INTERNATIONAL COURT OF JUSTICE

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

(REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN ADVISORY OPINION)

ANNEXES

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

15 FEBRUARY 2018

LIST OF ANNEXES

The Annexes to the United Kingdom's Written Statement are set out below and numbered in the order in which they are referred to in the text.

VOLUME 1

Annex 1 Mauritius Prime Minister Sir A Jugnauth Speech, Mauritian Parliamentary Records, 17 May 2016

Annex 2 Letter from Permanent Mission of the Republic of Mauritius to the United Nations, 5 June 2017

Annex 3 Mauritius Aide Mémoire, May 2017

Annex 4 Mauritius Note Verbale No.10/2017(1197/28) to British High Commission Port Louis, 15 June 2017

Annex 5 Sir Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (1966) (extracts) pp.61-62

Annex 6 Mauritius and Dependencies, Ordinance No. 20, 2 June 1852

Annex 7 Mauritius and Dependencies, Ordinance No. 14, 23 March 1853

Annex 8 Mauritius and Dependencies, Ordinance No. 41, 31 December 1875

Annex 9 The Lesser Dependencies Ordinance, Ordinance No. 4, 18 April 1904

Annex 10 Mauritius (Constitution) Order 1964, 26 February 1964

Annex 11 British Indian Ocean Territory Order 1965 (S.I. 1965 No.1920), 8 November 1965

Annex 12 British Indian Ocean Territory (Amendment) Order 1968 (S.I. 1968 No. 111), 26 January 1968

Annex 13 House of Commons Debate, 10 November 1965, vol. 730 col.-2W

Annex 14 United Nations General Assembly, Twentieth Session, Official Records, Fourth Committee 1558th Meeting, UN Doc. A/C.4/SR.1558 (extract), 16 November 1965

Annex 15 British Indian Ocean Territory Order 1976 (S.I. 1976/893), 9 June 1976

Annex 16 British Indian Ocean Territory (Amendment) Order 1981, 24 November 1981

Annex 17 British Indian Ocean Territory (Amendment) Order 1984, 25 June 1984

Annex 18 British Indian Ocean Territory (Amendment) Order 1994, 8 February 1994

Annex 19 British Indian Ocean Territory (Constitution) Order 2004, 10 June 2004

Annex 20 I. Hendry, S. Dickson, *British Overseas Territory Law* (2011) pp.301-310

Annex 21 S.A. de Smith, *Mauritius: Constitutionalism in a Plural Society*, 31 Modern Law Review (November 1968)

Annex 22 Mauritius Constitutional Conference 1965, Presented to Parliament by the Secretary of State for the Colonies by Command of her Majesty October 1965, Cmnd. Paper 2797

Annex 23 Mauritius Independence Act 1968 (1968 c. 8), 29 February 1968

Annex 24 Colonial Office Telegram No. 198 to Mauritius, No. 219 to Seychelles, 19 July 1965

Annex 25 Mauritius Telegram No. 170 to the Colonial Office, 23 July 1965

Annex 26 Mauritius Telegram No. 175 to the Colonial Office, 30 July 1965

Annex 27 Mauritius Telegram No. 188 to the Colonial Office, 13 August 1965

Annex 28 United Kingdom record of Colonial Secretary meeting with Lord Taylor, Sir S Ramgoolam and Mr A.J. Fairclough, 10:00am, 3 September 1965

Annex 29 United Kingdom record of the meeting on "Mauritius - Defence Matters", 9:00am, 20 September 1965

Annex 30 United Kingdom record of the meeting on "Mauritius - Defence Matters", in the Secretary of State's Room in the Colonial Office, 10:30am, 13 September 1965

Annex 31 Colonial Office note for the Prime Minister's Meeting with Sir S Ramgoolam, 22 September 1965

Annex 32 United Kingdom record of a conversation between the Prime Minister and the Premier of Mauritius at No.10 Downing Street, 10:00am, 23 September 1965

Annex 33 Record of a meeting held at Lancaster House on "Mauritius Defence Matters", 2.30pm, 23 September 1965

Annex 34 Sir S Ramgoolam manuscript letter, 1 October 1965

VOLUME 2

Annex 35 Colonial Office Telegram No. 423 to the Governor of Mauritius, 6 October 1965

Annex 36 Report of the Mauritius Select Committee on the Excision of the Chagos Archipelago, Appendix P (Extract from Minutes of Proceedings of the Meeting of the Council of Ministers held on 5 November 1965), 1 June 1983, p.63

Annex 37 United Kingdom Telegram No. 247 to the Colonial Office, 5 November 1965

Annex 38 Debate in Mauritius Legislative Assembly, 21 December 1965

Annex 39 The Mauritius Independence Order 1968, 4 March 1968

Annex 40 Mauritius Note Verbale No. 51/69 (17781/16/18) from the Office of the Prime Ministers (External Affairs Division) to the British High Commission Port Louis, 19 November 1969

Annex 41 United Kingdom Speaking Note, Pacific Indian Ocean Department (FCO) Visit of Sir S Ramgoolam, Prime Minister of Mauritius, 4 February 1970, 2 February 1970

Annex 42 Mauritius letter from Prime Minister Sir S Ramgoolam to British High Commission, Port Louis, 4 September 1972

Annex 43 Mauritius letter from Prime Minister Sir S Ramgoolam to British High Commission, Port Louis, 24 March 1973

Annex 44 Mauritius Legislative Assembly, Committee of Supply, 26 June 1974

Annex 45 United Kingdom record of Anglo-US Talks on Indian Ocean (Extracts), 7 November 1975

Annex 46 Debate in Mauritius Legislative Assembly (extracts), 26 June 1980

Annex 47 United Kingdom Telegram No.124 from British High Commission, Port Louis to Foreign and Commonwealth Office, 28 June 1980

Annex 48 Debate in Mauritius Legislative Assembly, 25 November 1980

Annex 49 Exchange of Notes constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the Availability for Defence Purposes of the "British Indian Ocean Territory", 30 December 1966, 603. *U.N.T.S*, 273 (No. 8737)

Annex 50 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius concerning the Ilois, Port Louis, 7 July 1982, with amending Exchange of Notes, Port Louis, 26 October 1982, Cmnd. 8785, 1316 UNTS 128.

Annex 51 The Ilois Trust Fund Act 1982, 30 July 1982

Annex 52 Example Ilois renunciation form, 1983-84

Annex 53 United Kingdom Foreign Secretary statement, 20 December 2012

Annex 54 Feasibility Study for the Resettlement of the Chagos Archipelago: Phase 2B. Volume 1: Executive Summary, June 2002

Annex 55 KPMG Feasibility Study for the Resettlement of the British Indian Ocean Territory, Volume I, 31 January 2015

Annex 56 Policy Review of Resettlement of the British Indian Ocean Territory: Written statement – HCWS272 (Mr Hugo Swire, Minister of State at the Foreign and Commonwealth Office), 10 February 2015

Annex 57 Progress in reviewing policy on resettlement of the British Indian Ocean Territory: Written Statement – HCWS461 (James Duddridge, Parliamentary Under Secretary of State at the Foreign and Commonwealth Office), 24 March 2015

Annex 58 BIOT Resettlement Policy Review: Summary of Responses to Public Consultation, 21 January 2016

Annex 59 British Indian Ocean Territory (BIOT) Policy Review of Resettlement Consultation with Interested Parties, 4 August 2015

VOLUME 3

Annex 60 Update on British Indian Ocean Territory: Written Statement – HLWS257 (Baroness Anelay of St Johns, Minister of State at the Foreign and Commonwealth Office), 16 November 2016

Annex 61 United Kingdom Telegram No. 149 recording meeting between United Kingdom and Mauritian Deputy Prime Minister, 28 November 2000

Annex 62 United Kingdom Telegram No. 5 recording meeting between United Kingdom Foreign Secretary and Mauritian Foreign Minister, 25 January 2001

Annex 63 Note Verbale from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office dated 5 March 2009

Annex 64 Note Verbale from the UK Foreign and Commonwealth Office to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius dated 13 March 2009

Annex 65 United Kingdom record of Foreign Secretary meeting with Mauritius Prime Minister Sir A Jugnauth, New York, 26 September 2016

Annex 66 United Kingdom Telegram No.1605281, 9 November 2016

Annex 67 Mauritius letter to the United Kingdom, 11 November 2016

Annex 68 United Kingdom Telegram No.79 recording meeting between Mauritius Secretary of Foreign Affairs and British High Commissioner, Port Louis, 7 September 2004

Annex 69 United Kingdom Telegram No.9, 17 January 2005

Annex 70 Mauritius letter from Minister of Foreign Affairs, Regional Integration and International Trade to UK Foreign Secretary, 20 October 2011

Annex 71 United Kingdom Note Verbale No.69/2011, 22 November 2011

Annex 72 Mauritius Note Verbale and letter from Minister of Foreign Affairs, Regional Integration and International Trade to United Kingdom Foreign Secretary, 21 March 2012

Annex 73 Mauritius letter to the United Kingdom, 4 November 2016

Annex 74 United Kingdom letter to Mauritius, 4 November 2016

Annex 75 Mauritius press release, 31 October 2017

Annex 76 African Union Resolution on Chagos Archipelago Ex. CL/994(XXX), 30-31 January 2017

Annex 77 Record of 17th Summit of Heads of State and Government of the Non-Aligned Movement, NAM 2016/CoB/DOC.1. Corr.1 (extracts), 17-18 September 2016, pp.104-105

Annex 78 Mauritius Note Verbale No.210/2017(MMG/CD/5/SEC) to Member States of the United Nations Human Rights Council, 21 June 2017

Annex 79 Treitel, *The Law of Contract,* 2nd Ed., 1966 (extracts) p.286

Annex 80 Chitty, *Chitty on Contracts*, 23rd Ed. (1968) (extracts), 312, 351

Annex 81 I. Hendry, S. Dickson, *British Overseas Territory Law* (2011) p. 280

Annex 82 United Nations General Assembly, Fifteenth Session Official Record, 869th Plenary Meeting, UN Doc. A/PV.869, 23 September 1960

Annex 83 United Nations General Assembly, Fifteenth Session, Chairman of the Council of Ministers of the Union of Soviet Socialist Republics Letter to President of the General Assembly, UN Doc. A/4501, 23 September 1960

Annex 84 United Nations General Assembly, Fifteenth Session, Official Records, Annexes 1960-61, Part 2, Agenda Item 87, Guatemala Amendment to Document A/L.323, UN Doc. A/L.325, 7 December 1960

Annex 85 United Nations General Assembly, Twenty-fifth Session, Special Committee Report to Sixth Committee, UN Doc. A/8018, May 1970

Annex 86 Report of Working Group of Officials on the Question of Ratification of the International Covenants on Human Rights, 1 August 1974

Annex 87 United Nations General Assembly, Nineteenth Session, United Kingdom comments on the Friendly Relations Declaration, UN Doc. A/5725/Add. 4, 22 September 1964

Annex 88 Mauritius Letter from the Permanent Representative to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 24 December 2015

Annex 89 Mauritius Prime Minister P Jugnauth Introductory Address at the Meeting of Legal Advisers on the Request for an ICJ Advisory Opinion Pursuant to the UN General Assembly Resolution 71/292 of 22 June 2017, The Hague, 27 November 2017

ANNEX 1

Mauritius Prime Minister Sir A Jugnauth Speech, Mauritian Parliamentary Records, 17 May 2016

No. 07 of 2016

REPUBLIC OF MAURITIUS

SIXTH NATIONAL ASSEMBLY

PARLIAMENTARY DEBATES (HANSARD)

FIRST SESSION

TUESDAY 17 MAY 2016

ORAL ANSWERS TO QUESTIONS

CHAGOS ARCHIPELAGO & TROMELIN ISLAND - MAURITIUS SOVEREIGNTY

The Leader of the Opposition (Mr P. Bérenger) *(by Private Notice)* asked the Rt. hon. Prime Minister, Minister of Defence, Home Affairs, Minister of Finance and Economic Development, Minister for Rodrigues and National Development Unit whether, in regard to the sovereignty of Mauritius over the Chagos Archipelago and over the Tromelin Island respectively, he will state -

(a) the exchanges, if any, between Mauritius, the United Kingdom and the United States of America since the Ruling delivered by the United Nations Arbitral Tribunal in March 2015 on the so-called Chagos Archipelago Marine Protected Area and the beginning of this turning-point year 2016, and

(b) if Government has had time to take up the issue of the sovereignty over the Tromelin Island with the President of the Republic of France since February last.

The Prime Minister: Madam Speaker, it has always been the unequivocal stand of Mauritius that the Chagos Archipelago, including Diego Garcia, and the Island of Tromelin form an integral part of the territory of Mauritius.

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 accession to independence, in violation of international law 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.

Pursuant to its commitment to ensure that the territorial integrity and sovereignty of Mauritius are fully respected and safeguarded, my Government is sparing no efforts so that Mauritius can effectively exercise its sovereignty on the Chagos Archipelago and the Island of Tromelin.

Madam Speaker, in reply to part (a) of the question, as the House is aware, the Arbitral Tribunal in the case brought by Mauritius against the United Kingdom to challenge

the legality of the 'marine protected area' which the United Kingdom purported to establish around the Chagos Archipelago delivered its Award on 18 March 2015.

The Tribunal unanimously held that the 'marine protected area' which the United Kingdom purported to establish around the Chagos Archipelago in April 2010 violates international law. It ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of the United Nations Convention on the Law of the Sea (UNCLOS).

In reaching these conclusions, the Tribunal made a number of important findings. Having considered in detail the undertakings given by the United Kingdom to Mauritian Ministers at the Lancaster House in September 1965, the Tribunal found that the United Kingdom's commitments towards Mauritius in relation to fishing rights and oil and mineral rights in the Chagos Archipelago and its surrounding waters are legally binding. Moreover, the Tribunal found that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding. The Tribunal went on to hold that the United Kingdom had not respected Mauritius' binding legal rights over the Chagos Archipelago.

In its Final Observations, the Arbitral Tribunal stated that, I quote -

> "It is now open to the Parties to enter into the negotiations that the Tribunal would have expected prior to the proclamation of the MPA, with a view to achieving a mutually satisfactory arrangement for protecting the marine environment, to the extent necessary under a "sovereignty umbrella."

Following the delivery of the Award, I wrote to the British Prime Minister on 14 April and 14 May 2015 to indicate that Mauritius stands ready to enter into negotiations with the United Kingdom, on the understanding that the latter shall fully respect the rights of Mauritius under UNCLOS and international law.

I also drew the attention of the British Prime Minister to the ruling of the Arbitral Tribunal at paragraph 298 of its Award that, I quote -

> "the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned."

In view of this ruling of the Tribunal, I have impressed on the British Prime Minister that the United Kingdom cannot take any action in connection with the defence uses of the Chagos Archipelago, including the UK-US agreement in respect of the Chagos Archipelago, without the full prior involvement and consent of Mauritius.

The British Prime Minister replied to me on 09 June 2015, proposing that Mauritius and the United Kingdom engage in discussions on marine conservation matters. He also indicated that the United Kingdom does not accept that Mauritius has any right to be consulted or to join in negotiations between the United Kingdom and the United States about the defence uses of the Chagos Archipelago.

In a letter which I subsequently addressed to the British Prime Minister on 06 July 2015, I pointed out that a constructive engagement on the Chagos Archipelago issue would not be possible with discussions limited only to marine conservation. I stressed that the issue of marine conservation should be addressed in the framework of a broader discussion on the Chagos Archipelago, having regard to the obligations of the United Kingdom under international law, including UNCLOS, as recognised by the Award of the Arbitral Tribunal. I reiterated the stand of Mauritius that any action taken by the United Kingdom in connection with the defence uses of the Chagos Archipelago, including the UK-US agreement in respect of the Chagos Archipelago should be with the full prior involvement and consent of Mauritius. Mauritius has urged that its rights should be expressly recognised in any continuation of the present agreement between the UK and the US in respect of the Chagos Archipelago. I also underscored that the meeting proposed by the UK should be held without prejudice to either country's position on sovereignty over the Chagos Archipelago.

Following a further exchange of correspondence between Mauritius and the United Kingdom, the latter agreed to the holding of a meeting of senior officials from the two countries on 09 November 2015 in London. Another meeting was held on 11 May 2016 in Mauritius. During these meetings, the following issues were discussed -

(a) interpretation and implementation of the Award delivered by the Arbitral Tribunal in the case of *Mauritius v United Kingdom*;

(b) protection of the marine environment of the Chagos Archipelago;

(c) fishing rights of Mauritius;

(d) oil and mineral rights of Mauritius;

(e) resettlement;

(f) UK-US agreement in respect of the Chagos Archipelago;

(g) submission to be made by Mauritius to the Commission on the Limits of the Continental Shelf in respect of the Chagos Archipelago Region;

(h) maritime delimitation with the Maldives, and

(i) the United Kingdom's proposal for the establishment of a bilateral consultative mechanism on marine conservation in the Chagos Archipelago.

Hardly any progress has been made in these two rounds of discussions in view of the differing interpretations of the Award by Mauritius and the United Kingdom. Mauritius considers that the 'marine protected area' purportedly established by the United Kingdom around the Chagos Archipelago is without legal effect under international law and cannot be enforced; this view is not shared by the United Kingdom. Further, the United Kingdom's interpretation of the Award is very, very narrow.

These two rounds of discussions have been held without prejudice to the position of Mauritius and the United Kingdom on the issue of sovereignty over the Chagos Archipelago, including UN General Assembly Resolution 1514 (XV) of 14 December 1960, and to all the rights of either country under international law, including under the UN Charter.

I also wish to point out that prior to the first round of discussions, we made it very clear to the UK side that since Mauritius does not recognise the so-called "BIOT", it could not have any discussions with any representative of the so-called "BIOT". However, there could be discussions with officials from the UK Foreign and Commonwealth Office. Hence, the UK delegation at the two rounds of discussions was led by Dr. Peter Hayes in his capacity of Director for Overseas Territories.

Madam Speaker, immediately before the meeting of senior officials held last Wednesday in Mauritius, I saw Dr. Peter Hayes, Director for Overseas Territories at the UK Foreign and Commonwealth Office and Head of the UK delegation, in my Office.

During that meeting, I pointed out that the United Kingdom had illegally excised the Chagos Archipelago from the territory of Mauritius prior to its accession to independence. I also referred to the undertaking which the United Kingdom had given to Mauritius on several occasions, including during meetings which I have had with my British counterparts in the past, that the Chagos Archipelago would be returned to Mauritius when it would no longer be

needed for the defence of the West. I mentioned that since the Cold War was over and the Soviet Union no longer existed, the UK had to honour its undertaking and could not now contend that the Chagos Archipelago was needed to fight terrorism and piracy as they pretend. I stated that it is totally unacceptable for the UK to keep coming up with new excuses in order not to return the Chagos Archipelago to the effective control of Mauritius. I underscored that if the UK were to honour its promise by returning the Chagos Archipelago to the effective control of Mauritius, this would contribute to completing the decolonisation process of Mauritius and would be a win-win situation for both countries.

In this regard, I requested that the Chagos Archipelago be returned by the United Kingdom to the effective control of Mauritius by a precise date to be agreed upon and proposed that consideration could be given to the joint management of the Chagos Archipelago pending its return to Mauritius. I asked for a reply to be given to my request by the end of June 2016, otherwise Mauritius would take appropriate action at the international level, including at the United Nations. The need for a precise date to be set for the return of the Chagos Archipelago to the effective control of Mauritius was also stressed during the bilateral talks last week.

I wish to point out that during the meeting which I had with Dr. Hayes, I made it very, very clear that Mauritius does not have any objection to the continued use of Diego Garcia as a military base by the United States in the context of an agreement providing for the return of the Chagos Archipelago to the effective control of Mauritius by an agreed date. I indicated to Dr. Hayes that Mauritius was even prepared to grant a sixty-year lease to the United States in respect of Diego Garcia, subject to the payment of a rent.

As regards the resettlement of the Chagos Archipelago, I reiterated to Dr. Hayes our stand that it is only with the Government of Mauritius that the Government of the United Kingdom can discuss that issue since it is the resettlement of Mauritian citizens which is at stake.

Mauritius has conveyed to the United Kingdom that it cannot, on the basis of the ruling of the Arbitral Tribunal at paragraph 298 of its Award, take any internationally lawful decision relating to resettlement without the prior involvement and consent of Mauritius. Mauritius has also made it clear that it cannot participate in a unilaterally determined consultation exercise that imposes consultation under domestic law. The consultation exercise purportedly carried out by the UK Government also envisaged resettlement under

conditions amounting, again, to a gross violation of the most basic human rights of Mauritian citizens of Chagossian origin.

Madam Speaker, following the Award delivered by the Arbitral Tribunal in the case brought by Mauritius against the United Kingdom under UNCLOS, I have also written on 14 April 2015 to the President of the United States to inform him of the Award and to urge him to contribute actively to a rapid settlement of the dispute between Mauritius and the United Kingdom over the Chagos Archipelago and an early return to full legality in accordance with international law. I also expressed the expectation of Mauritius that it should be involved in any negotiations regarding the continued use of Diego Garcia for defence purposes beyond 2016 in view of the Award of the Arbitral Tribunal.

In the bilateral talks between Mauritius and the United Kingdom, Mauritius has asked the United Kingdom to invite the United States to participate in trilateral discussions with Mauritius and the United Kingdom.

Moreover, I urged the United States, in my statement to the United Nations General Assembly last October, to engage in discussions with Mauritius regarding the long-term interest of Mauritius in respect of the Chagos Archipelago. When Dr. Shannon Smith, Deputy Assistant Secretary of State for African Affairs called on the Secretary to Cabinet and Head of the Civil Service last November, the latter reiterated the invitation of Mauritius to the US to engage in discussions with Mauritius.

