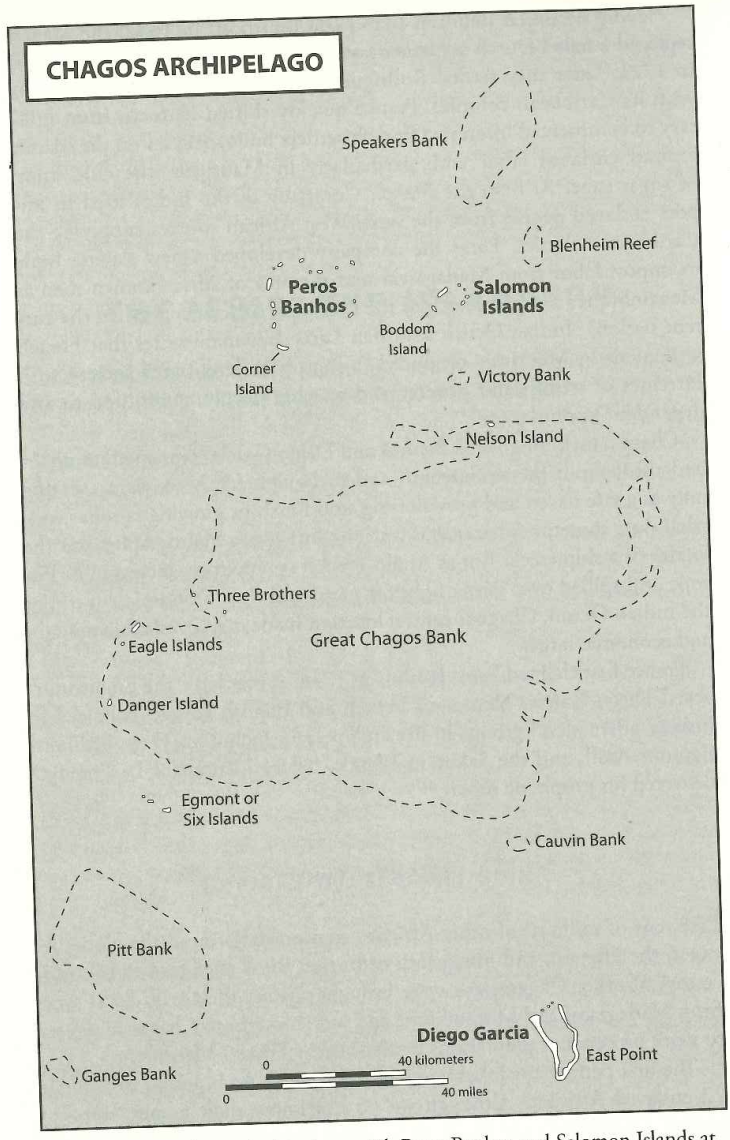

Figure 1.1 The Chagos Archipelago, with Peros Banhos and Salomon Islands at top center, Diego Garcia at bottom right.

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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-

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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.

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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

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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.

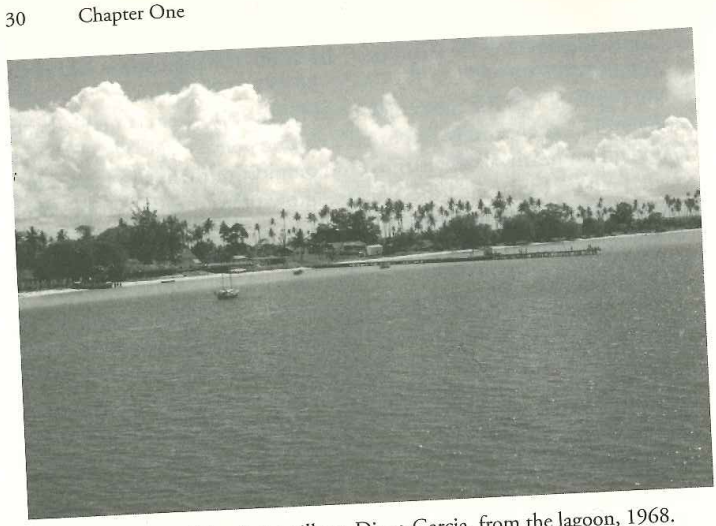

Figure 1.2 View of East Point village, Diego Garcia, from the lagoon, 1968. Photo courtesy of Kirby Crawford.