When Hon. Linda Thomas-Greenfield, US Assistant Secretary of State for African Affairs, called on me last January during her visit to Mauritius, I conveyed to her that Mauritius does not oppose the existence of a military base in Diego Garcia in the context of an agreement that settles once and for all the issue of sovereignty over the Chagos Archipelago.

Madam Speaker, as the House will see, Government has not remained inactive since the first meeting of the Committee on Chagos Archipelago held under my chairmanship on 13 April 2015. During that meeting, views were exchanged with a view to contributing to the development of a strategy by Government for concrete action to be taken at the earliest opportunity.

Madam Speaker, in reply to part (b) of the question, I wish to inform the House that Government will continue to press for the early resolution of the dispute between Mauritius

and France over the Island of Tromelin, in the spirit of friendship and trust which has always characterised the relationship between our two countries.

As the House is aware, pending the settlement of the sovereignty dispute between Mauritius and France over the Island of Tromelin, the two countries reached an agreement in 2010 on the co-management of the Island of Tromelin, without prejudice to the sovereignty of Mauritius over the island.

I propose to take up the issue of sovereignty over the Island of Tromelin with the French President when I next meet him.

However, in the meantime, I have had the opportunity to raise the issue of the sovereignty over the Island of Tromelin with the French Ambassador and other French dignitaries.

When the President of the French National Assembly called on me last month, I urged for the early resolution of the issue of sovereignty over the Island of Tromelin. I also informed the President of the French National Assembly that Mauritius might have to reconsider its position if the French authorities do not show greater interest in moving forward the ratification process of the agreement on co-management of the Island of Tromelin in the French Parliament.

Madam Speaker, I would like to reaffirm the commitment of my Government to ensure that the territorial integrity and sovereignty of Mauritius are fully respected and safeguarded.

Mr Bérenger: Madam Speaker, I hope you will give us some time to put our questions. Before I move to the part of the question relating to the UN General Assembly to leave the issue of the arbitration pronouncement behind us, has Government, with its lawyers here and overseas from UK or elsewhere, looked at the possibility or advisability of going back to the Tribunal being given the way the UK is interpreting the pronouncement?

The Prime Minister: Well frankly, we have not discussed that because I don't see the need of going back to UNCLOS. The award is there. It is very clear. UK is trying to play hide and seek with us and there is no reason for us to go back to UNCLOS.

Mr Bérenger: If I can move on. Can I know whether the Rt. hon. Prime Minister has had the occasion of raising personally with Prime Minister Cameron and President Obama the whole issue of the Chagos, of our sovereignty and so on, especially at last year's

Commonwealth Summit in Malta at the retreat, whether the Rt. hon. Prime Minister had a chance to take that up one to one with Prime Minister Cameron?

The Prime Minister: In fact, I tried, but Cameron evaded all the time and I got the signal that he was unwilling to meet me and discuss this matter.

Mr Bérenger: The Rt. hon. Prime Minister has informed us that he is given dates and if we don't have agreement by that date, by the end of June, if I heard correctly, the decision is to go to the General Assembly of the UN and then on to the International Court of Justice. Can I know - for the record especially because now we have moved further - why since the last elections there has been no attempt - it's already more than a year back - to re-launch the 2001 initiative which we took when the Prime Minister was Prime Minister, which I took with Foreign Minister Jack Straw, which he took with President Bush, and which I took again a year later with President Bush? Why since the elections there has been no attempt to re-launch that initiative?

The Prime Minister: Well, we didn't re-launch that initiative because, in the light of the Award, we have tried to start negotiations with the findings of the Award. I can't say how I could have taken other initiatives and other discussions with the Prime Minister or with the President of the United States. The President of the United States in the past, when I met him and discussed the matter, all the time their excuse was: "Look, we have an agreement with UK. We can't deal with you, you must deal with UK!" That has always been their stand.

Mr Bérenger: Now, we have been told that if agreement is not reached - and I hope it is reached - by a given date, we are going to the General Assembly and on to the International Court of Justice. This needs a lot of preparation and planning. Can I know whether Government is targeting the General Assembly of this year or the General Assembly of next year?

The Prime Minister: Of this year!

Mr Bérenger: This year!

The Prime Minister: That's why I have given time limit - end of June.

Mr Bérenger: Yes, but the problem is that at the level of the United Nations, to get it on the agenda of the United Nations General Assembly is not that easy. Can I know, therefore, whether - if the target is the General Assembly of this year – we have approached the present Chairperson of the General Assembly, because this is essential?

The Prime Minister: Our representative there is doing the needful and I also raised the matter with the Secretary-General of the United Nations when he was visiting us here.

Mr Bérenger: There was reference made to the Committee set up on 20 March 2015 with Parliamentarians of all the parties. We met twice and now we hear no more. We did not achieve anything and now we hear absolutely nothing. The Committee has not met for many, many months. Can I know what is the intention of the hon. Prime Minister?

The Prime Minister: Well, we are taking the necessary steps. I have explained in my answer and I see no need for such a meeting at this stage. When the need will require, we will certainly meet?

Mr Bérenger: Does the hon. Prime Minister plan, whilst this process is taking place at the United Nations, to meet personally with both the UK Prime Minister and the outgoing President, President Obama of the United States?

The Prime Minister: Well, I have not made any attempt insofar as the President of the United States is concerned, but the Prime Minister of UK, I have said, he does not want to meet me and discuss this matter. So, how can I?

Mr Bérenger: If I can move on to the Tromelin issue. I was a bit surprised to hear and I want to clarify that point because the previous Government had signed an Agreement with France for *cogestion* of Tromelin, but the previous Government withdrew and as the Prime Minister is aware, asked President Hollande to forget about that, now, we are going for sovereignty. Now, when I listened to the Rt. hon. Prime Minister, I have the impression that the issue of *cogestion* is again on. I think I heard the hon. Prime Minister say that he will insist that the procedures be done for the ratification of that Agreement which has already been ratified by Mauritius, but which is before the French Assembly. So, is that idea of *cogestion* still on in spite of the fact that the previous Government had turned a page on that?

The Prime Minister: Well, I have said when I answered the PNQ. Being given our friendly relations with France, we are trying by all means to have a friendly settlement of this matter. Since this question of *cogestion* has been ratified by Mauritius, it has to be ratified by the Assembly in France which they have not done and I have made it very clear that if they don't do it within a certain time, then we will consider that this *cogestion* is no longer on and we will take other steps that will be necessary.

Mr Bérenger: I am sure the Rt. hon. Prime Minister is aware that, in fact, the previous Government told the French side not to move ahead with ratification of that

Agreement by the National Assembly of France. Can I have confirmation that we have gone back on that, now we are canvassing again for *cogestion* although we gave notice to France that this is behind us?

The Prime Minister: Well, if that were so, when I talked to the French people they would have told us that: "Your Government does not want us to go forward." But they did not tell me that. They have said that they had certain problems, that is why it had been delayed and they are trying to get it through. But, I have pointed out to them that we can't wait indefinitely.

Mr Bérenger: The hon. Prime Minister will allow me to point out that it seems we have been misled because of the *Président* of the French Assembly, Mr Bartolomé, who called on the Prime Minister, as he informed us. But it seems he is not aware that the former Prime Minister of Mauritius informed President Hollande that we are no longer requesting for - it is on record and the hon. Prime Minister referred to that when he replied to my PNQ. This is on record and, therefore, why are we going back with the issue?

The Prime Minister: Well, I am not aware that the previous Government has taken such a step.

Mr Bérenger: In reference to the Prime Minister's reply to my PNQ, we better double-check. If I can ask a last question, last but one as usual; when we discussed Tromelin here, on 26 February 2005, the Rt. hon. Prime Minister said that, yes, he will discuss that with the President of Madagascar, the issue of Mauritius claiming sovereignty over Tromelin and Madagascar claiming sovereignty over the four other so-called *îles Éparses*. Now, can I know from the Rt. hon. Prime Minister whether he has discussed that with the President of Madagascar, especially being given that he was in Mauritius the 12 March last year?

The Prime Minister: Well, no. I didn't discuss that.

Mr Mohamed: Madam Speaker, may I ask the Rt. hon. Prime Minister, since we have heard that the Prime Minister of the United Kingdom is giving him the run-around and does not want to meet and since we have also clearly heard from all Prime Ministers in history that Mauritius clearly does not recognise the BIOT, why is it, therefore, that the Rt. hon. Prime Minister, in spite of Mauritius not recognising the BIOT, has decided to receive and meet with Dr. Peter Hayes, whom if I am not mistaken, is a Commissioner of the BIOT? Would this not, therefore, in itself implicitly recognise the BIOT by giving *audience* to the Commissioner of the BIOT?

The Prime Minister: I made it clear that we made it very clear, we don't recognise BIOT, we are not going to discuss with BIOT. This person is from the Foreign Office and he has come with a delegation of the British Government.

Mr Ganoo: Can I ask the Rt. hon. Prime Minister, with regard to the announcement that he has just made of the eventuality of going before the International Court of Justice, whether we have already sought advice from our lawyers and are they agreeable to this course?

The Prime Minister: Yes, definitely. We are all along consulting our lawyers here and one who is in UK.

Mr Bérenger: I am sure there have been consultations. The Rt. hon. Prime Minister is aware that if we do reach the International Court of Justice, we will have only an advisory ruling. I don't know if the Rt. hon. Prime Minister has looked at the number of advisory rulings that have piled up in the past, Palestine, Sahara, name it, to no effect. Therefore, can I ask the Rt. hon. Prime Minister whilst he will prepare for that action - it must be well prepared - will he agree with me that urgently he should write anew to both of them to explain what we are doing and also seek appointments with both the Prime Minister and the President on that issue?

The Prime Minister: Well, that is the only course that is opened to us. I would like to know from the hon. Leader of the Opposition what other course there is. I know that the advisory opinion of the International Court of Justice will not be binding. But, it will have a moral effect on UK and in the United Nations, other countries also will make use of that and we, in every other forum, wherever we will go, we will raise this matter and we will do British bashing on this. They pretend to be freedom lovers, fighters of democracy and justice, but to me it seems, their philosophy is: Might Is Right!

Madam Speaker: No other question, hon. Leader of the Opposition? Time is over! Questions addressed to the Rt. hon. Prime Minister! Hon. Members, the Table has been advised that Parliamentary Question No. B/409 with regard to the construction of the market of Central Flacq will now be replied by the hon. Minister of Public Infrastructure and Land Transport. Hon. Sesungkur!

ANNEX 2

Mauritius letter from Permanent Mission of the Republic of Mauritius to the United Nations, 5 June 2017

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

5 June 2017

Excellency,

I have the honour to refer to my letter of 30 May 2017 regarding Item 87 of the agenda of the 71st Session of the General Assembly, entitled "Request for an Advisory Opinion of the International Court of Justice (ICJ) on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", which will now be considered by the General Assembly on 22 June.

In addition to the aide memoire that I sent you earlier on this issue, I am enclosing a short summary of the award delivered by the Arbitral Tribunal, set up under Annex VII to the United Nations Convention on the Law of the Sea (UNCLOS), in the case brought by the Republic of Mauritius against the United Kingdom challenging the legality of the 'marine protected area' ('MPA') which the United Kingdom purported to establish on 1 April 2010 around the Chagos Archipelago which forms an integral part of the territory of the Republic of Mauritius.

You may wish to note that the Tribunal unanimously held that the 'MPA' which the UK purported to establish around the Chagos Archipelago violates international law. Mauritius had also asked the Tribunal to rule that the UK is not the "coastal State" for the purposes of UNCLOS, because the excision of the Chagos Archipelago from Mauritius was in breach of international law. Two of the arbitrators ruled that that Mauritius is the "coastal State" in relation to the Chagos Archipelago, which has not been contradicted by the other three arbitrators who found that they did not have jurisdiction to rule on that question. This confirms the long held view of Mauritius that the UK is not the "coastal State" in relation to the Chagos Archipelago and that Chagos Archipelago, including Diego Garcia, is and has always been – an integral part of the territory of the Republic of Mauritius.

Please accept, Excellency, the assurances of my highest consideration.

Jagdish D. Koonjul, G.O.S.K.
Ambassador
Permanent Representative

211 East 43rd Street • New York City, NY 10017 • Tel: (212) 949 0190 • Fax: (212) 697 3829 • E-mail: Mauritius@un.int

AWARD DELIVERED IN THE CASE BROUGHT BY THE REPUBLIC OF MAURITIUS AGAINST THE UNITED KINGDOM UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

1. On 20 December 2010, the Republic of Mauritius initiated proceedings against the United Kingdom under Article 287 of, and Annex VII to, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the 'marine protected area' ('MPA') which the United Kingdom purported to establish on 1 April 2010 around the Chagos Archipelago which forms an integral part of the territory of the Republic of Mauritius.

2. As Mauritius and the UK could not agree on the means for the settlement of the dispute, it was submitted to arbitration in accordance with Annex VII to UNCLOS. An Arbitral Tribunal consisting of the following members was constituted to hear the dispute:

(a) Professor Ivan Shearer AM (Australia) (President);
(b) Judge Sir Christopher Greenwood CMG, QC (United Kingdom);
(c) Judge Albert Hoffmann (South Africa);
(d) Judge James Kateka (Tanzania); and
(e) Judge Rüdiger Wolfrum (Germany).

3. Following the submission by Mauritius of its Memorial, the UK raised preliminary objections to the Tribunal's jurisdiction and requested that those objections be dealt with in a separate jurisdictional phase as a preliminary matter. The Tribunal rejected that request and ordered that the UK's preliminary objections be considered together with the merits of the case. A hearing on the merits and the UK's preliminary objections was held by the Tribunal from 22 April to 9 May 2014 in Istanbul, Turkey.

4. On 18 March 2015, the Arbitral Tribunal delivered its Award. Pursuant to Article 11 of Annex VII to UNCLOS, the Award is final and without appeal, and binding on the Parties.

5. The Tribunal unanimously held that the 'MPA' which the UK purported to establish around the Chagos Archipelago violates international law. It ruled that the UK breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.

6. In reaching these conclusions, the Tribunal made several important findings. It considered in detail the undertakings given by the UK to Mauritian Ministers at the Lancaster House meeting held on 23 September 1965 on the Chagos Archipelago in the margins of the 1965 Mauritius Constitutional Conference. The UK had argued that those undertakings were not binding and had no status in international law. That argument was firmly rejected by the Tribunal which held that, without prejudice to the issue of sovereignty, those undertakings became a binding international agreement upon the independence of Mauritius, and have bound the UK ever since. It found that the UK's commitments towards Mauritius in relation to fishing rights and oil and mineral rights in the Chagos Archipelago are legally binding. Moreover, the Tribunal found that the UK's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding as well. This establishes beyond doubt that, in international law, Mauritius has real, firm and binding rights over the Chagos Archipelago, and that the UK must respect those rights. The Tribunal recognised that Mauritius has a legal interest in the Chagos Archipelago such that decisions affecting its future use should not be taken without its involvement.

7. Mauritius had also asked the Tribunal to rule that the UK is not the "coastal State" for the purposes of UNCLOS, because the excision of the Chagos Archipelago from Mauritius was in breach of international law. Three members of the Tribunal found that they did not have jurisdiction to rule on that question; they expressed no view as to which of the two States has sovereignty over the Chagos Archipelago. However, and very significantly, two members of the Tribunal, namely Judges Wolfrum and Kateka, held that the Tribunal did have jurisdiction to decide this question, and concluded that the UK does not have sovereignty over the Chagos Archipelago. They also held that:

(a) the excision of the Chagos Archipelago from Mauritius in 1965 shows a complete disregard for the territorial integrity of Mauritius by the UK;

(b) UK Prime Minister Harold Wilson's threat to Mauritius Premier Sir Seewoosagur Ramgoolam at their meeting of 22 September 1965 that he "could return home without independence" if he did not consent to the excision of the Chagos Archipelago "amount[ed] to duress"; and

(c) in 1965, Mauritian Ministers were coerced into agreeing to the detachment of the Chagos Archipelago, and that this detachment violated the international law of self-determination.

8. The ruling by two of the arbitrators that Mauritius is the "coastal State" in relation to the Chagos Archipelago, which has not been contradicted by the other three arbitrators, represents the first determination of the issue by any international judge or arbitrator. This confirms the long held view of Mauritius that the UK is not the "coastal State" in relation to the Chagos Archipelago. The Chagos Archipelago, including Diego Garcia, is – and has always been – an integral part of the territory of the Republic of Mauritius, as recognized by the majority of States in the world, including members of the African Union, the Non-Aligned Movement, and the Group of 77 and China.

9. The Award as well as the Dissenting and Concurring Opinion of Judges Kateka and Wolfrum can be downloaded from the website of the Permanent Court of Arbitration at **http://www.pca-cpa.org/showpage.asp?pag_id=1429**

ANNEX 3

Mauritius Aide Memoire, May 2017

Item 87

Draft General Assembly Resolution

The General Assembly,

Reaffirming that all peoples have an inalienable right to the exercise of their sovereignty and the integrity of their national territory,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular, paragraph 6 thereof 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,

Recalling also its resolution 2066 (XX) of 16 December 1965 which invited 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) and to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, *and its further* resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

Bearing in mind its resolution 65/118 of 10 December 2010 on the Fiftieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *reiterating its view* that it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and *noting that* the process of decolonization is not yet complete,

Recalling its resolution 65/119 of 10 December 2010 declaring the Third International Decade

for the Eradication of Colonialism, and its resolution 70/231 of 23 December 2015 calling for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Noting the Resolutions on the Chagos Archipelago adopted by the Organisation of African Unity/African Union since 1980 and most recently at the African Union Summit held in Addis Ababa, Ethiopia on 30-31 January 2017, and the Resolutions on the Chagos Archipelago by the Non-Aligned Movement since 1983 and most recently at the 17th Summit of the Heads of State and Government held at Margarita Island, Venezuela on 17-18 September 2016, and in particular the deep concern they express as to the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago,

Noting its decision of 16 September 2016 to include an item on the agenda of its 71st Session entitled 'Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965', on the understanding that there would be no consideration of this item before June 2017,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

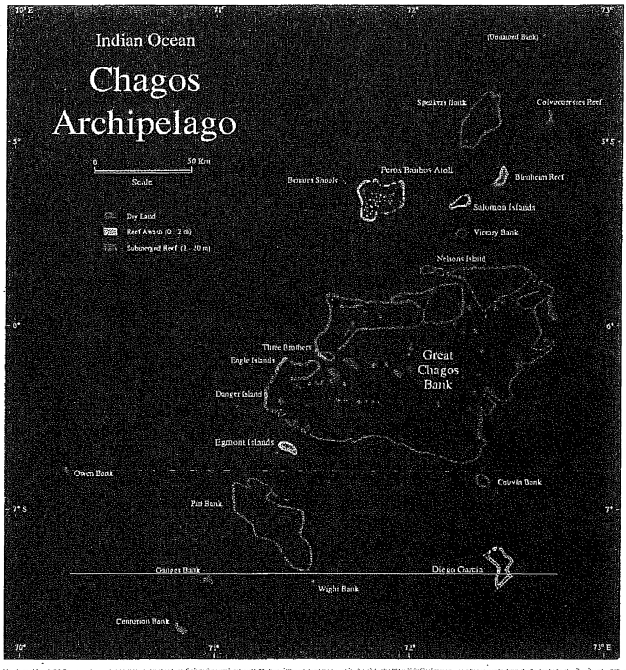
I. Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966, and 2357 (XXII) of 19 December

1967?

II. 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?

REPUBLIC OF MAURITIUS

Aide Memoire



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

Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

MAY 2017

1. On 16 September 2016, the UN General Assembly (UNGA) decided to include an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965" on the agenda of its current session, on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.

2. The period between September 2016 and June 2017 was intended to allow time for Members to ascertain whether progress could be made on the issues raised by the item, which relates to the completion of the process of decolonization of Mauritius, thereby enabling Mauritius to exercise its full sovereignty over the Chagos Archipelago. Unfortunately, no progress has been possible. Accordingly, action should now be taken by the UNGA.

Background

3. The Chagos Archipelago is a group of islands in the Indian Ocean. They have been part of Mauritius since at least the eighteenth century, when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.

4. Prior to granting independence to Mauritius on 12 March 1968, the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK") unlawfully dismembered Mauritius in 1965 by excising the Chagos Archipelago from its territory to create the so called "British Indian Ocean Territory."

5. This excision was carried out in violation of international law and UNGA Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Resolution 2066 (XX),

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

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

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

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

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

Actions taken by the United Kingdom in violation of international law

8. Following the illegal excision of the Chagos Archipelago, the United Kingdom has purported to take a number of actions in respect of the Chagos Archipelago which give rise to serious violations of international law, including human rights and international environmental law. These actions, which are inconsistent with the commitment to decolonization, include, but are not limited to:

   i. Conclusion in December 1966 of a fifty year agreement between the United Kingdom and the United States of America ("United States" or "US") concerning the availability for defence purposes of the Chagos Archipelago. While a limited naval communications facility was initially intended to be set up by the United States in Diego Garcia, which forms part of the Chagos Archipelago, it was subsequently developed into a support facility of the US Navy and later on into a full-fledged military base. The United Kingdom initially contended that the Chagos Archipelago was required for the defence of the West. Now that the Cold War is over and the threat from the Soviet Union no longer exists, the United Kingdom argues that the Chagos Archipelago is needed for the fight against terrorism and piracy.

   ii. Forcible eviction of the former inhabitants of the Chagos Archipelago ("Chagossians") in total disregard of their fundamental human rights.

   iii. Continued and systematic denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago, including through the creation of a 'marine protected area' around the Chagos Archipelago. Mr. Colin Roberts of the United Kingdom Foreign and Commonwealth Office is reported to have told a Political Counsellor at the US Embassy in London on 12 May 2009 that "establishing a marine reserve would, in effect, put paid to resettlement claims of the archipelago's former residents"[3].