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.*

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"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

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]

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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-

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.

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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]

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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.

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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]

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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

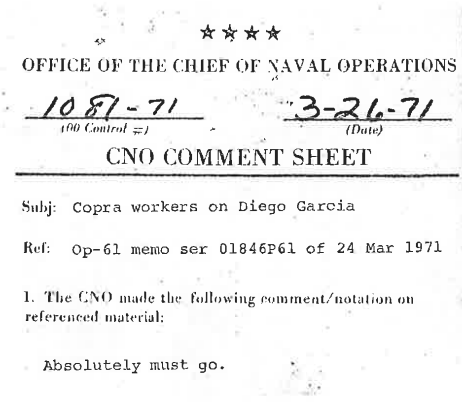
Figure 6.1 Closing Diego Garcia, January 24, 1971. The BIOT announces the deportations, John Todd at center, hand on forehead; Paul Moulinie at right, in white hat. Courtesy Chagos Refugees Group, Willis Prosper.

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

1081-71 (OO 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.

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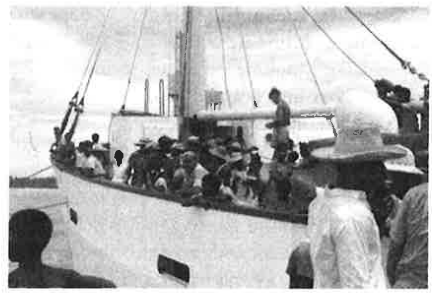

Figure 7.1 M.V. *Nordvær*, 1968. The BIOT cargo ship used to deport Chagossians, at times with more than 100 aboard. Photo courtesy of Kirby Crawford.

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.

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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

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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

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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."

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"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.

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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

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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.

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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.

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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.

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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

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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.

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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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Note Verbale from the Mauritius Ministry of Foreign Affairs to the U.K. Foreign and Commonwealth Office, No. 1197/28 (10 Apr. 2009)

. Date/Time 18/05/2009 09:12 2126744 P. 003
.8 May 2009 8:57 MFA 2126744 P.3

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 1968.

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.

Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE * MAURITIUS

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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- US embassy cables: the documents
- Foreign policy
- The US embassy cables
- US foreign policy
- Human rights
- US military

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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.

[…]

Annex 156

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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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.

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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.

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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)

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The Charter of the United Nations

A Commentary

THIRD EDITION

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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) 1 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.

11 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:

> 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.

12 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').

13 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]

14 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]

[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 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. 17

In the *Western Sahara* Advisory Opinion, the Court again based its conclusions on 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 18

[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 Jamarhiriya 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.

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.

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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.

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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.

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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.

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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

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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;

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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:

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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.