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

iv. Use of Diego Garcia – which, according to the United Kingdom, hosts a joint UK-US military base – as a transit point after September 2001 for rendition of persons to countries where they risked being subjected to torture or ill-treatment.

v. Unilateral creation of a 'marine protected area' ("MPA") around the Chagos Archipelago on 1 April 2010. The Arbitral Tribunal constituted in the case brought by Mauritius against the United Kingdom to challenge the legality of the 'MPA' ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.

vi. Pollution of the waters of the Chagos Archipelago with sewage and human waste by vessels acting under the authority or consent of the United Kingdom, including the *Pacific Marlin*, a patrol vessel used by the United Kingdom.

vii. Hydro blasting of ships in the lagoon adjoining Diego Garcia.

9. The following further unilateral actions have purportedly been taken by the United Kingdom without the prior involvement and consent of Mauritius since the ruling of the Arbitral Tribunal in the case of *Mauritius v United Kingdom*, which concluded at para. 298 of its Award that "the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned." These include:

   i. the conduct by the UK Government of a public consultation exercise on resettlement in the Chagos Archipelago from 4 August to 27 October 2015;

   ii. the UK Government's decision in November 2016 against resettlement of the former inhabitants of the Chagos Archipelago and the automatic roll over of the purported UK-US agreement in respect of the Chagos Archipelago for a further period of 20 years until 30 December 2036. These purported decisions were announced barely a week after the first round of talks held between Mauritius and the United Kingdom following the understanding reached in New York last

September to defer, at the United Kingdom's request, consideration of item 87 of the UNGA agenda; and

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

Talks between Mauritius and the United Kingdom

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

(a) joint environmental stewardship of the outer islands of the Chagos Archipelago, excluding the island of Diego Garcia (environmental protection, conservation and promotion of marine and land biodiversity; development of sustainable management of fishery stocks in the waters of the Chagos Archipelago; and observation of natural phenomena in the region); and

(b) bilateral defence engagement between Mauritius and the United Kingdom (training and defence cooperation, covering areas including maritime and aviation security, port security, and governance).

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

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

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

The rationale for an advisory opinion

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

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[4]General Assembly Resolution 1514 (XV) (14 December 1960), paras.1, 4, & 6.
[5]General Assembly Resolution 2066 (XX) (16 December 1965), para. 3.

13. In 2010, on the fiftieth anniversary of the adoption of UNGA Resolution 1514 (XV), the General Assembly noted with deep concern that "fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated". It further declared "that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law," and considered it "incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization."[6]

14. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965.

15. By having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the members of the United Nations, namely to complete the process of decolonization.

16. The Government of Mauritius will be submitting a draft resolution pertaining to the request from the General Assembly for an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

17. The Government of Mauritius would be grateful for the support of all Member States in its endeavour.

[6] General Assembly Resolution 65/118 (20 January 2011), pmbl.,paras. 2 & 9.

ANNEX 4

Mauritius Note Verbale No.10/2017(1197/28) to British High Commission Port Louis, 15 June 2017

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

No. 10/2017 (1197/28)

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the High Commission of the United Kingdom of the Great Britain and Northern Ireland and has the honour to refer to item 87 of the agenda of the 71st session of the United Nations General Assembly 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"** which will be considered by the General Assembly on 22 June 2017.

In this regard, the Republic of Mauritius proposes to table the enclosed draft resolution for adoption by the General Assembly.

As explained in the aide-mémoire which is also attached herewith, the issue raised by item 87 relates to the completion of the decolonisation of the Republic of Mauritius which is of direct and continuing interest to the United Nations, in particular the General Assembly which adopted Resolution 2066 (XX) on 16 December 1965, calling upon the administering Power to take no action which would dismember the territory of Mauritius and violate its territorial integrity. An advisory opinion of the International Court of Justice will assist the General Assembly in carrying out its work, in the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations.

The Government of the Republic of Mauritius would highly appreciate the valuable support of the Government of the United Kingdom of the Great Britain and Northern Ireland for the draft resolution. In this respect, the Government of the Republic of Mauritius would be grateful for your Government's support for this resolution.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the High Commission of the United Kingdom of the Great Britain and Northern Ireland the assurances of its highest consideration.

Port Louis, 15 June 2017

High Commission of the United Kingdom of the Great Britain and Northern Ireland
7th floor, Cascades Building
Edith Cavell Street, P.O. box 1063
Port Louis
Mauritius

Newton Tower, Sir William Newton Street, Port Louis
Tel : (230) 405 2500 Fax : (230) 208 8087, (230) 212 6764 Email: mfa@govmu.org

Draft General Assembly Resolution

The General Assembly,

Reaffirming that all peoples have an inalienable right to the exercise of their sovereignty and the integrity of their national territory,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular, paragraph 6 thereof 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,

Recalling also its resolution 2066 (XX) of 16 December 1965 which invited 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) and to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, and its further resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

Bearing in mind its resolution 65/118 of 10 December 2010 on the Fiftieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reiterating its view that it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and noting that the process of decolonization is not yet complete,

Recalling its resolution 65/119 of 10 December 2010 declaring the Third International Decade for the Eradication of Colonialism, and its resolution 70/231of 23 December 2015 calling for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Noting the Resolutions on the Chagos Archipelago adopted by the Organisation of African Unity/African Union since 1980 and most recently at the African Union Summit held in Addis Ababa, Ethiopia on 30-31 January 2017, and the Resolutions on the Chagos Archipelago by the Non-Aligned Movement since 1983 and most recently at the 17th Summit of the Heads of State and Government held at Margarita Island, Venezuela on 17 – 18 September 2016, and in particular the deep concern they express as to the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago,

Noting its decision of 16 September 2016 to include an item on the agenda of its 71st Session entitled 'Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965', on the understanding that there would be no consideration of this item before June 2017,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

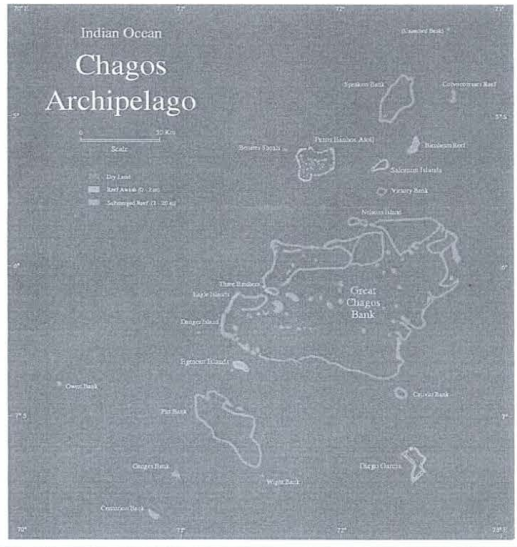
I. Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly

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?

II. 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?

REPUBLIC OF MAURITIUS

Aide Memoire



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

Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

MAY 2017

1. On 16 September 2016, the UN General Assembly (UNGA) decided to include an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965" on the agenda of its current session, on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.

2. The period between September 2016 and June 2017 was intended to allow time for Members to ascertain whether progress could be made on the issues raised by the item, which relates to the completion of the process of decolonization of Mauritius, thereby enabling Mauritius to exercise its full sovereignty over the Chagos Archipelago. Unfortunately, no progress has been possible. Accordingly, action should now be taken by the UNGA.

Background

3. The Chagos Archipelago is a group of islands in the Indian Ocean. They have been part of Mauritius since at least the eighteenth century, when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.

4. Prior to granting independence to Mauritius on 12 March 1968, the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK") unlawfully dismembered Mauritius in 1965 by excising the Chagos Archipelago from its territory to create the so-called "British Indian Ocean Territory."

5. This excision was carried out in violation of international law and UNGA Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Resolution 2066 (XX),

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

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

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

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

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

Actions taken by the United Kingdom in violation of international law

8. Following the illegal excision of the Chagos Archipelago, the United Kingdom has purported to take a number of actions in respect of the Chagos Archipelago which give rise to serious violations of international law, including human rights and international environmental law. These actions, which are inconsistent with the commitment to decolonization, include, but are not limited to:

   i. Conclusion in December 1966 of a fifty-year agreement between the United Kingdom and the United States of America ("United States" or "US") concerning the availability for defence purposes of the Chagos Archipelago. While a limited naval communications facility was initially intended to be set up by the United States in Diego Garcia, which forms part of the Chagos Archipelago, it was subsequently developed into a support facility of the US Navy and later on into a full-fledged military base. The United Kingdom initially contended that the Chagos Archipelago was required for the defence of the West. Now that the Cold War is over and the threat from the Soviet Union no longer exists, the United Kingdom argues that the Chagos Archipelago is needed for the fight against terrorism and piracy.

   ii. Forcible eviction of the former inhabitants of the Chagos Archipelago ("Chagossians") in total disregard of their fundamental human rights.

   iii. Continued and systematic denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago, including through the creation of a 'marine protected area' around the Chagos Archipelago. Mr. Colin Roberts of the United Kingdom Foreign and Commonwealth Office is reported to have told a Political Counsellor at the US Embassy in London on 12 May 2009 that "establishing a marine reserve would, in effect, put paid to resettlement claims of the archipelago's former residents"[3].

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

iv. Use of Diego Garcia – which, according to the United Kingdom, hosts a joint UK-US military base – as a transit point after September 2001 for rendition of persons to countries where they risked being subjected to torture or ill-treatment.

v. Unilateral creation of a 'marine protected area' ("MPA") around the Chagos Archipelago on 1 April 2010. The Arbitral Tribunal constituted in the case brought by Mauritius against the United Kingdom to challenge the legality of the 'MPA' ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.

vi. Pollution of the waters of the Chagos Archipelago with sewage and human waste by vessels acting under the authority or consent of the United Kingdom, including the *Pacific Marlin*, a patrol vessel used by the United Kingdom.

vii. Hydro blasting of ships in the lagoon adjoining Diego Garcia.

9. The following further unilateral actions have purportedly been taken by the United Kingdom without the prior involvement and consent of Mauritius since the ruling of the Arbitral Tribunal in the case of *Mauritius v United Kingdom*, which concluded at para. 298 of its Award that "the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned." These include:

i. the conduct by the UK Government of a public consultation exercise on resettlement in the Chagos Archipelago from 4 August to 27 October 2015;

ii. the UK Government's decision in November 2016 against resettlement of the former inhabitants of the Chagos Archipelago and the automatic roll over of the purported UK-US agreement in respect of the Chagos Archipelago for a further period of 20 years until 30 December 2036. These purported decisions were announced barely a week after the first round of talks held between Mauritius and the United Kingdom following the understanding reached in New York last

September to defer, at the United Kingdom's request, consideration of item 87 of the UNGA agenda; and

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

Talks between Mauritius and the United Kingdom

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

(a) joint environmental stewardship of the outer islands of the Chagos Archipelago, excluding the island of Diego Garcia (environmental protection, conservation and promotion of marine and land biodiversity; development of sustainable management of fishery stocks in the waters of the Chagos Archipelago; and observation of natural phenomena in the region); and

(b) bilateral defence engagement between Mauritius and the United Kingdom (training and defence cooperation, covering areas including maritime and aviation security, port security, and governance).

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

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

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

The rationale for an advisory opinion

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

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[4]General Assembly Resolution 1514 (XV) (14 December 1960), paras.1, 4, & 6.
[5]General Assembly Resolution 2066 (XX) (16 December 1965), para. 3.

13. In 2010, on the fiftieth anniversary of the adoption of UNGA Resolution 1514 (XV), the General Assembly noted with deep concern that "fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated". It further declared "that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law," and considered it "incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization."[6]

14. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965.

15. By having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the members of the United Nations, namely to complete the process of decolonization.

16. The Government of Mauritius will be submitting a draft resolution pertaining to the request from the General Assembly for an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

17. The Government of Mauritius would be grateful for the support of all Member States in its endeavour.

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[6] General Assembly Resolution 65/118 (20 January 2011), pmbl.,paras. 2 & 9.

ANNEX 5

Sir Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (1966) (extracts) pp.61-62

Commonwealth and Colonial Law

by

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had to deal with the same problem in the light of the constitutional changes that had taken place since 1911 and it is, to say the least, not surprising that it was held that that expression does not apply to Canada. As the penultimate paragraph of the judgment suggests, this case gives a salutary warning of the danger of using, in a legal document, expressions which are not fully understood.

Mandated and Trust Territories

Doubt has been expressed whether such an expression is appropriate in relation to a Mandated Territory or a Trust Territory; but why should it not be? A Trust Territory is not independent and it is, therefore, dependent. It may be dependent in a sense on the United Nations, but by the terms of the Trusteeship Agreement it is undoubtedly dependent upon the administering authority for everything in its day-to-day government. There is nothing to be said in favour of unnecessarily separating the law from the relevant facts or common-sense, which, in this case, leave no room for doubt that a Trust Territory is a dependency or dependent territory in relation to the administering authority. The same was equally true of Mandated Territories.

Dependencies of dependent territories

To avoid possible confusion it should perhaps be mentioned that one dependent territory may be placed under the authority of another of which it does not form part, and that the former is then usually called a Dependency of the latter. For example, Ascension Island, Tristan da Cunha and other Islands are Dependencies of St. Helena.[86] In drafting, all such cases can be dealt with in general terms. Thus, at the foot of the First Schedule to the Visiting Forces (British Commonwealth) (Application to the Colonies, etc.) Order in Council, 1940,[87] which contained a list of dependent territories to which the Order applied, was the following sentence: "Reference in this Schedule to any territory of which there are dependencies shall be construed as including a reference to such dependencies."

COLONIAL TERRITORY

This is another expression which is sometimes used to refer collectively to dependent territories. It is inaccurate because not all the places concerned are Colonies, but justifiable up to a point because the majority of other places have some resemblance to Colonies in the colloquial sense and, indeed, in their constitutional status, being,

[86] St. Helena Order in Council, 1956 (S.I. 1956 No. 414, p. 2186).
[87] S.R.O. 1940 No. 1373, S.R.O. & S.I. Rev. XXIII 371.

to a greater or lesser extent, under the administrative and legal control of the United Kingdom. The term has received statutory recognition in Acts of Parliament.

(1) *The Overseas Resources Development Acts*

In section 19 of the Act of 1948 [88] it was defined as meaning a territory to which section 1 of the Colonial Development and Welfare Act, 1940, applied at the commencement of the Act. Section 1 (1) of the Act of 1958 [89] excluded the whole or any part of independent sovereign countries and territories administered by the governments of such countries (except the United Kingdom). The definition in the consolidation Act of 1959 [90] adopts that in the Act of 1948, but excludes countries becoming independent after the commencement of that Act and any territory administered by an independent country. The effect of the references to the Colonial Development and Welfare Act, 1940, is to limit the definition to Colonies not possessing responsible government, British Protectorates and Protected States and United Kingdom Trust Territories.

(2) *The Colonial Loans Acts*

In section 1 (7) of the Act of 1949,[91] it was defined as meaning Southern Rhodesia, Malta or a colony not possessing responsible government, a British Protectorate or Protected State or a United Kingdom Trust Territory. In a new definition substituted by the Act of 1952,[92] the references to Southern Rhodesia and Malta and the words "not possessing responsible government" are omitted.

Her Majesty's Government

There was a time when this was generally understood to mean Her Majesty's Government in the United Kingdom [93] but that is not so now. The Government of any independent country in which the Queen is Head of the Executive (*i.e.*, excluding the Republics, Malaysia and Uganda) is Her Majesty's Government in that country. This expression should not, therefore, be used without the addition of a reference to the country or countries concerned. Strictly, the Government of a dependent territory of which Her Majesty is Sovereign is Her Majesty's Government, but it would not be in accordance with official or normal usage to use the expression in relation to dependent territories.

[88] 11 & 12 G. 6, c. 15.
[89] 6 & 7 El. 2, c. 15.
[90] (7 & 8 El. 2, c. 23), s. 20.
[91] (12, 13 & 14 G. 6, c. 50), s. 1 (7).
[92] (1 & 2 El. 2, c. 1), s. 1 (4).
[93] See, *e.g.*, Cd. 3523 (Colonial Conference 1907), p. 89.

ANNEX 6

Mauritius and Dependencies, Ordinance No. 20, 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.

D. J. Mickey

Secretary to the Council.

ANNEX 7

Mauritius and Dependencies, Ordinance No. 14, 23 March 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 8

Mauritius and Dependencies, Ordinance No. 41, 31 December 1875

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.

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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.

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

Magistrate to visit Dependencies.

To report.

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.

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 powers and 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

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.

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 9

The Lesser Dependencies Ordinance, Ordinance No. 4, 18 April 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.

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.

(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

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

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

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.

29. 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.

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,

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

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

Mauritius (Constitution) Order 1964, 26 February 1964

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of February, 1964

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) Order 1964.

(2) Subject to the provisions of this Order, this Order shall come into operation on such day (hereinafter referred to as " the appointed day ") as the Governor, acting in his discretion, by proclamation published in the Gazette shall appoint.

Interpretation.

2.—(1) In this Order—

" the Constitution " means the Constitution set out in schedule 2 to this Order ;

" the existing Legislative Council " means the Legislative Council established by the existing Orders ;

" the existing Letters Patent " means the Letters Patent specified in schedule 1 of this Order ;

" the existing Orders " means the Orders in Council specified in schedule 1 to this Order.

(2) Unless the context otherwise requires, expressions used in sections 1 to 10 of this Order have the same meaning as in the Constitution and the provisions of section 90 of the Constitution shall apply for the purpose of interpreting those sections as they apply for the purpose of interpreting the Constitution.

Amendment and revocation of existing Orders and Letters Patent.

3.—(1) The references to the Governor, the Other Officer Administering the Government and the Speaker in the Second Schedule to the Mauritius (Constitution) Order in Council 1958(a) shall be deemed to have been amended so as to contain the particulars set out

(a) S.I. 1958 II, p. 2914.

in Schedule 3 to the Constitution with effect respectively from the following dates:—

(*a*) 16th September 1962 ;

(*b*) 16th September 1962 ; and

(*c*) 16th January 1960.

(2) With effect from the appointed day the Orders in Council and the Letters Patent mentioned in schedule 1 to this Order are revoked.

Establishment of the Constitution.

4. Subject to the provisions of this Order, the Constitution shall come into effect in Mauritius on the appointed day.

Existing laws.

5.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Orders, have effect after the appointed day as if they had been made in pursuance of this Order and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The Governor may, by order published in the Gazette, at any time within six months after the appointed day, provide that any existing law shall be read and construed with such adaptations and modifications 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 ; and any existing law shall have effect accordingly from such date as may be specified in the order.

(3) An order made under this section may be amended, revoked or replaced by a further order so made or, in relation to any law or instrument affected thereby, by the authority having power to amend, repeal or revoke that law or instrument.

(4) For the purposes of this section, the expression " existing laws " means any Ordinance, law, rule, regulation, order or instrument made in pursuance of, or in force under, the existing Orders and having effect as part of the law of Mauritius immediately before the appointed day.

Existing offices.

6.—(1) Where any office has been established by or under the existing Orders, the existing Letters Patent 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 this Order, be deemed as from the appointed day to have been appointed to hold or to act in the latter office in accordance with the provisions of this Order and to have taken any necessary oaths or affirmations under this Order:

Provided that, unless otherwise provided by a law enacted under this Order, 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 at the expiration of that period or upon the attainment of that age.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under this Order upon any person or authority to make provision for the abolition of offices and the removal of persons holding or acting in any office.

(3) In this section " existing law " means such a law as is referred to in section 5(4) of this Order.

(4) The reference in subsection (1) of this section to offices established by or under the existing Orders or the existing Letters Patent does not include a reference to the office of Speaker of the Legislative Council, member of the Executive Council, or member of the Legislative Council.

Supreme Court proceedings.

7. All proceedings commenced or pending immediately before the appointed day before the Supreme Court may be carried on before the Supreme Court established by the Constitution.

Existing Executive Council.

8. Notwithstanding the revocation by this Order of the existing Orders, the Executive Council established by those Orders—

(*a*) shall continue to exist until such time as the Council of Ministers established by the Constitution has been constituted ; and

(*b*) shall, until that time, perform its functions and be consulted by the Governor in accordance with the provisions of the existing Orders.

Legislative Assembly.

9.—(1) The person who immediately before the appointed day held office as Speaker of the existing Legislative Council shall be deemed to have been elected as Speaker of the Legislative Assembly established under this Order but, notwithstanding the revocation of the existing Orders, shall hold office subject to the provisions of subsection (2) of section 18 of the Mauritius (Constitution) Order in Council 1958 as if those provisions had not been revoked.

(2) Any person who immediately before the appointed day was a nominated member of the existing Legislative Council shall be deemed to have been appointed as a nominated member of the Legislative Assembly established under this Order and the provisions of the Constitution shall apply to him accordingly.

(3) Any person who immediately before the appointed day was an elected member of the existing Legislative Council shall, with effect from the appointed day, be deemed to be an elected member of the Legislative Assembly established under this Order and to have been returned thereto in accordance with the provisions of the Constitution by the electoral district by which he was returned to the existing Legislative Council, and the provisions of the Constitution shall apply to him accordingly.

(4) The rules and orders of the existing Legislative Council in force immediately before the appointed day shall, from the appointed day and until it is otherwise provided under section 43 of the Constitution, be the rules and orders of the Legislative Assembly established under this Order, but shall be construed with such modifications and adaptations, if any, as may be necessary to bring them into conformity with the Constitution.

(5) The period of five years mentioned in section 56 of the Constitution shall, in relation to the Legislative Assembly as first constituted under this Order, be deemed to have commenced on the date when the existing Legislative Council first met after the last general election of members thereto.

Power reserved to Her Majesty.

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

W. G. Agnew.

SCHEDULE 1 TO THE ORDER Section 3(2).