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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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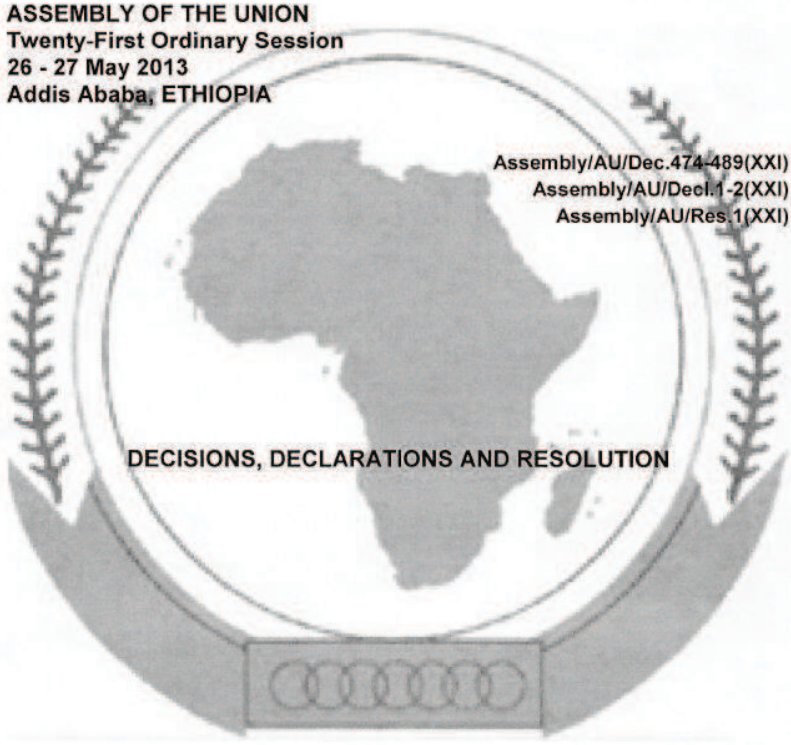
ASSEMBLY OF THE UNION
Twenty-First Ordinary Session
26 - 27 May 2013
Addis Ababa, ETHIOPIA



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;

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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.

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Republic of Mauritius, *National Report of the Republic of Mauritius in view of the Third International Conference on Small Island Developing States* (July 2013)

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Republic of Mauritius

THIRD INTERNATIONAL CONFERENCE ON SMALL ISLAND DEVELOPING STATES

National Report of the Republic of Mauritius

UNDESA

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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.

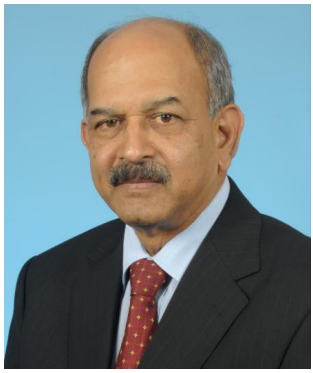
Small Island Developing States remain a special case for sustainable development and continue to face unique and increasing challenges including the negative effects of climate change and a unique vulnerability of natural disasters but also to the degradation of key eco systems. They face built in constraints 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.

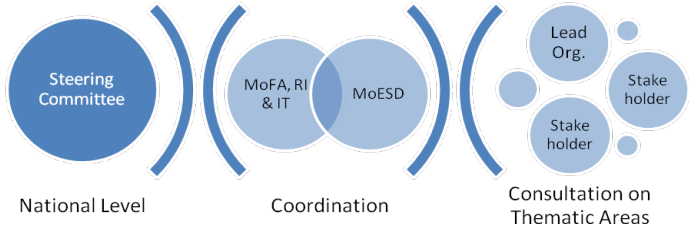
National Preparatory Process

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

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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

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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

Annex 169

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].

[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;

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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

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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).

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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.

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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]

[71] [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.

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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.

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Republic of Mauritius, Ministry of Finance & Economic Development, *Mauritius in Figures* (2016)

REPUBLIC OF MAURITIUS

MAURITIUS IN FIGURES

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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

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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.

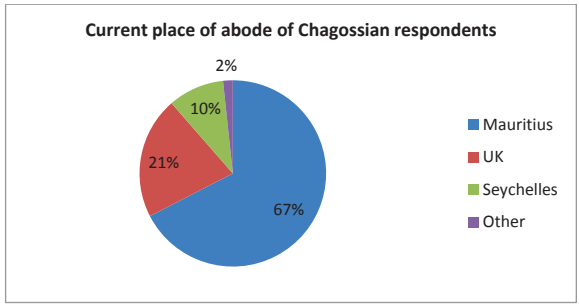
Types of responses

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.