THE EXISTING ORDERS AND LETTERS PATENT

Titles	*References*
The Mauritius (Constitution) Order in Council 1958	S.I. 1958 II, p. 2914.
The Mauritius (Constitution) (Amendment) Order in Council 1959	S.I. 1959 II, p. 3501.
The Mauritius (Constitution) (Amendment No. 2) Order in Council 1959 ...	S.I. 1959 II, p. 3505.
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SCHEDULE 2 TO THE ORDER

THE CONSTITUTION OF MAURITIUS

ARRANGEMENT OF SECTIONS

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Section

1. Fundamental rights and freedoms of the individual.
2. Protection of right to life.
3. Protection of right to personal liberty.
4. Protection from slavery and forced labour.
5. Protection from inhuman treatment.
6. Protection from deprivation of property.
7. Protection for privacy of home and other property.
8. Provisions to secure protection of law.
9. Protection of freedom of conscience.
10. Protection of freedom of expression.
11. Protection of freedom of assembly and association.
12. Protection of freedom of movement.
13. Protection from discrimination on the grounds of race, etc.
14. Enforcement of protective provisions.
15. Provisions for periods of public emergency.
16. Interpretation and savings.

CHAPTER II

THE GOVERNOR AND THE DEPUTY TO THE GOVERNOR

Section

17. Governor.
18. Powers and duties of Governor.
19. Publication of Governor's Commission and taking of oaths.
20. Succession to Government.
21. Appointment of Deputy to Governor.
22. Disposal of land.
23. Offices and appointments.
24. Concurrent appointments.
25. Grant of pardon, etc.
26. Public Seal.

CHAPTER III

THE LEGISLATURE

Part I—The Legislative Assembly

27. Legislative Assembly.
28. The Speaker and the Deputy Speaker.
29. Absence of Speaker or Deputy Speaker.
30. Qualifications for membership.
31. Disqualifications for elected and nominated membership.
32. Tenure of office of elected and nominated members.
33. Vacation of seat on sentence.
34. Determination of questions as to membership.
35. Temporary members of the Legislative Assembly.
36. Electoral districts.
37. Qualifications of electors.
38. Disqualification of electors.
39. Right to vote at elections.
40. Law as to elections.

Part II—Legislation and Procedure in Legislative Assembly

41. Power to make laws.
42. Royal Instructions.
43. Rules and orders.
44. Official language.
45. Presiding in Legislative Assembly.
46. Legislative Assembly may transact business notwithstanding vacancies.
47. Quorum.
48. Voting.
49. Introduction of Bills.
50. Governor's reserved power.
51. Assent to Bills.
52. Disallowance of laws.
53. Oath of allegiance.
54. Privileges of Legislative Assembly and members.
55. Sessions.
56. Prorogation and dissolution.
57. General elections.

CHAPTER IV

THE COUNCIL OF MINISTERS

Section

58. Council of Ministers.
59. Exercise of Governor's powers.
60. The Premier.
61. Appointed members of Council of Ministers.
62. Parliamentary Secretaries.
63. Vacation of office of members of Council of Ministers.
64. Determination of questions as to membership.
65. Temporary members of Council of Ministers.
66. Official oaths.
67. Summoning of Council of Ministers.
68. Proceedings in Council of Ministers.
69. Assignment of departments.
70. Leave of absence.

CHAPTER V

THE JUDICATURE

71. Supreme Court.
72. Retirement and resignation of judges.
73. Removal of judges.
74. Salaries and conditions of service.

CHAPTER VI

THE PUBLIC SERVICE

75. Appointments, etc. of officials in public service.
76. Public Service Commission.
77. Public Service Commission to advise Governor.
78. Laws relating to Public Service Commission.
79. Police Service Commission.
80. Police Service Commission to advise Governor.
81. Regulations for Police Service Commission.
82. The Judicial and Legal Service Commission.
83. Judicial and Legal Service Commission to advise Governor.
84. Proceedings of Judicial and Legal Service Commission.
85. Regulations for Judicial and Legal Service Commission.
86. Protection of commission, etc. from legal proceedings.
87. Attorney-General.
88. Deputy Public Prosecutor.

CHAPTER VII

MISCELLANEOUS

89. Emoluments.
90. Interpretation.

THE SCHEDULES TO THE CONSTITUTION

SCHEDULE 1 Sections 19, 53 and 66.

OATH OF ALLEGIANCE

OATH FOR THE DUE EXECUTION OF THE OFFICE OF GOVERNOR

OATH FOR THE DUE EXECUTION OF THE OFFICE OF MEMBER OF THE COUNCIL OF MINISTERS

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.

Protection of right to personal liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted ;

(*b*) in execution of the order of a court punishing him for contempt of that court or of a court inferior to it ;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law ;

(*d*) for the purpose of bringing him before a court in execution of the order of a court ;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence ;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare ;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease ;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community ;

(*i*) for the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court ; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court ; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression " forced labour " does not include—

(*a*) any labour required in consequence of the sentence or order of a court ;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained ;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service ; or

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

Protection from inhuman treatment.

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

Protection from deprivation of property.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit ; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property ; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation ; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party ; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property—

(*a*) in satisfaction of any tax, rate or due ;

(*b*) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Mauritius ;

(*c*) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract ;

(*d*) by way of the vesting or administration of property belonging to another person, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up ;

(*e*) in the execution of judgments or orders of courts ;

(*f*) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants ;

(*g*) in consequence of any law with respect to the limitation of actions or acquisitive prescription ;

(*h*) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(i) of work of soil conservation or the conservation of other natural resources ; or

(ii) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse refused or failed, to carry out.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by the government of Mauritius.

Protection for privacy of home and other property.

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any other property in such a manner as to promote the public benefit ;

(*b*) for the purpose of protecting the rights or freedoms of other persons ; or

(*c*) to enable an officer or agent of the government of Mauritius or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that government, that authority, or that body corporate, as the case may be ;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;

(*c*) shall be given adequate time and facilities for the preparation of his defence ;

(*d*) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so provided by or under any law of Mauritius, by a legal representative at the public expense ;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution ; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge ;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the

maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) paragraph (*a*) of subsection (2) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) paragraph (*e*) of the said subsection (2) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section " criminal offence " means a crime, misdemeanour or contravention punishable under the law of Mauritius ; " legal representative " means a person entitled to practise in Mauritius as a barrister or, except in relation to proceedings before a court in which an Attorney-at-Law has no right of audience, an Attorney-at-Law who is so entitled.

Protection of freedom of conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion ;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health ; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments ; or

(*b*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health, or

(ii) for the purpose of protecting the rights or freedoms of other persons ; or

(*b*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

12.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions, by order of a court, on the movements or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a court at a later date for trial of such criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius ;

(*b*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Mauritius of persons generally, or any class of persons, and except so far as

that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ;

(*c*) for the imposition of restrictions on the movement or residence within Mauritius of any person who does not belong to Mauritius or the exclusion or expulsion from Mauritius of any such person ;

(*d*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius ;

(*e*) for the imposition of restrictions upon the movement or residence within Mauritius of public officers ; or

(*f*) for the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

Protection from discrimination on the grounds of race, etc.

13.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of revenues or other funds of Mauritius ; or

(*b*) with respect to persons who do not belong to Mauritius ; or

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by subsection (2) of section 7, subsection (5)

of section 9, subsection (2) of section 10, subsection (2) of section 11 or subsection (3) of section 12, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Enforcement of protective provisions

14.—(1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 1 to 13 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 1 to 13 (inclusive) to the protection of which the person concerned is entitled :

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) No law enacted under this Constitution shall make provision with respect to rights of appeal from any determination of the Supreme Court made in proceedings brought in the Supreme Court in pursuance of this section that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to proceedings in that Court sitting as a court of original jurisdiction.

(4) No appeal shall lie from any determination under this section that any application is merely frivolous or vexatious.

(5) A law enacted under this Constitution may make provision, or may authorise the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorise the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

Provisions for periods of public emergency.

15.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939(**a**), as amended(**b**), shall be held to be inconsistent with or in contravention of section 3, subsection (2) of section 4, or any provision of sections 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(**a**) *See* S.I. 1952 I, at p. 621.
(**b**) S.I 1956/731, 1963/88. 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084).

(2) Where any person who is lawfully detained in pursuance only of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, entitled to practise as a barrister in Mauritius, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Interpretation and savings.

16.—(1) In this Chapter, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Mauritius, other than a court established by a disciplinary law, and includes Her Majesty in Council, and in sections 2 or 4 of this Constitution a court established by a disciplinary law;

"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 Mauritius Police Force;

(*c*) a police force established by any law in force in Mauritius;

(*d*) a fire service established by any law in force in Mauritius; or

(*e*) the Mauritius Government Prison Service;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter "a period of public emergency" means any period during which—

(*a*) Her Majesty is at war; or

(*b*) there is in force a Proclamation made by the Governor under the provisions of section 3 of the Emergency Powers Order in Council 1939 and published in the Gazette declaring that the provisions of Part II of that Order shall come into operation.

(3) For the purposes of this Chapter a person shall be deemed to belong to Mauritius if he is a British subject and—

(*a*) was born in Mauritius or of parents who at the time of his birth were ordinarily resident in Mauritius; or

(*b*) has been ordinarily resident in Mauritius continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth; or

(*c*) has obtained the status of a British subject under the British Nationality Act 1948(a) by virtue of his having been naturalised in Mauritius before that Act came into force or by virtue of his having been naturalised or registered as a citizen of the United Kingdom and Colonies in Mauritius under that Act; or

(*d*) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of court or a deed of separation; or

(*e*) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies.

(4) In relation to any person who is a member of a disciplined force raised under a law enacted under this Constitution, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 3 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Mauritius, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER II

THE GOVERNOR AND THE DEPUTY TO THE GOVERNOR

Governor.

17. There shall be a Governor and Commander-in-Chief for Mauritius who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Mauritius.

Powers and duties of Governor.

18. The Governor shall have such functions as may be conferred upon him by or under this Constitution or any other law and such other functions as Her Majesty may be pleased to assign to him and, subject to the provisions of this Constitution and any law by which any such functions are conferred, shall do or execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable by him in his discretion) according to such Instructions, if any, as Her Majesty may see fit to address to him:

Provided that the question whether or not the Governor has in any matter complied with such Instructions shall not be called in question in any court of law.

Publication of Governor's Commission and taking of oaths.

19. Every person appointed to the office of Governor shall, before entering upon that office, take and subscribe the oath of allegiance and the oath for the due execution of his office set out in schedule 1 to this Constitution.

Succession to Government.

20.—(1) Whenever the office of Governor is vacant or the Governor is absent from Mauritius or is for any other cause prevented from or incapable of discharging the functions of his office, those functions shall, during Her Majesty's pleasure, be discharged—

(*a*) by such person as Her Majesty may designate by instructions given through a Secretary of State; or

(*b*) if there is no person in Mauritius so designated, by the Chief Secretary.

(a) 11 & 12 Geo. 6. c. 56.

(2) Before assuming the functions of the office of Governor any person referred to in subsection (1) of this section shall take and subscribe the oath of allegiance and the oath for the due execution of the office of Governor set out in schedule 1 to this Constitution.

(3) Any person referred to in subsection (1) of this section shall not continue to discharge the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person referred to in subsection (1) of this section shall not, for the purposes of this section, be regarded as absent from Mauritius or prevented from or incapable of discharging the functions of the office of Governor—

(*a*) by reason only that he is in passage from one part of Mauritius to another, or

(*b*) at any time when there is a subsisting appointment of a Deputy under section 21 of this Constitution.

Appointment of Deputy to Governor.

21.—(1) Whenever the Governor—

(*a*) has occasion to be absent from the seat of government but not from Mauritius ; or

(*b*) has occasion to be absent from Mauritius for a period which he has reason to believe will be of short duration ; or

(*c*) because of illness, which he has reason to believe will be of short duration, considers it desirable to do so.

he may, acting in his discretion, by Instrument under the Public Seal, appoint any person in Mauritius to be his Deputy during that absence or illness, and in that capacity to perform such of the functions of the office of Governor as may be specified in the Instrument.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a Deputy under this section and the Deputy shall conform to and observe all such instructions as the Governor may from time to time address to him.

(3) A person appointed as Deputy under this section shall hold that appointment for such period as may be specified in the Instrument by which he is appointed and his appointment may be revoked at any time by the Governor, acting in his discretion, or by a Secretary of State.

Disposal of land.

22. Subject to the provisions of any law for the time being in force in Mauritius and of any Instructions from time to time given to the Governor under Her Majesty's Sign Manual and Signet or through a Secretary of State, the Governor may, in Her Majesty's name and on Her behalf, make and execute under the Public Seal grants and dispositions of any land or other immovable property within Mauritius which may be lawfully granted or disposed of by Her Majesty.

Offices and appointments.

23. The Governor, in Her Majesty's name and on Her behalf, may constitute such judgeships and other offices for Mauritius as may lawfully be constituted by Her Majesty and, subject to the provisions of this Constitution, may, acting in his discretion, make appointments (including appointments on promotion or transfer) to any such office, and any person so appointed shall, unless it is otherwise provided by any law for the time being in force in Mauritius, hold office during Her Majesty's pleasure.

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

(ii) upon becoming a member of the Council of Ministers or a Parliamentary Secretary ; or

(iii) when the Legislative Assembly first sits after any general election ;

(iv) if by writing under his hand addressed to the Governor he resigns ; or

(v) if the Legislative Assembly passes a resolution supported by the votes of two-thirds of all the members thereof requiring his removal from office.

(3) The Legislative Assembly shall—

(*a*) at its first sitting in every session ; and

(*b*) if the office of Deputy Speaker falls vacant at any time before the next session of the Legislative Assembly, as soon as is practicable,

elect from among its members, other than members of the Council of Ministers or Parliamentary Secretaries, a Deputy Speaker of the Legislative Assembly.

(4) A person shall vacate the office of Deputy Speaker—

(i) upon ceasing to be a member of the Legislative Assembly ;

(ii) upon becoming a member of the Council of Ministers or a Parliamentary Secretary ;

(iii) if by writing under his hand addressed to the Speaker he resigns ; or

(iv) if the Legislative Assembly passes a resolution supported by the votes of two-thirds of all the members thereof requiring his removal from office.

(5) In any election of a Speaker or Deputy Speaker under this section the votes of the members of the Legislative Assembly shall be given by means of a ballot taken in such manner so as not to disclose how any vote is cast.

Absence of Speaker or Deputy Speaker.

29. Where, for any reason the office of Speaker or Deputy Speaker is vacant, or the Speaker or the Deputy Speaker is absent from the Legislative Assembly, the functions of the Speaker or the Deputy Speaker shall be performed—

(*a*) in the case of the Speaker by the Deputy Speaker or, if the office of Deputy Speaker is vacant or the Deputy Speaker is absent from the Legislative Assembly, by such member of the Legislative Assembly (not being a member of the Council of Ministers or a Parliamentary Secretary) as the Legislative Assembly may elect for the purpose ; and

(*b*) in the case of the Deputy Speaker, by such member of the Legislative Assembly (not being a member of the Council of Ministers or a Parliamentary Secretary) as the Legislative Assembly may elect for the purpose.

Qualifications for membership.

30.—(1) The members of the Legislative Assembly shall be British subjects of not less than 21 years of age and—

(*a*) in the case of elected members, shall be qualified for election, and elected, in accordance with the provisions of this Constitution and any law for the time being in force ;

(*b*) in the case of nominated members, shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal.

(2) Subject to the provisions of section 31 of this Constitution, a person shall be qualified to be an elected member of the Legislative Assembly if, and shall not be so qualified unless, he—

(*a*) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election ;

(*b*) has resided in Mauritius for a period of not less than six months immediately before the date of his nomination for election ; and

(*c*) 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 Assembly.

Disqualifications for elected and nominated membership.

31. No person shall be qualified to be an elected or nominated member of the Legislative Assembly 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 Mauritius 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 ;

(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 Mauritius 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 the Commonwealth and has not been discharged or has obtained the benefit of a *cessio bonorum* in Mauritius ;

(*e*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius ;

(*f*) is under sentence of death imposed on him by a court in any part of the Commonwealth, 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 Mauritius 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 Assembly by any law in force in Mauritius relating to offences connected with elections.

Tenure of office of elected and nominated members.

32.—(1) Subject to the provisions of this Constitution, a nominated member of the Legislative Assembly shall hold his seat in the Assembly during the Governor's pleasure.

(2) The seat of an elected or a nominated member of the Legislative Assembly shall become vacant—

(*a*) upon a dissolution of the Assembly ;

(*b*) if he resigns 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 Assembly or, being a nominated member, he is, with his consent, nominated as a candidate in any election of a member to the Assembly ;

(*d*) if he ceases to be a British subject ;

(*e*) if he becomes a party to any contract with the government of Mauritius 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 Mauritius ;

(*g*) 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 Assembly previously obtained, be absent from the sittings of the Assembly for a continuous period of three months during any session thereof ;

(*h*) if any of the circumstances arise that, if he were not a member of the Legislative Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (*a*), (*b*), (*d*), (*e*), (*g*) or (*h*) of section 31 of this Constitution ; or

(*i*) in the circumstances mentioned in section 33 of this Constitution.

Vacation of seat on sentence.

33.—(1) Subject to the provisions of this section, if an elected or nominated member of the Legislative Assembly is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Assembly and his seat in the Assembly 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 Assembly 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 Assembly shall not become vacant under subsection (1) of this section, and he may again perform his functions as a member of the Assembly.

(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.

34.—(1) Any question whether a person has been validly appointed as a nominated member of the Legislative Assembly or whether a nominated member of the Legislative Assembly 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 Assembly, or whether an elected member of the Legislative Assembly has vacated his seat therein, shall be determined by the Supreme Court.

Temporary members of the Legislative Assembly.

35.—(1) Whenever a nominated member of the Legislative Assembly is unable, because of his illness or absence from Mauritius, to perform his functions as a member of the Assembly, the Governor, acting in his discretion, may by Instrument under the Public Seal appoint a person to be temporarily a member of the Assembly.

(2) A person appointed under this section to be temporarily a member of the Legislative Assembly—

(*a*) shall hold his seat in the Assembly during the Governor'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 Assembly, or when the seat of the member in whose place he was appointed becomes vacant.

(3) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person appointed to be temporarily a member of the Legislative Assembly as they apply to a nominated member of the Legislative Assembly.

Electoral districts.

36.—(1) For the purpose of electing members of the Legislative Assembly, the island of Mauritius 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.

37.—(1) Subject to the provisions of section 38 of this Constitution, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless he—

(*a*) is a British subject of the age of twenty-one years or upwards ; and

(*b*) has resided in Mauritius for a period of at least two years immediately before the prescribed date or is domiciled in Mauritius and is resident therein on the prescribed date.

(2) No person shall be entitled to be registered as an elector—

(*a*) in more than one electoral district ; or

(*b*) in any electoral district in which he has not been resident for a period of six months immediately before the prescribed date.

(3) In this section " the prescribed date " means such date as may for the time being be prescribed for the purposes of any law in force in Mauritius relating to the registration of electors.

Disqualifications of electors.

38. 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 the Commonwealth 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 ;

(*b*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius ; or

(*c*) is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

Right to vote at elections.

39.—(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 Mauritius—

(*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.

Law as to elections.

40. Subject to the provisions of this Constitution, a law enacted under this Constitution may provide for the election of members of the Legislative Assembly, including (without prejudice to the generality of the foregoing power) 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 division of the island of Mauritius into electoral districts for the purpose of elections ;

(*d*) the holding of elections ;

(*e*) the determination of any question which may arise as to whether any person has been validly elected a member of the Legislative Assembly or as to whether the seat of any elected member in the Legislative Assembly has become vacant ;

(*f*) the definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for

membership of the Legislative Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence ; and

(*g*) the disqualification for election as members of the Legislative Assembly 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 II—Legislation and Procedure in Legislative Assembly

Power to make laws.

41. Subject to the provisions of this Constitution, the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of Mauritius.

Royal Instructions.

42. Subject to the provisions of this Constitution, the Governor and the Legislative Assembly 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.

Rules and orders.

43. Subject to the provisions of this Constitution and of any Instructions under Her Majesty's Sign Manual and Signet, the Legislative Assembly may from time to time make, amend and revoke rules and 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.

Official language.

44. The official language of the Legislative Assembly shall be English but any member may address the chair in French.

Presiding in Legislative Assembly.

45. The Speaker, or in his absence the Deputy Speaker, or in their absence a member of the Legislative Assembly (not being a member of the Council of Ministers or a Parliamentary Secretary) elected by the Legislative Assembly for the sitting, shall preside at any sitting of the Assembly.

Legislative Assembly may transact business notwithstanding vacancies.

46. The Legislative Assembly 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 Assembly 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 Assembly or otherwise took part in those proceedings.

Quorum.

47.—(1) If at any sitting of the Legislative Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in the rules and orders of the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of sixteen members of the Legislative Assembly in addition to the person presiding.

Voting.

48.—(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Legislative Assembly shall be determined by a majority of the votes of the members present and voting,

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.

(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 Legislaive 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.

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 ;

(*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

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

such duties in respect of such subject or department as may be assigned to him by any such member of the Council of Ministers.

(2) A Parliamentary Secretary, appointed under the provisions of subsection (1) of this section, shall be subject to the provisions of sections 63 and 66 of this Constitution as if he were an appointed member of the Council of Ministers.

Vacation of office of appointed members of Council of Ministers.

63. An appointed member of the Council of Ministers shall vacate his office—

(*a*) when a person is appointed or re-appointed as Premier or where, under the circumstances referred to in paragraph (3) of section 60 of this Constitution, the Premier resigns or is removed from office;

(*b*) when, after any dissolution of the Legislative Assembly, he is informed by the Governor that the Governor is about to re-appoint him as a member of the Council of Ministers or to appoint another person in his place;

(*c*) if, for any reason other than the dissolution of the Legislative Assembly, he ceases to be a member of the Legislative Assembly;

(*d*) if he resigns his office by writing under his hand; or

(*e*) if his appointment is revoked by the Governor, after consultation with the Premier.

Determination of questions as to membership.