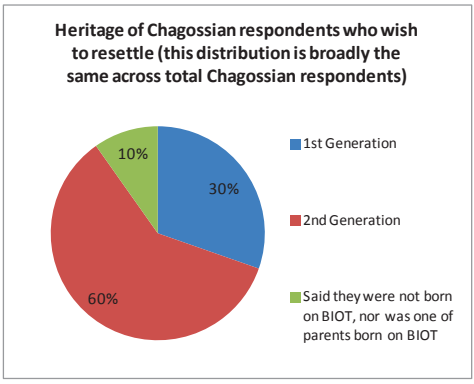
Individual responses from Chagossians

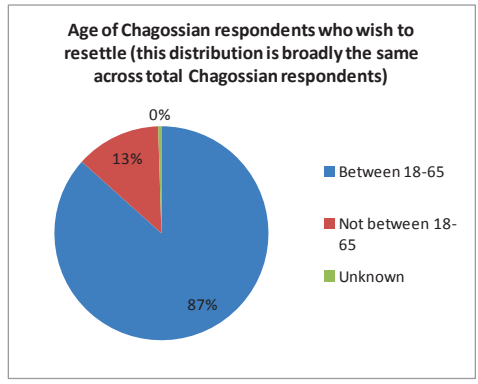
Chagossian respondents

The majority of Chagossians who responded are currently living in Mauritius.



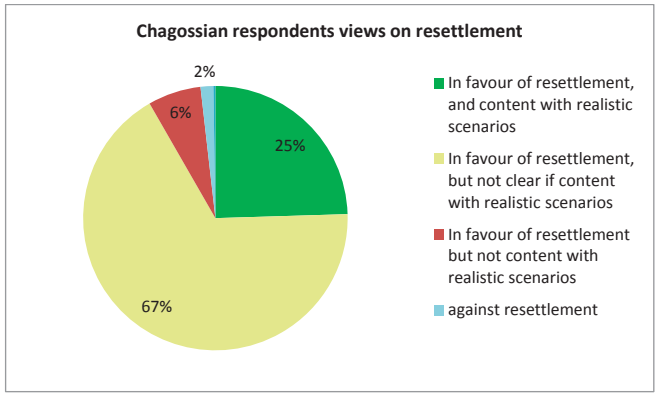
Most Chagossian respondents are of working age and have a connection to BIOT through their parents (what we define as “2nd Generation” in the table below) rather than having been born there themselves.





Views on resettlement

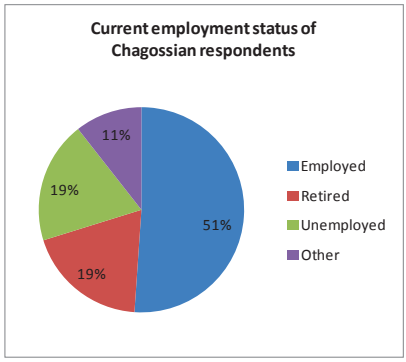
Though the vast majority of Chagossians were in favour of resettlement in principle, there were more nuanced views about the scenarios that were presented in the consultation document as the most realistic description of how it might work.

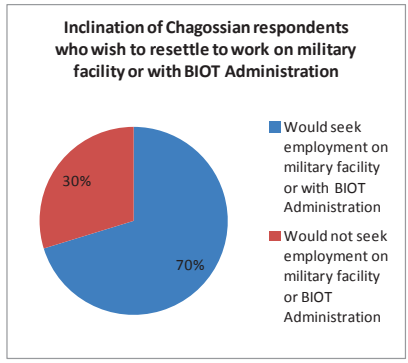


Employment opportunities in any resettlement

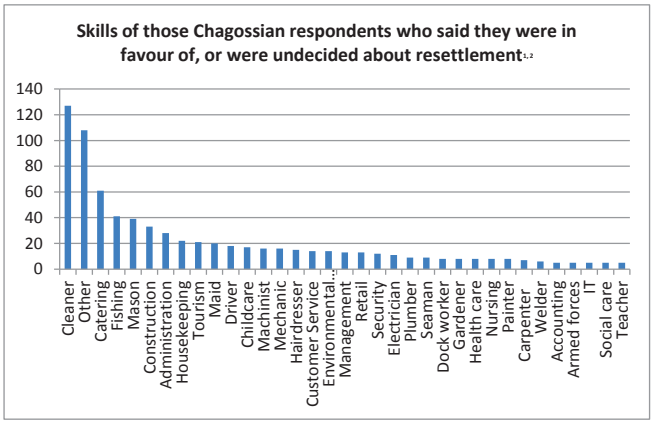
Around half of Chagossians who wanted to return are currently in employment (see chart overleaf). Of those who responded to the questionnaire, over 1,000 additional dependents were indicated, though it is impossible to determine whether some of these dependents are also respondents themselves.