64. Any question whether any person is a member of the Council of Ministers shall be determined by the Governor, acting in his discretion.

Temporary members of Council of Ministers.

65.—(1) Whenever an appointed member of the Council of Ministers is unable, because of illness or absence from Mauritius, to perform his functions as a member of the Council of Ministers the Governor, after consultation with the Premier, 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 an elected or nominated member of the Legislative Assembly in place of an appointed member of the Council of Ministers.

(2) A person appointed under this section to be temporarily a member of the Council of Ministers shall cease to hold office as such when he is notified by the Governor that the person in whose place he was appointed is again able to perform the functions of his office, or when the office of the person in whose place he was appointed becomes vacant.

(3) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person appointed to be temporarily a member of the Council of Ministers as they apply to a member of the Council of Ministers.

Official oaths.

66. Before entering upon the functions of his office as a member of the Council of Ministers, every member of the Council of Ministers and every person appointed to be temporarily a member of the Council of Ministers 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 form set out in schedule 1 to this Constitution.

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.

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.

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.

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.

73.—(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 the Commonwealth 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.

(a) 3 & 4 Will. 4. c. 41. (b) Revised Mauritius Ordinances, 1945. cap. 286.

(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(**a**), as amended by the Courts (Amendment) Ordinance 1954(**b**) or to any other provision made by any law for the time being in force in Mauritius for the termination of the appointment of such a person at the end of a particular period or when his services as a temporary judge of the Supreme Court are no longer required.

Salaries and conditions of service.

74.—(1) There shall be charged on the revenues of Mauritius 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 Mauritius.

(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 apply to 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.

CHAPTER VI

THE PUBLIC SERVICE

Appointments, etc, of officers in public service.

75.—(1) Power to make appointments to offices in the public service (including appointments on promotion and transfer) and to dismiss and to exercise disciplinary control over officers in that service shall vest in the Governor.

(2) (*a*) Subject to the provisions of paragraph (*b*) of this subsection, the 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 subsection (1) of this section.

(*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

(**a**) Revised Mauritius Ordinances, 1945, cap. 168. (**b**) Ordinance No. 12 of 1954.

(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 Mauritius immediately before the coming into operation of this Constitution 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.

(4) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

Public Service Commission.

76.—(1) There shall be for Mauritius a Public Service 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 78 of this Constitution.

(2) The Governor, acting in his discretion, shall appoint the members of the Public Service Commission, and may revoke the appointment of any member.

(3) No person shall be appointed as, or shall remain, a member of the Public Service Commission if he is, or becomes, a member of, or a candidate for election to, the Legislative Assembly or any Local Authority in Mauritius.

(4) The salaries and allowances of the members of the Public Service Commission shall be such as may from time to time be fixed by the Governor, and shall be charged on and paid out of the revenues of Mauritius.

Public Service Commission to advise Governor.

77.—(1) The Governor, acting in his discretion, may, either generally or specially and in whatever manner he thinks fit, refer to the Public Service Commission for its advice any question which relates to the appointment (including appointment on promotion) of any person to an office in the public service, or the dismissal or disciplinary control of officers in the public service, and any other question which, in his opinion, affects the public service:

Provided that the Governor shall not refer to the Commission any question which, in his opinion, affects solely the police force or any member of it or the holder of any office set out in schedule 3 to this Constitution.

(2) It shall be the duty of the Public Service Commission to advise the Governor on any question which 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.

78. Subject to the provisions of this Constitution, any law enacted under this Constitution may provide for all or any of the following matters relating to the Public Service Commission:—

(*a*) the appointment, tenure of office and terms of service of members of the Commission;

(*b*) the organisation 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; and

(*h*) the protection and privileges of members of the Commission in performing their functions, and the privilege of communications to and from the Commission or its members in case of legal proceedings.

Police Service Commission.

79.—(1) There shall be for Mauritius a Police Service Commission which shall consist of a chairman and not more than four other members.

(2) The Governor, acting in his discretion, shall appoint the members of the Police Service Commission, and may revoke the appointment of any member.

(3) No person shall be appointed as, or shall remain, a member of the Police Service Commission if he is, or becomes, a member of, or a candidate for election to, the Legislative Assembly or any Local Authority in Mauritius.

(4) The salaries and allowances of the members of the Police Service Commission shall be such as may from time to time be fixed by the Governor, and shall be charged on and paid out of the revenues of Mauritius.

Police Service Commission to advise Governor.

80.—(1) The Governor, acting in his discretion, may, either generally or specially and in whatever manner he thinks fit, refer to the Police Service Commission for its advice—

(*a*) any question which relates to the appointment (including appointment on promotion), dismissal or disciplinary control of members of the police force of and above the rank of Inspector, or to the appointment of members of the police force below that rank;

(*b*) any question which relates to the dismissal or disciplinary control of members of the police force below the rank of Inspector, and which by virtue of any law in force in Mauritius is subject to his approval; and

(*c*) any other question which, in his opinion, affects the police force.

(2) It shall be the duty of the Police Service Commission to advise the Governor on any question which he refers to it under this section, but the Governor shall not be obliged to act in accordance with its advice.

Regulations for Police Service Commission.

81. Subject to the provisions of this Constitution, the Governor, acting in his discretion, may make regulations for giving effect to the provisions of sections 79 and 80 of this Constitution, and in particular and without prejudice to the generality of the foregoing power may by such regulations provide for all or any of the following matters relating to the Police Service Commission :—

(*a*) the appointment, tenure of office and terms of service of members of the Commission ;

(*b*) the organisation 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 ;

(*h*) the protection and privileges of members of the Commission in performing their functions, and the privilege of communications to and from the Commission or its members in case of legal proceedings.

The Judicial and Legal Service Commission.

82.—(1) There shall be for Mauritius a Judicial and Legal Service Commission which shall consist of the Chief Justice, who shall be Chairman, and the following members—

(*a*) The Senior Puisne Judge ;

(*b*) The Chairman of the Public Service Commission ; and

(*c*) one other member (in this section referred to as " the appointed member ") appointed by the Governor acting in his discretion.

(2) The appointed member shall be a person who is or has been a Judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court.

(3) The appointed member shall hold office for two years from the date of his appointment.

(4) The appointed member may resign his office by writing under his hand addressed to the Governor.

(5) The Governor, acting in his discretion, may revoke the appointment of the appointed member.

(6) If the office of the appointed member is vacant or that member is for any reason unable to perform the functions of his office, the Governor, acting in his discretion, may appoint a person qualified for appointment as such a member to act as a member of the Commission,

and any person so appointed shall, subject to the provisions of subsections (3), (4) and (5) of this section, continue to act until the office of the appointed member is filled or until the appointment is revoked by the Governor, acting in his discretion.

(7) The appointed member shall, if he does not hold, or is not acting in any public office, receive such fees and allowances as may from time to time be determined by the Governor and such fees and allowances shall be charged and paid out of the revenues of Mauritius.

Judicial and Legal Service Commission to advise Governor.

83. The Governor, acting in his discretion, may, either generally or specially and in whatever manner he thinks fit, refer to the Judicial and Legal Service Commission for advice any question which relates to the appointment (including appointment on promotion) of any person to one of the offices specified in schedule 2 to this Constitution or the dismissal or disciplinary control of officers holding any such offices.

(2) It shall be the duty of the Judicial and Legal Service Commission to advise the Governor on any question which he refers to it under this section, but the Governor shall not be bound to act in accordance with its advice.

Proceedings of Judicial and Legal Service Commission.

84. At any meeting of the Judicial and Legal Service Commission a quorum shall be constituted if there are present the Chief Justice and two other members ; and if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.

Regulations for Judicial and Legal Service Commission.

85. Subject to the provisions of this Constitution, the Judicial and Legal Service Commission may with the approval of the Governor make regulations providing for—

(*a*) the discharge by the Commission (whether or not with the assistance of such bodies and persons as are hereafter mentioned) of additional functions and duties ;

(*b*) the Commission being assisted where necessary by Departmental or Promotion Boards and by such other persons and classes of persons as may be prescribed in the performance of all or any of their functions and duties ;

(*c*) the interviewing of candidates by the Commission or by such Boards or persons as are referred to in the preceding paragraph ;

(*d*) forms and fees in connection with applications to the Commission, reports or communications from the Commission or for any other matter required by or under the preceding three sections ;

(*e*) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences ; and

(*f*) the protection and privileges of members of the Commission in respect of the performance of their duties and the privilege of communications to and from the Commission and its members in case of legal proceedings.

Protection of commission, etc. from legal proceedings.

86. The question whether—

(*a*) the Judicial and Legal Service Commission has validly performed any function vested in it by or under this Constitution ;

(*b*) any member of the Commission or any other authority or public officer has validly performed any function in relation to the work of the Commission vested in such member or other authority or public officer under this Constitution,

shall not be enquired into in any court.

Attorney-General.

87. It shall be lawful for the Governor to appoint a member of the Council of Ministers, other than the Chief Secretary, to be the Attorney-General of Mauritius and in any such case the person so appointed shall not, for the purposes of this Constitution, be deemed to be a public officer.

Director of Public Prosecutions.

88.—(1) Upon the appointment of a person to be Attorney-General under the provisions of section 87 of this Constitution there shall be established the office of Director of Public Prosecutions and such office shall be a public office.

(2) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Judge of the Supreme Court.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings before any court;

(*b*) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(*c*) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under subsection (3) of this section may be exercised by him in person or through other persons acting under or in accordance with his general or special instructions.

(5) The powers conferred upon the Director of Public Prosecutions by paragraphs (*b*) and (*c*) of subsection (3) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(6) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court shall be deemed to be part of those proceedings.

CHAPTER VII

MISCELLANEOUS

Emoluments

89.—(1) The Governor and the other officers mentioned in schedule 3 to this Constitution shall receive emoluments at the annual rates respectively specified in that Schedule; and the sums necessary to

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.

Interpretation.

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.

(*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.

SCHEDULE 2

Section 83.

Solicitor-General
Director of Public Prosecutions
Assistant Attorney-General
Master and Registrar of the Supreme Court
Senior Crown Counsel
Magistrate (including the President or a Magistrate of the Intermediate Criminal Court and of the Industrial Court)
Crown Counsel
Crown Attorney
Assistant Crown Attorney

SCHEDULE 3

Sections 77 and 89.

	Annual rate of emoluments
Governor	Rupees 65,334 salary and Rupees 20,000 duty allowance.
Other Officer for the time being Administering the Government	Rupees 58,801 salary and Rupees 20,000 duty allowance.
Chief Secretary	Rupees 40,000 salary.
Speaker	Rupees 36,000

EXPLANATORY NOTE

(*This Note is not part of the Order, but is intended to indicate its general purport.*)

This Order provides a new Constitution for Mauritius in the terms agreed at the Mauritius Constitutional Review talks held in London in June and July, 1963.

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ANNEX 11

British Indian Ocean Territory Order 1965 (S.I. 1965 No.1920), 8 November 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(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation.

1. This Order may be cited as the British Indian Ocean Territory Order 1965.

Interpretation.

2.—(1) In this Order—

"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(b) and mentioned in schedule 3 to this Order.

(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 Indian Ocean Territory to be a separate colony.

3. As from the date of this Order—

(*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.

Establishment of office of Commissioner.

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.

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

(a) 58 & 59 Vict. c. 34. (b) Rev. XX, p. 688: 1948 I, p. 4730.
(c) 52 & 53 Vict. c. 63.

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 form 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 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 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.

(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 Instrument 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.

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 attaching 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.

Judicial proceedings.

17.—(1) Notwithstanding any other provision 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(a) 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(b) is amended by the insertion of the following definition immediately before the definition of "the Gazette":—

(a) S.I. 1955 II, p. 3217. (b) S.I. 1964 I, p. 1163.

" " Dependencies " means the islands of Rodriques and Agaléga, and the St. Brandon Group of islands often called Cargados Carajos ; ".

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960(a) as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963(b) is further amended by the deletion from the definition of " the Colony " of the words " as defined in the Seychelles Letters Patent 1948 ".

Power reserved to Her Majesty.

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).

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)

Diégo Garcia
Egmont or Six Islands
Péros Banhos
Salomon Islands
Trois Frères, including Danger Island and Eagle Island.

SCHEDULE 3

Section 2(1)

West Island
Middle Island
South Island
Cocoanut Island
Euphratis and other small Islets.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the constitution of the British Indian Ocean Territory consisting of certain islands hitherto included in the Dependencies of Mauritius and certain other islands hitherto forming part of the Colony of Seychelles.

(a) S.I. 1960 III, p. 4201. (b) S.I. 1963 II, p. 2775.

ANNEX 12

British Indian Ocean Territory (Amendment) Order 1968 (S.I. 1968 No. 111), 26 January 1968

STATUTORY INSTRUMENTS

1968 No. 111

BRITISH INDIAN OCEAN TERRITORY

OVERSEAS TERRITORIES

The British Indian Ocean Territory (Amendment) Order 1968

Made - - - - 26th January 1968

At the Court at Sandringham, the 26th day of January 1968

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and construction.

1.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1968 and shall be construed as one with the British Indian Ocean Territory Order 1965(b) (hereinafter called "the principal Order").

(2) The principal Order and this Order may be cited together as the British Indian Ocean Territory Orders 1965 and 1968.

Amendment of principal Order.

2. The principal Order shall have effect as if—

(*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 Island."; and

(*c*) in schedule 3 the words "Polymnie Island" were inserted immediately after the words "Cocoanut Island".

W. G. Agnew.

(a) 1895 c. 34. (b) S.I. 1965/1920 (1965 III, p. 5767).

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order corrects certain inaccuracies in the descriptions of the Chagos Archipelago and the Aldabra Group respectively in the British Indian Ocean Territory Order 1965.

ANNEX 13

House of Commons Debate, 10 November 1965, vol. 720 col.-2W

Defence Facilities

HC Deb 10 November 1965 vol 720 cc1-2W 1W
§ *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.

2W

§ *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 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 14

United Nations General Assembly, Twentieth Session, Official Records, Fourth Committee
1558th Meeting, UN Doc. A/C.4/SR.1558 (extract), 16 November 1965

United Nations
GENERAL ASSEMBLY
TWENTIETH SESSION
Official Records

FOURTH COMMITTEE, 1558th MEETING

Tuesday, 16 November 1965, at 3 p.m.

NEW YORK

CONTENTS

Page

Agenda item 23:
Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: 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: A/5800/Rev.1, chapters VII, IX, X and XIII-XXVI; A/6000/Rev.1, chapters IX-XXV (continued)
General debate and consideration of draft resolutions (continued) 231

Chairman: Mr. Majid RAHNEMA (Iran).

AGENDA ITEM 23

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: 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: A/5800/Rev.1, chapters VII, IX, X and XIII-XXVI; A/6000/Rev.1, chapters IX-XXV (continued) (A/5959 and Corr.1, A/6084, A/6094, A/C.4/L.802)

GENERAL DEBATE AND CONSIDERATION OF DRAFT RESOLUTIONS (continued) (A/C.4/L.802)

1. Mrs. MENESES DE ALBIZU CAMPOS (Cuba) recalled that the General Assembly had decided to establish the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples because one year after the adoption of the Declaration in question hardly any steps had been taken to implement its provisions; indeed, in some regions armed action and repressive measures had been used to prevent dependent peoples from exercising their right to complete independence. In General Assembly resolution 1654 (XVI), embodying that decision, the Assembly had noted that acts aimed at the disruption of national unity and territorial integrity were still being carried out in certain countries in the process of decolonization, and had expressed the conviction that any delay in the application of the Declaration could threaten international peace and security. It was disturbing to note that, five years after the adoption of the Declaration, the colonial Powers were still trying to obstruct the decolonizing efforts of the United Nations; they had not, however, been able to prevent the Special Committee from performing a useful service in the cause of the oppressed peoples.

2. A situation which was of concern to Cuba and to many other delegations was that in so-called British Guiana. Although as far back as 1953 British Guiana had declared itself in favour of independence under the party led by Mr. Cheddi Jagan, and despite the successive electoral victories of that party, the Territory remained under colonial rule, repressive measures were enforced, many leading patriots were in prison, the majority party favouring independence was prevented from governing and artificial racial strife had been created. Indeed, the imperialists had attempted to convert the struggle of the people against foreign domination into a civil war. In the place of Mr. Jagan's party, Washington and London had placed in power a docile Government of their creation.

3. A series of futile conferences had been held in London and an attempt was still being made to deceive world opinion by that artifice. The administering Power was continuing to ignore the resolutions of the United Nations as it had done in the case of Southern Rhodesia, where the colonialist settlers had turned against their own masters. The General Assembly had repeatedly pointed out to the administering Powers that the way to avoid a catastrophe was to fix an early date for independence. A solution would not be found through the creation of docile governments with the blessing of the imperialists. That was not merely a formal blessing: The Wall Street Journal had pointed out on 11 November 1965 that the United States was rushing $14 million in loans and grants to British Guiana during the present year, whereas aid to Mr. Jagan's Government in 1964 had amounted to only $200,000. The same newspaper reported that the production of United Kingdom sugar companies was 50 per cent higher during the present year than during the preceding year, that installations for bauxite mining were being expanded by the aluminum companies and that the production of diamonds in the Territory had doubled in relation to 1964.

4. In other Territories, too, colonialist resistance was continuing, owing to economic, political or strategic considerations. Plans for new military bases in the Territories were increasing the threat to the peace of the oppressed peoples. Military bases in all Territories which had not gained independence must be speedily and unconditionally eliminated; they must be removed before independence and not after. Her own country knew what it was to have a foreign military base on its soil, imposed at the time of the imperialist presence there. Such bases were a constant threat to neighbouring peoples, too, and to their independence. The New York Times of 11 November 1965 had reported that a new United Kingdom territory, to become a mili-

tary base, had been created out of part of Mauritius and Seychelles. The Times of London of 11 November 1965 had quoted the United Kingdom Secretary of State for the Colonies as saying that the islands would be available for the construction of defence facilities by the United Kingdom and United States Governments. The information that compensation would be paid for the islands did not reassure her delegation. General Assembly resolution 1514 (XV) required States to respect the integrity of the national territory of dependent peoples. Her delegation could not accept the argument that payment had been made for the islands concerned; no sovereign State would allow the alienation of any part of its territory.

5. In the light of the principle of the equality of nations large and small, enshrined in the Charter, there could be no justification for questioning the right of a Territory to independence on the basis of its small population or area. Nor could economic arguments be adduced to show the incapacity of a people for independence. Such pretexts were used for the purpose of maintaining bastions of colonialism, using the subterfuge of artificial federations, or association or integration with other States. Any constitutional advance which did not give the people full control of their destiny or which maintained imperial rule in the form of a so-called association was unacceptable.

6. Mr. DIABATE (Guinea) said that the historic Declaration on the Granting of Independence to Colonial Countries and Peoples reflected not only the passionate desire of dependent peoples for freedom but also the recognition that the denial of freedom represented a threat to international peace and security. While the attainment of full sovereignty by a number of countries since the date of the adoption of the Declaration was to be welcomed, his delegation condemned the attempts of certain colonialist countries to empty the Declaration of its essential content, which was the political, economic and cultural liberation of the Territories still under foreign rule.

7. The Declaration did not justify the handing over of power to unrepresentative groups or puppets. In British Guiana, for example, an explosive situation had been created. His delegation appealed once more to the United Kingdom not to exacerbate racial tensions there, but to free the political prisoners and negotiate with the true representatives of the people, namely, the Progressive People's Party.

8. The Declaration must also be implemented effectively in the Territories administered by the Spanish Government. His delegation had listened with interest to the statement of the President of the Governing Council of Equatorial Guinea at the Committee's 1550th meeting, but it was convinced that the higher interests of the people of Equatorial Guinea called for an end to foreign domination in all forms and manifestations. Without liberty there could be no real development.

9. His delegation would support draft resolution A/C.4/L.802, submitted by a number of Latin American countries with a view to starting a dialogue between the United Kingdom and Argentine Governments concerning the future of the Malvinas Islands.

10. Mr. PAYSSE REYES (Uruguay) said that for the moment he would confine himself to the question of the Malvinas. His delegation's position on Argentina's claim to sovereignty over the Malvinas had been clearly set out by his delegation in Sub-Committee III of the Special Committee (A/5800/Rev.1, chap. XXIII, appendix, paras. 35-57). In November 1964, the Special Committee had endorsed the conclusions of the Sub-Committee and he wished to stress in particular conclusions (b), (c), and (d) (A/5800/Rev.1, chap. XXIII, para. 59).

11. The draft resolution before the Committee (A/C.4/L.802) was based on that decision of the Special Committee. He noted that Argentina had indicated its readiness to settle the dispute direct with the United Kingdom and that the Minister for Foreign Affairs of Argentina had stated that there would be no difficulty in finding a formula which would guarantee the rights and aspirations of the people of the Malvinas Islands. It would thus be logical simply to invite the Governments of the United Kingdom and Argentina to continue negotiations directed towards finding a peaceful solution, taking into account the provisions of the United Nations Charter and of General Assembly resolution 1514 (XV) and the interests of the inhabitants. There seemed no need to discuss the question of rights of possession. The islands had belonged to Spain and had passed into the possession of the American States in 1810. The problem was to put an end to a de facto situation lacking all legal basis, and that was the course prescribed by the draft resolution.

12. Mr. CARDUCCI-ARTENISIO (Italy) said that his delegation, which had had the opportunity of following the constitutional developments in the Territories under consideration through its participation in the Special Committee, was satisfied in principle with the political and constitutional situation prevailing in most of the Territories and supported the steps taken by the administering Powers concerned towards the implementation of General Assembly resolution 1514 (XV). Most of the Territories enjoyed complete internal self-government and, through elections conducted on the basis of "one man; one vote", their inhabitants were able to express their views on their present constitutions and on their evolution towards self-determination and independence. In other Territories the siutation was not so promising, although there were special circumstances to explain the delays in the attainment of the goals set forth in the relevant General Assembly resolutions.

13. The question had been raised whether the small area and population of certain Territories required that special criteria should be applied to them. It was perhaps unfortunate that the Special Committee had not found it possible to work out some basic principles which could be applied to the implementation of resolution 1514 (XV) in respect of such Territories. It was surely inconceivable that islands with a population of less than a hundred could become independent States without giving rise to future problems. A first step might perhaps be made by adapting the amplifying, if necessary, the criteria indicated in General Assembly resolution 1541 (XV), which might be regarded as a kind of supplement to

to envisage it ever becoming an independent State. The population was small and not indigenous and did not demand independent political status. The guiding principles, such as self-determination, which were valid in the majority of Non-Self-Governing Territories were not valid in the present case. New criteria that would be applicable to such special cases should be found.

67. The problem was not one of decolonization alone, but one of sovereignty. The population appeared to be in favour of a link with the United Kingdom, but Argentina had put forward strong historical and geographical arguments on its side and had, moreover, never recognized United Kingdom sovereignty over the islands. The Committee was not competent to decide on a question of sovereignty, but resolution 1514 (XV) could only be implemented in the Territory once the dispute over sovereignty had been settled. He was happy to hear that the United Kingdom Government had accepted the invitation of the Argentine Government to begin negotiations. If those discussions took place, the two countries would have given the world an example of fruitful co-operation with a view to obtaining a peaceful settlement of their differences, while safeguarding their own interests.

68. Draft resolution A/C.4/L.802, which reflected the spirit of conciliation of the Latin American countries, was purely procedural and did not prejudice the outcome of the dispute. His delegation would vote in favour of it.

69. Mr. GBEHO (Ghana) said that he wished to record both his delegation's appreciation of the work and reports of the Special Committee and its regret that the information in those reports did not give a correct picture of the situation in the colonial Territories. That was not the fault of individual members of the Special Committee but was the result of the strict censorship of information imposed by the administering Powers.

70. His country proclaimed its views on decolonization so frequently because it could not be silent as long as one square foot of the earth remained under colonial domination. The principles of self-determination and social justice were indivisible and inviolable. The history of colonialism had been a sordid one. It had originally been inspired by a spirit of greed and adventure, which had been intensified in the days of the slave trade. The rise of the industrial revolution in Europe had created a need for more raw materials, which had led to greater emphasis on colonialism based on the subjugation of the peoples. The peak had been reached in 1885, at the Congress of Berlin, when European nations had divided Africa at the stroke of a pen without any consideration for geographical, ethnic or social factors. The mind of man did not rest, however, and finally in the present century the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples had been proclaimed.

71. The number of colonies still to be liberated was immense and many were under United Kingdom domination. From the reports of the Special Committee it was obvious that economic conditions and social, health and educational facilities in many of the Territories were far from adequate. In the case of Barbados, Mauritius and the Seychelles, for example, it was clear that the administering Power had not been administering the Territories in a progressive manner. The administering Powers should be made aware that colonialism imposed obligations. It appeared from the reports of the Special Committee that some of the administering Powers tried to give the impression that the people of the Territories wanted integration with them. If there was any geographical reason for that, he could understand, and in any case would respect, the wishes of the inhabitants of those Territories, but as a member of a newly liberated country he would advise those Territories to be cautious. Integration in practice might leave them dissatisfied.

72. It had been stated that the maintenance of military bases in colonial Territories was morally indefensible when it was not agreeable to the population. He would like to reiterate that that was so, especially when it was at the expense of the independence of the Territory.

73. He regretted the existence of racial disharmony in British Guiana and the administering Power's delay in granting the Territory independence. The people of the Territory had lived in racial harmony until they had asked for independence, and he hoped that the administering Power would see fit to grant it without delay, in an atmosphere of racial harmony and political progress.

74. At the Committee's 1550th meeting, the President of the Governing Council of Equatorial Guinea had explained the situation in Fernando Póo and Río Muni and had congratulated Spain on the good work it had done. If the people of the Territory had indeed found liberty and spiritual guidance under Spain, then he could only support them. The Committee had not been told, however, when Spain would grant independence to the Territory and he wondered whether Spain would give the Committee that information.

75. Mr. BROWN (United Kingdom) said that of the forty or so Territories with which the Committee was concerned under agenda item 23, about twenty were under United Kingdom administration.

76. As the reports of the Special Committee for 1964 and 1965 demonstrated, the past two years had been marked by steady advance in those Territories. A number had become fully independent and were now Members of the United Nations. There had been a series of constitutional conferences concerning certain of the Territories; the constitutional progress of other Territories had been the subject of less formal consultations between local leaders and the United Kingdom Government; and in some Territories purely local consultations had taken place with a view to reaching agreement on proposals for discussion with the United Kingdom Government. In a number of Territories there had been important consitutional changes, the details of which were included in the reports of the Special Committee. Major elections had taken place in several more.

77. Thus, in a substantial number of the Territories there had been continued progress towards self-government and self-determination—and in each case the direction and pace of that progress had been determined in close and continuous consultation with local opinion, as expressed through political parties and the other normal organs of opinion available in a free democratic society.

78. The Territories on which the Fourth Committee's interest had been concentrated fell into two groups. Firstly, there were the Territories which had given rise to comments on constitutional questions and where there had been recent important developments about which the Committee might wish to be further informed, namely Mauritius, Fiji and British Guiana. Secondly, there was a group of Territories—Gibraltar and the Falkland Islands—where the interest did not centre on the normal questions of constitutional advance with which the Fourth Committtee and the Special Committee were generally concerned, but where the point at issue was a claim to sovereignty over a British Territory by another country.

79. He would deal first with the constitutional aspects of Mauritius, Fiji and British Guiana. The report of the Special Committee on Mauritius (A/6000/Rev.1, chap. XIII) had been completed before the end of the Mauritius constitutional conference, held in London in September. All the parties represented in the Mauritius legislature had been represented. At the end of the conference, the Colonial Secretary had announced that the United Kingdom Government considered it right that Mauritius should move towards full independence. The procedures were to be as follows. As the conference had not been able to reach full agreement on a new electoral system, the Colonial Secretary was to appoint a commission to make recommendations on the new system and on electoral boundaries with a view to safeguarding the interests of all communities. Once the commission had reported, the Colonial Secretary would decide upon the new electoral system, a general election would be held and a new government would be formed. Independence would follow after a period of six months of full internal self-government if the new Legislative Assembly passed a resolution, by a simple majority, asking for independence. Those processes could be completed before the end of 1966. The new constitution, agreed upon at the conference, would include safeguards for minority interests, a chapter on human rights, the appointment of an ombudsman, and provisions to ensure that the main features of the constitution could not be amended unless at least three quarters of the members of the Legislative Assembly agreed.

80. Questions had been raised about the United Kingdom Government's plans for certain islands in the Indian Ocean. The facts were as follows. The islands in question were small in area, were widely scattered in the Indian Ocean and had a population of under 1,500 who, apart from a few officials and estate managers, consisted of labourers from Mauritius and Seychelles employed on copra estates, guano extraction and the turtle industry, together with their dependents. The islands had been uninhabited when the United Kingdom Government had first acquired them. They had been attached to the Mauritius and Seychelles Administrations purely as a matter of administrative convenience. After discussions with the Mauritius and Seychelles Governments—including their elected members—and with their agreement, new arrangements for the administration of the islands had been introduced on 8 November. The islands would no longer be administered by those Governments but by a Commissioner. Appropriate compensation would be paid not only to the Governments of Mauritius and Seychelles but also to any commercial or private interests affected. Great care would be taken to look after the welfare of the few local inhabitants, and suitable arrangements for them would be discussed with the Mauritius and Seychelles Governments. There was thus no question of splitting up natural territorial units. All that was involved was was an administrative re-adjustment freely worked out with the Governments and elected representatives of the people concerned.

81. Fiji was another Territory on whose future a major constitutional conference had been held since the completion of the report of the Special Committee. The conference, held in London in July and August, had been attended by all eighteen of the non-official members of the Fiji Legislative Council. The agreed object of the conference had been to work out a constitutional framework within which further progress could be made towards internal self-government and which would preserve a continuing link with the United Kingdom. The conference had agreed that there should be for the first time an elected majority in the Legislative Council. There would be no nominated non-official members and a maximum of four nominated officials. The conference had also agreed that all the minority groups which had hitherto not had the vote should be enabled to vote and stand for election: that concerned the Rotuman Islanders, certain other Pacific Islanders, and the Chinese community. Fiji would thus attain full universal adult suffrage, thereby meeting one of the main points made in the Special Committee during the discussion of Fiji in 1964. The Rotuman Islanders and the other Pacific Islanders would vote on the same rolls as the Fijians, and the others with the European group. Because of the enfranchisement of those groups and the consequent effects on the representation of the three main communities, it had been decided that the proportion of European members would be reduced from one of parity with the other two communities to ten. The Fijians would now have fourteen seats, a small increase—at the expense of the European group—taking account of the fact that the Rotuman and other Pacific Islanders were now to vote with them. The Indian representation remained proportionately unchanged, both overall and as a proportion of those elected on the communal rolls. It had also been decided that in future there would be nine members of the Legislative Council elected by a cross-voting system, under which each member would be elected by persons of all communities. Finally, there would be provision in the constitution for development from the present "membership" system, whereby members of the Executive Council spoke for various departments of government in the Executive Council and the legislature without being in administrative control of those

ANNEX 15

British Indian Ocean Territory Order 1976 (S.I. 1976/893), 9 June 1976

S. I. No. 7 of 1976.

1976 No. 893.

OVERSEAS TERRITORIES

The British Indian Ocean Territory Order 1976

Made *9th June* 1976

Coming into Operation 28*th June* 1976

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

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercice of the powers in that behalf by the Colonial Boundaries Act 1895(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation

1. This Order may be cited as the British Indian Ocean Territory Order 1976 and shall came into operation on the appointed day.

Interpretation

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

"the Territory" means the British Indian Ocean Territory specified in the Schedule hereto ;

"the appointed day" means the 28th day of June 1976 ;

"the Commissioner" means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner.

(2) The Interpretation Act 1889(b) shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

Revocations

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

(a) 1895 c. 34. (b) 1889 c. 63.
(c) S. I. 1965/1920 (1965 III, p. 4400).
(d) S. I. 1968/111 (1968 I, p. 304).

(2) The revocation of those Orders shall be without prejudice to the continued operation of any laws made and laws having effect thereunder and having effect as part of the law of the Territory immediately before the appointed day ; and any such laws shall have effect on and after the appointed day as if they had been made under this Order and (without prejudice to their amendment or repeal by any law made under this Order) shall be construed with such modifications, adaptions, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

Establishment of office of Commissioner

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

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

Powers and duties of Commissioner

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

Official Stamp

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

Constitution of offices

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

(*a*) make appointments, to be held during Her Majesty's pleasure, to any office so constituted ; and

(*b*) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments

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

(*a*) another person may be appointed substantively to that office ;

(*b*) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Power to make laws

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

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

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

Disallowance of laws

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

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

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

Commissioner's powers of pardon, etc.

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

(*a*) grant to any person concerned in or convicted of any offence against the

laws of the Territory a pardon, either free or subject to lawful conditions ; or

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence or

(*c*) substitute a less severe form of punishment for any punishment imposed by any such sentence ; or

(*d*) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Judicial proceedings

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

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

Disposal of land

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

Amendment of Seychelles (Constitution) Order 1975.

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

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

(*b*) the words

"*Aldabra Group, consisting of :*
West Island
Middle Island
South Island
Cocoanut Island
Polymnie Island
Euphratis and other small islets"

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

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

Power reserved to Her Majesty

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

N. E. Leigh

THE SCHEDULE

Section 2(1)

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

EXPLANATORY NOTE

(*This Note is not part of the Order*)

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

(a) 1975 III, p. 8585.

ANNEX 16

British Indian Ocean Territory (Amendment) Order 1981, 24 November 1981

THE BRITISH INDIAN OCEAN TERRITORY (AMENDMENT) ORDER 1981

At the Court at Buckingham Palace

THE 24th DAY OF NOVEMBER 1981

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of 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.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1981 and shall be construed as one with the British Indian Ocean Territory Order 1976(a) (hereinafter referred to as "the principal Order"), and this Order and the principal Order may be cited together as the British Indian Ocean Territory Orders 1976 and 1981.

(2) This Order shall come into operation on such date as the Commissioner by notice in the Official Gazette of the Territory shall appoint.

Appointment of Commissioner

2. Paragraph (1) of section 4 of the principal Order is revoked and replaced by the following—

"(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 shall hold office during Her Majesty's pleasure".

Powers of Supreme Court

3. The following new section is inserted immediately after section 11 of the principal Order:—

"Power of Supreme Court to exercise certain jurisdictions outside the Territory.

11A.—(1) The Supreme Court established under this Order (hereinafter referred to as 'the Supreme Court') may, in accordance with any directions issued from time to time by the Chief Justice of that Court (hereinafter

(a) S.I. 1976/893.

referred to as 'the Chief Justice'), sit in the United Kingdom for the purpose of hearing an appeal or application, if, but only if, the parties to the appeal or, as the case may be, the parties to be heard on the application have agreed to its being heard in the United Kingdom.

(2) Subject to any law made under section 9 of this Order, the Chief Justice may make rules of Court for the purpose of regulating the practice and procedure of the Supreme Court with respect to appeals or applications heard in the United Kingdom.

(3) The Supreme Court may exercise when outside the Territory any powers of revision of criminal proceedings in the Magistrates' Court of the Territory conferred on it by any law made under section 9 of this Order".

N. E. Leigh

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the British Indian Ocean Territory Order 1976 by making new provision for the appointment of the Commissioner for the British Indian Ocean Territory, and by permitting the Supreme Court of the Territory—

(*a*) with the consent of the parties to hear appeals or applications in the United Kingdom;

(*b*) to exercise its revisional jurisdiction over criminal proceedings in the Magistrates' Court when outside the Territory.

ANNEX 17

British Indian Ocean Territory (Amendment) Order 1984, 25 June 1984

THE BRITISH INDIAN OCEAN TERRITORY (AMENDMENT) ORDER 1984

At the Court at Buckingham Palace

THE 25th DAY OF JUNE 1984

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of 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.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1984 and shall be construed as one with the British Indian Ocean Territory Orders 1976(a) and 1981(b) (hereinafter referred to as "the principal Orders"), and this Order and the principal Orders may be cited together as the British Indian Ocean Territory Orders 1976 to 1984.

(2) This Order shall come into operation on such date as the Commissioner by notice in the Official Gazette of the Territory shall appoint.

Amendment of Section 11A of the principal Orders

2. Section 11A of the principal Orders shall be amended:—

(*a*) by deleting subsection (1) and substituting the following subsection—

"*Power of Supreme Court to exercise certain jurisdictions outside the Territory.*

(1) The Supreme Court of the Territory may, in accordance with any directions issued from time to time by the Chief Justice of that Court, sit in the United Kingdom for the purpose of hearing an appeal or application, if, but only if, the parties to the appeal or, as the case may be, the parties to be heard on the application have agreed to its being heard in the United Kingdom:

Provided that where an order has been made on an application heard in the United Kingdom under this subsection, the party who obtained the order shall not be entitled to withhold consent to the hearing in the United Kingdom of any application by any other person or party for the variation or recission of that order.";

(a) S.I. 1976/893. (b) 1981 III, p.6524.

sub-registry of the Supreme Court may be established in the United Kingdom for the filing, sealing and issue of such documents (whether or not relating to an appeal or application to be heard in the United Kingdom) as may be prescribed by rules of Court made by the Chief Justice.".

N. E. Leigh

EXPLANATORY NOTE

This Order amends the British Indian Ocean Territory Orders 1976 and 1981 by providing that a party who has obtained an order of the Supreme Court of the Territory in an application heard by consent in the United Kingdom may not refuse consent to an application to vary or rescind the order being heard in the United Kingdom. The Order also provides for the establishment of a sub-registry of the Court in the United Kingdom.

ANNEX 18

British Indian Ocean Territory (Amendment) Order 1994, 8 February 1994

THE BRITISH INDIAN OCEAN TERRITORY (AMENDMENT) ORDER 1994

At the Court at Buckingham Palace

THE 8th DAY OF FEBRUARY 1994

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

HER MAJESTY, by virtue and in exercise of 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.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1994 and shall be construed as one with the British Indian Ocean Territory Order 1976(**a**) (hereinafter referred to as "the principal Order").

(2) This Order, and the British Indian Ocean Territory Orders 1976 to 1984(**b**) may be cited together as the British Indian Ocean Territory Orders 1976 to 1994.

(3) This Order shall come into force on 9th February 1994.

Revocation and Replacement of section 11A of principal Order

2. Section 11A of the principal Order is revoked and replaced by the following:–

"***Supreme Court may sit in United Kingdom***

11A.—(1) The Supreme Court of the Territory 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.

(2) Subject to subsection (3) of this section, the Chief Justice may make a direction under subsection (1) of this section 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.

(3) A direction under subsection (1) of this section 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.

(a) S.I. 1976/893.
(b) S.I. 1976/893; 1981 III, p. 6524; 1984 II, p. 4336.

(4) Subject to any law made under section 9 of this Order, 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 jurisdiction and powers in the United Kingdom.

(5) A sub-registry of the Supreme Court may be established in the United Kingdom for the filing, sealing and issue of such documents relating to proceedings in the Court (whether or not they are proceedings in which the Court exercises its jurisdiction and powers in the United Kingdom) as may be prescribed by rules of court made by the Chief Justice.

(6) Anything done in the United Kingdom by virtue of this section shall have, and have only, the same validity and effect as if done in the Territory.".

Revocation of article 5 of the Admiralty Jurisdiction Order 1984

3. Article 5 of the Admiralty Jurisdiction (British Indian Ocean Territory) Order 1984(a) is revoked.

N.H. Nicholls

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the British Indian Ocean Territory Orders 1976 to 1984 so as to authorise the Chief Justice of the Territory, in certain circumstances, to direct that the Supreme Court of the Territory may sit in the United Kingdom and there exercise its powers and jurisdiction in any civil or criminal proceedings. It also revokes article 5 of the Admiralty Jurisdiction (British Indian Ocean Territory) Order 1984, as amended, which authorised the Chief Justice of the Territory, in certain circumstances, to direct that the Supreme Court of the Territory may exercise in the United Kingdom its jurisdiction and powers in Admiralty proceedings and which the present Order renders unnecessary.

(a) S.I. 1984/540 which was amended by the Admiralty Jurisdiction (British Indian Ocean Territory) (Amendment) (No. 2) Order 1992 made on 4th June 1992.

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ANNEX 19

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

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 20

I. Hendry, S. Dickson, *British Overseas Territory Law* (2011) pp.301-310

British Overseas Territories Law

Ian Hendry
and
Susan Dickson

•HART•
PUBLISHING
OXFORD AND PORTLAND, OREGON
2011

British Antarctic Territory Order 1989 enables courts established by Ordinance to sit within the Territory or in the United Kingdom or 'any other colony' with the concurrence of the Governor of such colony. By virtue of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989,[43] the Supreme Court and Magistrate's Court of the Falkland Islands respectively have jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising under the law of the British Antarctic Territory which are within the jurisdiction of the Supreme Court or the Magistrate's Court of the Territory. Local magistrates are appointed from among the British Antarctic Survey personnel serving at the scientific stations in the Territory.

There is a Court of Appeal for the Territory, established by Order in Council, which may sit outside the Territory.[44] Final appeal lies to the Judicial Committee of the Privy Council.[45]

Law

The statute law in force in the British Antarctic Territory mainly comprises Ordinances enacted by the Commissioner and instruments made under them. These local laws are supplemented by certain Acts of the United Kingdom Parliament and Orders in Council that have been extended to the Territory. The incorporation of English statutes, common law and rules of equity is provided for in detail in sections 5 and 6 of the Administration of Justice Ordinance 1990.[46]

Economy

The main source of income is the sale of postage stamps and local tax paid by over-wintering scientists. Tourism is a growing industry, mostly ship-based. The currency is the pound sterling.

BRITISH INDIAN OCEAN TERRITORY

The British Indian Ocean Territory is a group of islands lying about 1,770 kilometres east of Mahe in Seychelles. It comprises the following islands, known collectively as the Chagos Archipelago: Diego Garcia; Egmont or Six Islands; Peros Banhos; Salomon Islands; Three Brothers Islands; Nelson or Legour Island; Eagle Islands; and Danger Islands.[47] While the Territory covers about 54,400 square kilometres of sea, the total land area is 60 square kilometres, the largest island, Diego

[43] SI 1989/2399, as amended by SI 2009/1737.
[44] British Antarctic Territory Court of Appeal Order 1965 (SI 1965/590, as amended by SI 1989/2399).
[45] British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965 (SI 1965/592, as amended by SI 2009/224).
[46] Laws of the British Antarctic Territory, Ordinance No 5 of 1990.
[47] British Indian Ocean Territory (Constitution) Order 2004 (see n 58 below) s 2(2) and sch.