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.



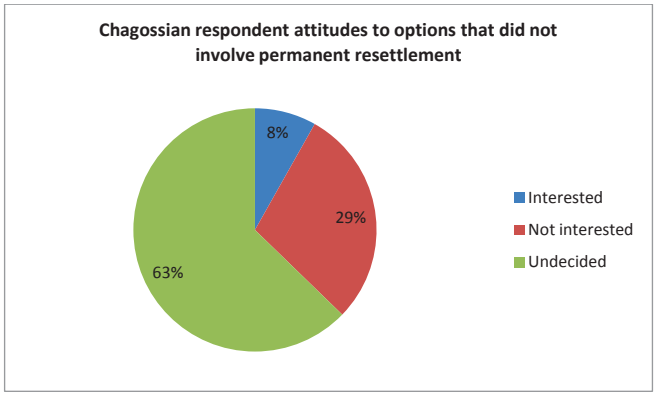


A range of practical skills were declared by Chagossians in their responses, though many indicated they would seek training in other areas including tourism, environmental management, and Territory administration.



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

Annex 180

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."

Annex 180

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

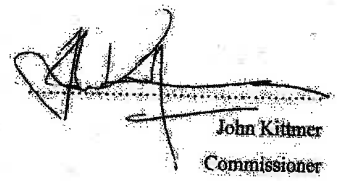
An Ordinance to amend existing laws to ensure that they correctly correlate to each other, to increase the maximum penalties for specific offences and to remove or otherwise amend outdated or incorrect provisions.

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

Annex 180

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

Annex 180

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 (Consultation) 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 5(4)* £500 *Section 8* "Immigration Ordinance 1971" "Immigration Ordinance 1971"	 £2000 Replace with "British Indian Ocean Territory (Immigration) Order 2004" 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" "Fisheries (Conservation and Management) Ordinance 1991" "Outer Islands (Services for Visiting Vessels) Ordinance 1993" *Section 2(2)(b)* "Fisheries (Conservation and Management) Ordinance 1991" *Section 2(2)(c)* "Outer Islands (Services for Visiting Vessels) Ordinance 1993" *Section 2(3)* "Fisheries (Conservation and Management) Ordinance 1993" *Section 6* "Immigration Ordinance 1971" "Fisheries (Conservation and Management) Ordinance 1991" "Outer Islands (Services for Visiting Vessels) Ordinance 1993"	 Replace with "Imports and Exports Control Ordinance 2009" Replace with "Fisheries (Conservation and Management) Ordinance 2007" Replace with "Visitors and Visiting Vessels Ordinance 2006" Replace with "Fisheries (Conservation and Management) Ordinance 2007" Replace with "Visitors and Visiting Vessels Ordinance 2006" Replace with "Fisheries (Conservation and Management) Ordinance 2007" Replace with "British Indian Ocean Territory (Immigration) Order 2004" Replace with "Fisheries (Conservation and Management) Ordinance 2007" 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"

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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

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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

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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

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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.

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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.

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.

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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.

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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;

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(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

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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**

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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.

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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;

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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

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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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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.

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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;

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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.

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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.

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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

211 East 43rd Street • New York City, NY 10017 • Tel: (212) 949 0190 • Fax: (212) 697 3829 • E-mail: Mauritius@un.int

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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

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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.

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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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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

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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

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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.

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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

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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

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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

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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.

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"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.

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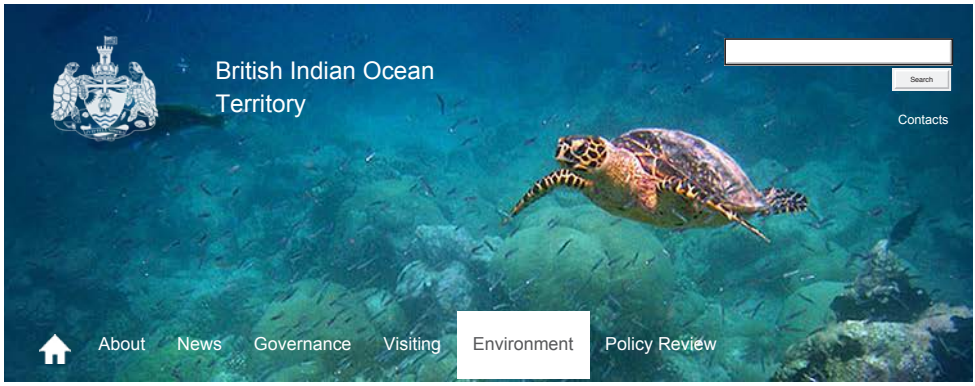
United Kingdom, *"British Indian Ocean Territory: Terrestrial Protected Areas"*, *available at* https://biot.gov.io/environment/terrestrial-protected-areas/ (last accessed 3 Jan. 2018)



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)

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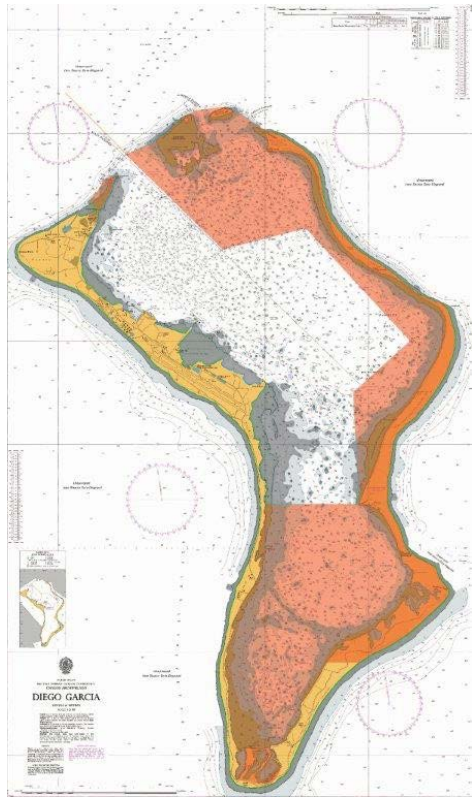

Ramsar site

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.

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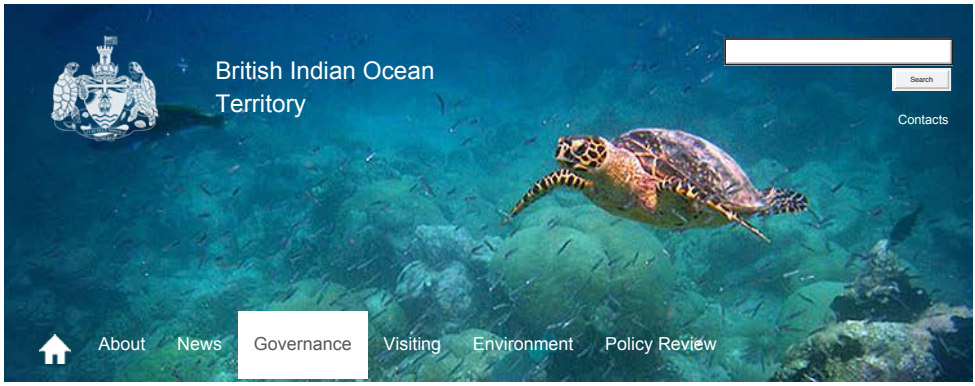
United Kingdom, *"British Indian Ocean Territory: Governance"*, *available at* https://biot.gov.io/governance/ (last accessed 3 Jan. 2018)



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

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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).

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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)

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.