Garcia, being 44 square kilometres. The Territory was constituted and is set aside for the defence purposes of the United Kingdom and the United States of America,[48] and has no permanent population. The temporary inhabitants are the armed forces at the United States defence facility on Diego Garcia, civilian employees of contractors to the United States military, and a small Royal Navy contingent. All of these reside on Diego Garcia, the other islands (sometimes called 'the outer islands') being uninhabited. Mauritius has asserted a sovereignty claim to the Territory since 1980. While the United Kingdom rejects this claim, successive British Governments have given undertakings to the Government of Mauritius that the Territory will be ceded to Mauritius when it is no longer required for defence purposes.[49]

History

The islands of the Chagos Archipelago were charted by Vasco da Gama in the early sixteenth century, and Portuguese seafarers named the archipelago and some of the atolls. The islands were administered by France from Mauritius during the late eighteenth century. France ceded the islands to the United Kingdom, along with Mauritius and Seychelles, by the Treaty of Paris, 1814.[50] They were administered as a dependency of the colony of Mauritius until 1965 when, with the agreement of the Mauritius Council of Ministers, they were detached to form the major part of a new colony called the British Indian Ocean Territory. The United Kingdom Government paid the Government of Mauritius £3 million in consideration of the detachment of the islands. Three other island groups,[51] previously part of the colony of Seychelles, made up the Territory as originally constituted,[52] but these were returned to Seychelles when that country became independent in 1976.[53]

The new colony was established for the defence purposes of the United Kingdom and the United States, as provided for in an Exchange of Notes between their two Governments of 30 December 1966.[54] This agreement is expressed to last for 50 years, followed by a further period of 20 years unless, not more than two years before the end of the 50 year period, notice of termination has been given by either Government, in which case it shall terminate two years after the date of such notice.[55] Further Exchanges of Notes were concluded between the United Kingdom and United States Governments on 24 October 1972 and 25 February 1976 relating to the United States naval facility on Diego Garcia.[56]

[48] British Indian Ocean Territory (Constitution) Order 2004 s 9(1).
[49] UK White Paper 'Partnership for Progress and Prosperity, Britain and the Overseas Territories' (Cm 4264) p 51.
[50] State Papers vol 1 pt 1 p 151.
[51] The Farquar Islands, the Aldabra Group and the Island of Desroches.
[52] British Indian Ocean Territory Order 1965 (SI 1965/1920), amended by SI 1968/111. These Orders recited powers granted by the Colonial Boundaries Act 1895 (1895 c 34) as well as prerogative powers.
[53] British Indian Ocean Territory Order 1976 (SI 1976/893) s 14. This Order also recited the Colonial Boundaries Act 1895 and prerogative powers.
[54] UKTS No 15 (1967); Cmnd 3231.
[55] See paragraph (11).
[56] UKTS No 126 (1972); Cmnd 5160 and UKTS No 19 (1976); Cmnd 6413. The 1976 agreement replaced the 1972 agreement.

The Chagos islands had been exploited for copra from the late eighteenth century. After emancipation in the nineteenth century the former slaves on the islands became contract employees working the copra plantations, and some chose to remain on the islands, having children who also stayed there. Following the 1966 Exchange of Notes, in 1967 the Crown purchased the freehold title to all land in the islands that was not already Crown land. The copra plantations were run down as they had become commercially unviable. The plantation workers were progressively relocated, mostly to Mauritius and Seychelles, and the last of them left the Territory in 1973. The United Kingdom Government paid the Government of Mauritius £650,000 in 1973, and a further £4 million in 1982 into a Trust Fund, to assist in the resettlement of the workers in Mauritius. Attempts by the former inhabitants, originally called 'Ilois' but now more commonly called 'Chagossians', to win the right to return to the islands or to obtain further compensation in the English courts have been ultimately unsuccessful.[57]

Status

The British Indian Ocean Territory is a British overseas territory, the islands comprising which were acquired by cession. The government of the Territory is provided for by Royal prerogative powers.

Constitution

The current Constitution of the Territory is set out in the British Indian Ocean Territory (Constitution) Order 2004.[58] This establishes the office of Commissioner, who is appointed by the Queen. In practice the office of Commissioner is held by a senior official in the Foreign and Commonwealth Office. The Commissioner exercises executive powers, may constitute offices for the Territory and make appointments to such offices. In practice the Commissioner is assisted by an Administrator, resident in London, and by the Commissioner's Representative, who is the officer in charge of the Royal Navy contingent on Diego Garcia.

The Commissioner may make laws for the peace, order and good government of the Territory. Exceptionally, section 10(2) of the Order declares, without prejudice to the generality of the provision granting legislative power and 'for the avoidance of doubt', that

> the Commissioner may make any such provision as he considers expedient for or in connection with the administration of the Territory, and no such provision shall be deemed to be invalid

[57] See *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067; *Chagos Islanders v Attorney General* [2003] EWHC 2222 (QB); [2003] All ER (D) 166; *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] 1 AC 453 (HL). The history is recounted most comprehensively and authoritatively, on the basis of extensive documentary and oral evidence, in the judgment of Ouseley J in *Chagos Islanders v Attorney General* (above).

[58] This is a prerogative Order, and therefore not a statutory instrument. It was published in the (2004) 36(1) British Indian Ocean Territory Official Gazette. For convenience it is reproduced at pp 305 10 below.

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 2009/224).

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.

'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 ('the existing Orders') are revoked.

(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.

(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.

(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.

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 21

S.A. de Smith, *Mauritius: Constitutionalism in a Plural Society*, 31 Modern Law Review (November 1968)

THE
MODERN LAW REVIEW

Volume 31 November 1968 No. 6

MAURITIUS: CONSTITUTIONALISM IN A PLURAL SOCIETY

> "A daintie island of good refreshing . . . there is not under the sunne a more pleasant, healthy and fruitful piece of ground for an island uninhabited." (PETER MUNDY, navigator, c. 1638.)

MAURITIUS, *l'Ile de France*, was ceded to the Crown in 1814. It became an independent member of the Commonwealth on March 12, 1968, and was elected to membership of the United Nations by acclamation on April 24. Between 1957 and 1966 eleven Commonwealth countries in Africa, peopled by less sophisticated inhabitants, had preceded Mauritius along the same road. Why did Mauritius lag behind? Only by outlining some of the special problems affecting Mauritius can this question be answered. Such an outline, albeit inadequate to portray a complex scene, will also help to explain the peculiar features of the independence constitution.

I. BACKGROUND [1]

Mauritius is small, remote and overpopulated. Its economy is seriously vulnerable to fluctuations in world commodity prices. Intricate communal problems have stunted the growth of national consciousness and have too often dominated political controversy in modern times. In many developing countries some of these difficulties are present in a more acute form; but the Mauritian blend is unique.

Geography has been unkind to Mauritius. The island lies far out in the Indian Ocean, more than 500 miles to the east of Madagascar. Together with Rodrigues, a smaller island another 360 miles to the

[1] There is no standard work on Mauritius, and next to nothing has been published on the fascinating political contortions of the last few years; the writer is obliged to resist any temptation to fill this gap. General historical accounts can be found in P. J. Barnwell and A. Toussaint, *A Short History of Mauritius* (1949) and Auguste Toussaint, *History of the Indian Ocean* (1966). Detailed factual information is collected in the *Annual Reports* (H.M.S.O.); the latest is for 1966. Burton Benedict, *Mauritius: Problems of a Plural Society* (1965) is a good short survey of the main contemporary issues.

east,[2] it has an area of 760 square miles[3]; the islands are frequently smitten by cyclones.

Unfortunately, the population is now more than 800,000, an extraordinary figure for a tiny agricultural country, and despite a recent decline in the birth-rate it may well exceed two millions by the end of the century.[4] The soil is fertile, but no mineral resources have yet been discovered, and the economy is overwhelmingly dependent on sugar, which accounts for 97 per cent. of the country's exports. The sugar industry in Mauritius is highly efficient. But the present world market price of sugar does not even cover the cost of production. The standard of living, still significantly higher than in the large majority of African and Asian countries, has been maintained by virtue of the Commonwealth Sugar Agreement, under which two-thirds of the sugar crop is sold, largely to the United Kingdom, at a high price.[5] Unemployment and underemployment are rife; some progress has been made towards diversification of the economy by the development of light industry, tourism and tea production, but there are too few jobs to provide for the growing body of school-leavers.[6] Foreign investment and international aid are sorely needed; they are also sorely needed by a great number of competitors. Emigration is acting as a palliative to the problem of over-population; but the Mauritians who leave tend to be those with specialised skills whom the country can ill afford to lose. Shortly before independence Mauritius received from the United Kingdom a substantial grant of budgetary aid; this was the first occasion on which Mauritius had received direct aid for such a purpose.

Communal problems in Mauritius, though undoubtedly serious, are not necessarily desperate. Mauritius has no long history of bloody inter-communal disorders—the rioting between Muslims and Creoles early in 1968, resulting in twenty-seven deaths, was unprecedented—or residential segregation; nor is there an indigenous population outnumbered by immigrants of a different race or culture. The only important indigenous inhabitant was the dodo. The Dutch, fitful

[2] Rodrigues, little known to the outside world and difficult to reach (see Quentin Keynes, "Island of the Dodo" (1956) 100 *National Geographic Magazine* 77, 93, 99, 102–104), produces livestock and vegetables. Till independence it was administered as a dependency of Mauritius. For Rodriguan separatism, see pp. 612, 613, 622, *post*.

[3] Mauritius (with Rodrigues) also has two remote island dependencies, Agalega and Cargados Carajos. A former dependency, the Chagos Archipelago, was detached in 1965; see p. 609, *post*. See generally, Sir Robert Scott, *Limuria: the Lesser Dependencies of Mauritius* (1964); F. D. Ommaney, *The Shoals of Capricorn* (1952).

[4] *Cf.* Richard Titmuss and Brian Abel-Smith, *Social Policies and Population Growth in Mauritius* (1961), Chap. 3. The guess made in the text above is perhaps a conservative estimate.

[5] £47 10s. a ton in 1968, well over three times the world market price at the time of independence.

[6] For a comprehensive analysis of the basic problems, see J. E. Meade, *The Economic and Social Structure of Mauritius* (1961).

colonists, gave Mauritius its name; before they left in 1710 the dodo was dead. They were succeeded by the French, who established themselves in strength; they planted sugar, introduced French culture and African slaves, and begat many children of mixed blood. Although French rule was brought to an end during the Napoleonic Wars, the impact of France, and of the Franco-Mauritian settlers who still control the sugar industry, remains profound in Mauritius today. For example, among nearly all elements in the population French is spoken more fluently than English, and English is spoken with a French accent.[7] But British political institutions and ideas have prevailed—Franco-Mauritian political and social attitudes have tended to remain pre-revolutionary—and even French civil law has yielded some ground to English innovations.

In 1835 the slaves were emancipated. About this time, the first Indian indentured labourers were brought in to work on the sugar estates. Most of the labourers were prevailed upon or chose to make their homes in Mauritius, and by 1861 two-thirds of the population were of Indian origin.[8] Indian immigration had almost ceased by the end of the nineteenth century, and Indo-Mauritians can rightly claim to be as fully Mauritian as the "General Population"—the French and Creole[9] sections of the population.

At the 1962 Census, the population was broken down into four main groups. Approximately half the population described themselves as belonging to the Hindu section of the population, one-sixth as Muslims, 30 per cent. as members of the "General Population" and 3 per cent. as Chinese. The General Population is overwhelmingly Roman Catholic and varies in colour from white to black with numerous intermediate gradations of brown. Many Chinese are also Roman Catholics. The principal communal divisions in Mauritius are religious or cultural; they are not primarily ethnic, and today they have little to do with colour.

II. Constitutional and Political Development Till 1967

Till 1948 public affairs in Mauritius were dominated by British officials and Franco-Mauritian settlers. A few coloured men—Ollier, Newton, the Laurents, Rivet, and later Anquetil and Rozemont—

[7] The official language of the Legislative Assembly is still English (Independence Constitution, s. 49), though members may address the chair in French. For political reasons the Opposition has urged the adoption of French as a second official language; the Government has resisted this demand on the ground that it would lead to further demands for the instatement of Hindi, Urdu and other languages, with a consequential growth of linguistic communalism.

The nearest approach to a *lingua franca* in Mauritius is Creole, basically a French *patois*; the language has hardly any literature.

[8] See generally Burton Benedict, *Indians in a Plural Society* (1961).

[9] Originally the word "Creole" meant a French settler. Nowadays it usually denotes a non-white Mauritian who is not exclusively of Indian or Chinese origin, though sometimes persons of mixed race are called "coloured" and black Mauritians "Creoles." The term "Creole" also refers to a language (note 7, *supra*).

were to make their mark in politics,[10] but the shaping of local policy was essentially oligarchical. During the stormy Governorship of Sir John Pope-Hennessy, a dynamic Irish Catholic home ruler whose unorthodox concept of "Mauritius for the Mauritians" embraced a solicitude for the rights of Creoles and even Indo-Mauritians,[11] the Constitution of 1885 was adopted.[12] There was created a new Council of Government, consisting of the Governor, eight *ex-officio* members, nine nominated members (of whom at least three were to be non-officials), and ten other members elected on a narrow franchise. The Governor retained wide executive powers exercisable in his personal discretion. Nevertheless, the constitution was a liberal one for a Crown colony.

For more than sixty years Mauritius was governed under the 1885 Constitution; the only significant amendment was made in 1933, when the proportion of nominated non-officials was increased from one-third to two-thirds. But immediately after the Second World War came a major reform. Under the Constitution of 1947 the unofficial majority in the Legislature became an elected majority; and the franchise was broadened so that the electorate increased sixfold.[13] The consequences were dramatic. For the first time the Indo-Mauritians emerged as a real political force; eleven out of the nineteen elected seats were won by Hindus, seven by Creoles and one by a Franco-Mauritian. The results produced alarm and despondency not only among Franco-Mauritians but also among many Creoles who, having been effectively excluded for so long from the political influence to which their numbers had entitled them, now found themselves outnumbered by Hindu voters. The radical Mauritius Labour Party had been founded by Creoles; now it had become a predominantly Hindu party, and there began that alienation of Creoles from Hindus which has been the most regrettable feature of modern Mauritian politics.

But it was still a far cry from representative government to responsible government. Of the elected members of the Legislative Council, none was directly appointed to the Executive Council, though four of them were indirectly elected to membership of the Executive Council by proportional representation. Of the eleven nominated non-official members of the Legislative Council—there were also three *ex-officio* members as well as the Governor—seven were white and none was a Hindu.[14] At this time the Labour Party held a clear majority of the nineteen elective seats and had been

[10] See Jay Narain Roy, *Mauritius in Transition* (1960), Chap. 8.

[11] James Pope-Hennessy, *Verandah* (1964), pp. 231–302.

[12] D. Napal, *Les Constitutions de l'Ile Maurice* (1962), p. 93. It is understood that a more detailed factual account of some of the constitutional developments set out in this section will appear in Chapter 3 of the *Annual Report for 1967*.

[13] See S.R. & O. and S.I. Revised 1948, xiii, pp. 271, 277. For the *travaux préparatoires*, see Cmd. 7228 (1947).

[14] Roy, *op.cit.*, pp. 365–366.

allocated none of the nominated seats.[15] Possibly the Governor was alive to the "Hindu menace." However, "Liaison Officers," without executive responsibilities, were appointed in 1951, and there were elected members among them.

Clearly such a situation could not endure. There followed the first round of those excruciatingly protracted but highly sophisticated controversies over constitutional reform in which Mauritius has excelled. (The local predilection for devious manoeuvre, political defamation and general disputation has earned the stern censure of some[16] and provided innocent entertainment for others.) In December 1958 the Legislative Council, by a small majority, passed a resolution calling for a greater measure of self-government. The Secretary of State for the Colonies temporised, asking the Governor to hold local consultations. An array of multifarious schemes soon proliferated. The Labour Party called for universal suffrage, a reduction in the number of nominated members and the introduction of a ministerial system. Others put forward proposals including communal representation with separate electoral rolls, multi-member constituencies with a limited vote, and an increase in the number of nominated members. Eventually the Secretary of State accepted the principles of universal suffrage and an unofficial majority in the Executive Council with a ministerial system, but proposed that the elected members of the Legislative Council and the non-official members of the Executive Council should all be elected by the single transferable vote system of proportional representation.[17]

The Mauritius Labour Party would have nothing to do with the proportional representation scheme, and a further series of meetings was convened in London. The outcome was the London Agreement of 1957.[18] Under this Agreement, a ministerial system of government was introduced. An independent Boundary Commission would be appointed to see whether Mauritius could be divided into forty single-member constituencies, which would give "each main section of the population . . . adequate opportunity to secure representation corresponding to its own number in the community as a whole." Failing this, elections would be held according to the party list system of proportional representation. In addition, the Governor

[15] H. V. Wiseman, *The Cabinet and the Commonwealth* (1958), pp. 63–64, 131–132.

[16] *Cf.* Sir Robert Scott, a former Governor: " . . . the most daunting obstacle in the way of healthy political development in Mauritius is the manner in which the political and social structure is pervaded through and through by fear and suspicions, jealousies and dislikes. Combined with this is that flavour of final purposeless, inner irresponsibility which Lord Keynes attributed to a distinguished statesman now dead" (Despatch No. 11 of January 7, 1955, para. 11 (Mauritius Legislative Council, Sess.Pap. No. 3 of 1956)). This judgment may have been too severe.

[17] Despatches of February 10, 1956, and March 10, 1956 (published in Sess.Pap. No. 3 of 1956).

[18] H.C.Deb., Vol. 566, cols. *115–117* (Written Answers); Mauritius Legislative Council, Sess.Pap. No. 1 of 1958, Appendix C.

would be enabled to nominate, in his personal discretion after consultation with members of the Legislative Council, up to twelve other members. Nomination was not to be used to frustrate the results of the elections—the 1948 precedent was not to be followed—but would be used "to ensure representation of special interests or those who had no chance of obtaining representation through election." The proposal for the election of members of the Executive Council by proportional representation was dropped; instead, the Governor was to invite nine members of all elements in the Legislative Council, to be represented as nearly as possible in relation to party strengths.

The Trustram Eve Boundary Commission succeeded in devising forty single-member constituencies [19] by what may be described as "honest gerrymandering" [20]; its proposals were accepted [21] and implemented. At the General Election of 1959, held under a new constitution [22] and on the basis of universal suffrage, the Labour Party won a large majority of seats, campaigning in harness with its new ally, the overtly communal Muslim Committee of Action; the Independent Forward Bloc, then a Hindu party of the *sans-culottes*, made headway; the Parti Mauricien, a conservative party representing Franco-Mauritians and middle-class Creoles, fared poorly. Under-represented minorities were allocated nominated seats. The new Government, formed in accordance with the principles laid down in the London Agreement, was a coalition, and not a majority party Government.[23]

A somewhat uneasy equilibrium was thus established, and the way ahead was obscure. The United Kingdom Government was anxious not to exacerbate communal tensions or to imperil a vulnerable economy by forcing the pace towards full internal self-government. At a Constitutional Review Conference held in 1961 the only significant change proposed was the creation of the office of Chief Minister; further changes, still falling short of internal self-government, would be deferred till after the next General Election; after that, Mauritius might move forward to full internal self-government, "if all goes well and it seems generally desirable." A visit by the Constitutional Commissioner might be arranged in due course.[24]

At the General Election of 1963 the Mauritius Labour Party lost

[19] Sess.Pap. No. 1 of 1958.
[20] *Cf.* W. J. M. Mackenzie, *Free Elections* (1958), pp. 110–112; T. E. Smith, *Elections in Developing Countries* (1960), pp. 13–14, 143.
[21] Sess.Pap. No. 5 of 1958.
[22] S.I. 1958, p. 2914. The constitutions of Mauritius up to independence were made by prerogative instruments. See further, on the 1958 Constitution, S.I. 1959, pp. 3501, 3505, 3506, 3510.
[23] Two Independents were appointed. The Independent Forward Bloc refused the Governor's invitation to join the Government.
[24] Sess.Pap. No. 5 of 1961; reproduced in the Report of the Mauritius Constitutional Conference 1965 (Cmnd. 2797 (1965), at pp. 12–15). See also S.I. 1961, pp. 4631, 4632; S.I. 1962, p. 4083.

its absolute majority, winning nineteen out of the forty elected seats; the Parti Mauricien, having attracted a larger body of Creole support in the urban belt, improved to eight seats; the Independent Forward Bloc won seven, the Muslim Committee of Action four, and Independents two. The nomination of the twelve additional members proved burdensome both to the Governor and to some of the party leaders; the outcome left the balance of political forces much as it had been, but gave the General Population a slightly stronger representation than before. A complicating factor in the process of nomination had been the assurance previously given to the leaders of the Muslim Committee of Action that prior consideration would be given to Muslim "best losers"—candidates who had been narrowly defeated at the General Election. Apart from the embarrassing problems created between and within the parties over the selection of candidates for nomination, there were differences in interpretation over the meaning of a Muslim "best loser."[25] But the idea that best losers had special claims to membership—an idea that would be unacceptable in most countries—was to take root in Mauritius.

I visited Mauritius in July and August 1964. By this time the modest "second stage" of the 1961 conference decisions had been introduced[26] and an all-party coalition had been formed; there were no fewer than fourteen non-official Ministers, and the Chief Minister, Dr. (now Sir Seewoosagur) Ramgoolam had been elevated to the rank of Premier, but the Governor still presided in the Executive Council.

My main purpose was to explore the foundations of a constitutional scheme appropriate for full internal self-government, and in particular to reconsider the system of electoral representation and to examine new safeguards for minorities. It was clear that the existing rules and practices relating to the nomination of members would have to be discontinued. There was no consensus on what should replace it. My own suggestions stimulated discussion but offered no final answer. I reviewed a number of other possible constitutional safeguards for group and individual interests—a constitutional Bill of Rights had already been introduced—and came down in favour of an Ombudsman with wide terms of reference.[27]

The decisive Constitutional Conference on Mauritius took place in London in September 1965. Although the island had yet to achieve full internal self-government, the central issues facing the conference were the determination of ultimate status and the constitutional framework to be adopted for self-government and the next

[25] See Sess.Pap. No. 2 of 1965, paras. 14, 15.

[26] Mauritius (Constitution) Order 1964 (S.I. 1964, p. 1163). For the new Royal Instructions see S.I. 1964, p. 1206.

[27] Report of the Constitutional Commissioner, November 1964 (Sess.Pap. No. 2 of 1965).

and final step forward. The Mauritius Labour Party and the Independent Forward Bloc advocated independence. The Muslim Committee of Action was not opposed in principle to independence but strongly urged the introduction of better constitutional safeguards for Muslim interests. The Parti Mauricien Social Démocrate—the party had acquired a less conservative image as a result of the efforts of Gaëtan Duval, a young coloured lawyer who was the most stirring public speaker in Mauritius—opposed independence and supported the principle of free association with the United Kingdom [28]; it demanded a referendum on the question of independence or association. In the event, Mr. Anthony Greenwood, the Secretary of State, announced on the last day of the conference his view that it was right that Mauritius should be independent. If a referendum on independence were to be held, this would prolong uncertainty and "harden and deepen communal divisions and rivalries." Instead, a General Election would be held under a new electoral system which would be introduced after an independent Electoral Commission had reported. If the newly elected Legislative Assembly then so resolved, Her Majesty's Government would, in consultation with the Government of Mauritius, fix a date for independence after six months of internal self-government.[29] By the time the Secretary of State's announcement was made, the members of the Parti Mauricien delegation had walked out of the conference. After the announcement they were joined by the two Independents.

At the conference a constitutional framework for self-government and independence had been devised.[30] One important element was missing—the system for elections and legislative representation. In view of the disagreements about ultimate status and the manner of self-determination, it was felt to be particularly important to reach agreement between the parties on this crucial matter, especially as the Parti Mauricien was known to be heavily supported by the General Population and was thought to be making headway among other communities. But although many ingenious compromise solutions were canvassed, none was generally acceptable. The Secretary of State therefore decided that, instead of imposing a solution, he should appoint a Commission to make recommendations on an electoral system, constituency boundaries and the best method of allocating seats in the Legislature. There were to be no more nominated members, and provision should be made for the representation of Rodrigues. For the rest, the electoral system was to be based primarily on multi-member constituencies—the small size of the existing constituencies had led to parochial pressures being exerted on members—and there were to be no communal electoral

[28] The party was (and is) markedly Francophile and has tendencies towards Anglophobia. Its enemies claimed that its true preference was for union with France. The neighbouring island of Réunion is an overseas department of France.

[29] Cmnd. 2797 (1967) p. 7.

[30] *Ibid.* at pp. 22–30. See further, pp. 614–621, *post*.

rolls; 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,"[31] but no encouragement should be given to the multiplication of small parties.

Shortly after the conference the Chagos Archipelago was detached from Mauritius, and together with some islands in the Seychelles group was constituted as a new colony, the British Indian Ocean Territory.[32] It was contemplated that this territory might be used for strategic purposes. The Government of Mauritius received £3 million by way of compensation. The Ministers belonging to the Parti Mauricien then went into opposition, ostensibly on the ground that the compensation was inadequate.

The Banwell Commission, which reported early in 1966,[33] showed that the resources of human ingenuity had not yet been exhausted. The basic structure of the Commission's proposals was simple enough: twenty constituencies in Mauritius formed by amalgamating the existing constituencies in pairs, each returning three members, with block voting under the first-past-the-post system; and two members with full voting rights for Rodrigues. There were to be no communally reserved seats. In order to safeguard under-represented minorities, two "correctives" were proposed. In the first place, if a party obtained more than 25 per cent. of the votes cast but less than 25 per cent. of the seats, additional seats should be allocated to that party's "best losers" to bring its representation just above the 25 per cent. level; this device was conceived mainly for the purpose of giving the Opposition a "blocking quarter" in the process of constitutional amendment under a new constitution. In the second place, there would in any case be five extra seats to be allocated to "best losers" from under-represented parties and communities by means of a complex formula introducing an element of proportional representation; no party would be entitled to such a seat unless it had obtained at least 10 per cent. of the total vote and at least one directly elected member and unless it had a defeated candidate belonging to the community entitled to the seat to be allocated.

The United Kingdom Government, having accepted these proposals, executed an abrupt side-step when the parties represented in the Government of Mauritius flatly rejected the principles underlying the correctives. The Banwell recommendations would have left the Muslim Committee of Action with a choice between the fate of the dodo and the embraces of the Mauritius Labour Party. To its

[31] Cmnd. 2797 (1967), p. 5 (italics provided). These words were carefully chosen, and were intended to indicate that the Commission was not obliged to attempt to ensure that all sections of the population should be afforded representation in proportion to their numbers. To this extent the London Agreement of 1957 was superseded.

[32] S.I. 1965 No. 1920. See also S.I. 1965, p. 6440; H.C.Deb. Vol. 720, col. 2 (Written Answers) (November 10, 1965).

[33] Colonial No. 362 (1966).

leaders neither alternative seemed attractive. The Labour Party was also in a difficult position. As the major partner in the Government coalition, it felt itself to be losing popular support as a result of the deteriorating financial and employment situation. Partly because of the conflicts between India and Pakistan, many Muslims had gravitated to the Parti Mauricien. The Labour Party needed all the Muslim support it could retain. At the same time, it was threatened by the emergence of a new political body, the narrowly sectarian Hindu Congress, which was a by-product of the anti-Hindu campaign waged by some elements in the Opposition. And it had a deep suspicion of the divisive potential inherent in any scheme of proportional representation. In short, it could see itself falling at the last hurdle before independence.

Mr. John Stonehouse, the Parliamentary Under-Secretary for the Colonies, was dispatched to Mauritius, and within a few days brought off the remarkable feat of securing the agreement of all parties on a modified version of the Banwell scheme. Briefly, the Banwell "correctives" were dropped; instead, there were to be eight seats allocated to best losers from under-represented *communities*, but the allocation was to be made in such a way as to retain the numerical balance between the party or party alliance having the largest number of victories in the sixty-two constituency seats on the one hand, and the minority party or party alliance on the other; the requirement that a party had to obtain 10 per cent. of the total vote and one directly elected member to qualify for a best loser seat was also eliminated.[34] Thus was Mauritius to move forward into the society of nations.

All that remained was to draw up new electoral registers, dissolve the Legislative Assembly and conduct the fateful General Election. The pace of events, however, was far from lively.[35] Ultimately the elections were held on August 7, 1967.[36] About 90 per cent. of the registered electors voted. The Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc, which had formed an *ad hoc* Independence Party, obtained 54·5 per cent. of the votes and won thirty-nine seats, nearly all in mainly rural constituencies. The Parti Mauricien Social Démocrate, under Duval's skilful leadership, obtained 43·5 per cent. of the votes and won twenty-three seats, all in urban constituencies or Rodrigues where

[34] See H.C.Deb. Vol. 731, cols. *92–94* (Written Answers) (July 7, 1966); and Schedule 1 to the Constitution of 1966 (S.I. 1966, p. 5190), now reproduced in Schedule 1 to the Independence Constitution (S.I. 1968, p. 1871).

[35] This was attributable partly to the cumbersome procedure for registration and partly to a disinclination on the part of the Mauritian Ministers to rush to the hustings amid gathering storms. Under the then existing constitution the Governor could have dissolved the Legislative Assembly without ministerial advice, but to do so would have been highly injudicious.

[36] Both the process of registration and the elections were scrutinised by a team of Commonwealth observers. They made criticisms on points of detail but agreed that the procedures were free and fair (Commonwealth Nos. 2 and 3 (1967)).

Hindus are in a minority. The Hindu Congress proved to be a damp squib; the intervention of its candidates had no effect on the result in any constituency. Other parties and independent candidates received negligible support.

Of the Independence Party's successful candidates, thirty-one were Hindus, five were Muslims and three were members of the General Population. Of the P.M.S.D.'s successful candidates, three were Hindus, five were Muslims, thirteen were members of the General Population and two were Sino-Mauritians; it is generally thought that the party received at least 70 per cent. of the Muslim vote, at least 80 per cent. of the General Population vote and the bulk of the Chinese vote, but little support among Hindus other than Tamils.

The eight best loser seats were then allocated, four to each party; six went to candidates belonging to the under-represented General Population, one to a Muslim and one to a Hindu. The Muslim was Mr. A. R. Mohamed, the leader of the Muslim Committee of Action. For many years Mr. Mohamed, perhaps the most colourful figure in Mauritian politics, had been the arch-priest of best-loserdom. The self-government constitution was brought into force,[37] and the new Legislative Assembly passed a resolution requesting the United Kingdom Government to implement the decisions taken in London in 1965. On October 24, 1967, it was announced that Mauritius would become independent on March 12, 1968.

III. Mauritius at the United Nations

A brief note on the treatment of the problems of Mauritius by the political organs of the United Nations may be interpolated at this point.

Mauritius was first discussed at the United Nations in 1964, and then only in a perfunctory way. The creation of the British Indian Ocean Territory in 1965 was naturally condemned[38]: it involved the dismemberment of existing colonial territories and the establishment of a new colony with a view to its use for "foreign bases." Indeed, the Committee of Twenty-Four has refused to recognise the existence of the new colony as a legitimate entity.

1967 was a bad year for Britain at the United Nations. Britain was denounced for refusing to use force to quell the Rhodesian rebellion; the grant of associated statehood to five small islands in the Caribbean was not accepted as a bona fide act of decolonisation; and the General Assembly ended by demanding in effect that

[37] For the text, see Mauritius Constitution Order 1966 (S.I. 1966, p. 5190); for the Royal Instructions, see S.I. 1967, p. 2135. Three minor amendments were made to the Constitution Order in 1967 (see S.I. 1967, pp. 2133, 3807, 5455; the third designated the Premier as Prime Minister). See also the Mauritius (Former Legislative Council) Validation Order 1966 (S.I. 1966, p. 5254); for the background to this Order, see *Annual Report for 1966*, pp. 5–6.

[38] General Assembly Resolution 2066 (xx) (1965).

Gibraltar be handed over to Spain against the will of the overwhelming majority of the colony's inhabitants. Against this background one would hardly have expected the Committee of Twenty-Four or the Fourth Committee of the General Assembly to congratulate Britain on the progress that was being made towards the decolonisation of Mauritius, particularly in view of the fact that from September 1965 till August 1967 progress was not immediately perceptible. Even so, some of the proceedings before those bodies may cause the most hardened cynic to blench. Statements of fact were treated as falsehoods and fantasies were accepted as facts.[39] But once independence had been achieved (presumably to the surprise of the majority of the Committee of Twenty-Four), all was forgotten, if not forgiven.

IV. INDEPENDENCE

The road from internal self-government to independence was short but stony. In the first place, separatist agitation developed in Rodrigues, which has an almost exclusively Creole population and had voted overwhelmingly for the P.M.S.D. and against Mauritian independence at the 1967 elections. Separatist movements in former

[39] (i) On June 15, 1967, a Mr. Sibsurrun, who claimed to have 50,000 supporters in Mauritius, launched into a vitriolic attack on the Government of Mauritius when giving evidence by special invitation as a petitioner before the Committee of Twenty-Four. He was treated with deference by the Chairman and some of the other delegates. (See A/AC. 109/S.R. 535.) At the General Election held a few weeks later, Mr. Sibsurrun obtained 63 votes in his constituency, receiving the support of 0·6 per cent. of the voters.

(ii) On June 16, 1967, the Indian representative on the Committee observed that the "United Kingdom Government's policy with regard to Mauritius was to delay independence as much as possible . . . the United Kingdom Government had found one pretext after another to postpone the inevitable, giving the impression that it had found parting with that rich colony extremely difficult." (See A/6700/Add. 8, at pp. 38-39.) For many years the Indian Government had had a resident Commissioner in Mauritius.

(iii) The Tanzanian representative remarked in April 1967: "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 to vote . . ." (A/6700/Add. 8, Annex, p. 24). The representative may conceivably have had his mind on Fiji, not Mauritius. If he was indeed addressing his mind to the right country his incomprehension was total.

(iv) On November 24, 1967, the representative of the Democratic Republic of the Congo noted with regret (in the course of a debate on a report on the activities of foreign monopolies which were allegedly impeding the granting of independence in colonial territories) that the situation in Southern Africa was being repeated in Mauritius (see A/C.4/S.R. 1724 at p. 9). In fact there are no foreign (or British) monopolies operating in Mauritius; and the date for the independence of Mauritius had been announced four weeks earlier. This anthology could easily be enlarged.

One should add that the Committee of Twenty-Four had at its disposal a substantial body of factual information, prepared by the Secretariat, about Mauritius; and that the British representative made supplementary factual statements and replied to the questions and assertions of other representatives.

island dependencies of larger islands or island groups which have just achieved full self-government are becoming a common phenomenon—the Anguillan rebellion against the authority of St. Kitts and the desire of Barbuda to sever its links with Antigua are two manifestations of this trend—and they are apt to present very great difficulties. The antipathy in Rodrigues towards Mauritius was accentuated by ethnic differences. However, the United Kingdom Government refused to accede to the Rodriguan request for secession.[40]

Secondly, the rioting between Muslims and Creoles in Port Louis, the capital of Mauritius, late in January 1968 quickly led to the proclamation of a state of emergency [41] and the calling in of British troops from Singapore. The most serious disorders were soon quelled, but not before many casualties and heavy damage to property had occurred. The connection between the rioting and political rivalry was tenuous; the immediate causes appear to have been the growth of prostitution and protection rackets operated by communal gangs; but once violence had begun it spread beyond the organised hooligans and assumed an uglier dimension. Hindus were unaffected. For the P.M.S.D. the outcome was an evaporation of the party's support among the Muslim section of the population.

The United Kingdom Parliament passed the Mauritius Independence Act 1968; and the Mauritius Independence Order 1968,[42] embodying the Constitution, was made. Meanwhile a compensation scheme for expatriate public officers who chose to retire had been adopted.[43]

Princess Alexandra was to represent Her Majesty at the independence celebrations. On the advice of the United Kingdom Government—advice which was resented and criticised in Mauritius—she did not attend them. Despite the continuance of the state of emergency, the celebrations passed off with dignity and without untoward incidents; the only casualty directly attributable to the celebrations was a member of the Mauritius Police Force, injured during the course of an over-ambitious motor-cycle display. The official Opposition had instructed its supporters to boycott the celebrations; two members of the P.M.S.D. nevertheless attended the State Opening of Parliament, and one of them, loudly applauded from the Government benches, seconded the Prime Minister's address in reply to the Speech from the Throne.[44] In Rodrigues prudence prevailed,

[40] *The Times*, January 13, 1968. Union with Réunion seems to have been the preferred option of the Rodriguans. About this time Rodrigues was struck by two cyclones, and shortly afterwards there was rioting on the island over the distribution of food supplies.

[41] The Governor was still responsible for internal security, but he acted in consultation and with the concurrence of the Prime Minister.

[42] S.I. 1968, p. 1871.

[43] S.I. 1967, p. 3782. See further Cmnd. 3606 (1968) (Public Officers Agreement).

[44] Another unexpected incident was a small but vigorous Maoist demonstration at Plaisance Airport to greet the official guests from Peking.

and the official flag-raising ceremony took place unceremoniously under the cover of darkness.

V. THE CONSTITUTION

At first glance the Independence Constitution may seem to be a not very remarkable product of the Westminster export model factory. Closer scrutiny reveals a number of unusual features calling for explanation.

The Legislature

Mauritius has a unicameral legislature of seventy members. The peculiarities of the best loser system under which eight of the seats are allocated after the filling of the sixty-two constituency seats have already been outlined.[45] The most regrettable aspect of the electoral system is that candidates must declare, at the time of their nomination, to what community they belong; but this was the price paid in order to obtain agreement between the parties in 1966.

Constituency delimitations are to be conducted at intervals of not more than ten years by an Electoral Boundaries Commission, composed of a chairman and two to four other members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; the members will hold office for five years, subject to removal in the same manner as superior judges.[46] Supervision of the registration of voters and the conduct of elections is entrusted to an Electoral Supervisory Commission, the Chairman of which is to be appointed by the Judicial and Legal Service Commission, a conspicuously non-political body; the other members of the Supervisory Commission are appointed in the same manner as those of the Boundaries Commission; all enjoy the same judicial-type tenure. Bills and other legal instruments relating to registration and elections must be submitted in draft to the Supervisory Commission for comment; any report made by the Commission must be laid before the Assembly. An Electoral Commissioner, a barrister appointed by the Judicial and Legal Service Commission and enjoying judicial security of tenure, works under the exclusive authority of the Supervisory Commission.[47]

Executive and Legislature

Provision is made for the normal Cabinet system of parliamentary government. But there can be as many as fifteen Ministers and five

[45] At p. 610 *ante*. See Constitution, s. 31 (2) and Sched. 1. Resident Commonwealth citizens, as well as citizens of Mauritius, may vote and be elected to the Legislative Assembly (Constitution, ss. 33, 42). The Speaker of the Assembly is removable only on the resolution of two-thirds of the membership of the Assembly (s. 32 (3) (*d*)).

[46] ss. 38 (1), 39, 92 (2)–(5).

[47] ss. 38 (2), 40, 41, 92 (2)–(5).

parliamentary secretaries.[48] Undoubtedly Mauritius could be governed by fewer office-holders; the liberal upper limit is a manifestation of the politics of accommodation,[49] of which Sir Seewoosagur Ramgoolam is an accomplished exponent. In this plural society, governed by a potentially fissiparous coalition, it has been thought necessary to accommodate as many political and communal interests as possible within the framework of the Constitution. There are other plural societies (*e.g.*, the Lebanon) in which more elaborate and devious expedients are employed for a similar purpose.[50]

A Parliament lasts for five years unless sooner dissolved. Normally the Governor-General may dissolve Parliament only on the Prime Minister's advice. However, he may dissolve without advice if (i) the office of Prime Minister is vacant and he considers that there is no prospect of being able to find a successor with majority support in the Assembly; or (ii) the Assembly has passed a vote of no confidence in the Government and the Prime Minister has neither resigned within three days nor advised a dissolution within seven days or such longer period as the Governor-General considers reasonable.[51] If the latter situation arises and the Governor-General decides not to dissolve, he must instead remove the Prime Minister. If after a General Election the Governor-General is of the opinion that the Prime Minister has lost his majority, he *may* remove the Prime Minister, but not until ten days have elapsed, unless he is satisfied that the Opposition has won a majority of seats[52]; the requirement of ten days' grace is presumably designed to cover the type of situation that arose in Sierra Leone early in 1967, precipitating a *coup d'état*. The office of Prime Minister does not automatically become vacant on a dissolution of Parliament.

The Governor-Generalship

This recital shows that the Governor-General is invested with several personal discretionary powers which may have to be exercised in times of political crisis. In addition, he has a limited discretion in choosing a Prime Minister and has a free discretion to appoint an acting Prime Minister when the Prime Minister is incapable of tendering advice on this matter, and his concurrence is needed before any appointment to his own personal staff is made.[53]

[48] ss. 59–62, 66. Ministers other than the Attorney-General must be chosen from among members of the Assembly. Special provision is made (ss. 59 (3), 60 (3), 69) for an Attorney-General who is not a member of the Assembly; the first two Attorneys-General have, however, been existing members of the Assembly.

[49] *Cf.* Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968).

[50] Leonard Binder (ed.), *Politics in Lebanon* (1966). And *cf.* the Dodo in *Alice in Wonderland* (Chap. 3): " . . . *all* must have prizes."

[51] Constitution, s. 57.

[52] s. 60.

[53] ss. 59 (3), 63, 89 (8).

This list of personal discretions differs in content from that found in other Westminster model constitutions, but it is not extraordinary in its general range; indeed, the Governor-General of Mauritius lacks the general discretionary power found in some of the recent Commonwealth constitutions to refuse a Prime Minister's request for dissolution whenever he thinks that a dissolution would be contrary to the national interest and that an alternative government can be found without a dissolution.

What is extraordinary and unique in Mauritius is the range of other personal discretions vested in the Governor-General. This feature of the Constitution is traceable to the decision taken in 1965 to remove from the hands of the political branch of the Executive the power to exercise certain highly sensitive functions which might give rise to serious political contention.

Thus, the Governor-General personally appoints and removes not only the Leader of the Opposition (s. 78) and the members of the Commission on the Prerogative of Mercy (s. 75); what is far more important is that personal responsibility for the appointment of the Chief Justice, the Ombudsman, and members of the Public Service and Police Service Commissions, is vested in the Governor-General.[54] In 1965 it was thought inexpedient to follow the normal course of leaving responsibility for these appointments in the hands of the Prime Minister, having regard to the political and communal tensions obtaining in Mauritius.

The importance of the Service Commissions in the governmental and social structure of Mauritius can hardly be overestimated. For many years Creoles had been strongly entrenched in the civil service, the police and the judiciary; their morale and even loyalty might be undermined if they felt that they were being made the victims of communal or political discrimination or personal nepotism, and allegations of impropriety (usually ill-founded) against persons wielding political authority have abounded in Mauritius. Well-paid jobs outside the public service are very scarce; jockeying for position is commonplace. Once the Service Commissions had been given executive and not merely advisory powers, and internal self-government had been introduced, new assurances were vitally necessary. It is significant that the Constitution lays down that the Public Service and Police Service Commissions shall be composed of a Chairman (who at the present time is British) and four other members; it was expected of the Governor-General that he should play his part in the politics of accommodation by appointing one member from each of the four main sections of the population.

[54] ss. 77 (1), 86 (1), 90 (1). The Chief Justice is to be appointed after consultation with the Prime Minister, the members of the Public Service and Police Service Commissions after consultation with the Prime Minister and the Leader of the Opposition, and the Ombudsman after consultation with the Prime Minister, the Leader of the Opposition and the Leaders of other parties represented in the Assembly. The Governor-General may also prescribe which offices are to be created on the Ombudsman's staff (s. 96 (4)).

Personal responsibility for initiating the procedure for removal of the Chief Justice, the members of Commissions and the Ombudsman, also lies with the Governor-General. The officers concerned are removable only for inability or misbehaviour on the report of a judicial tribunal of inquiry appointed by the Governor-General in his discretion. The initiative in setting in motion the machinery for removing the Commissioner of Police, the Director of Public Prosecutions, the Director of Audit and the Electoral Commissioner, who also have judicial security of tenure, rests with the appropriate Service Commission, but the members of the judicial tribunal of inquiry are still appointed by the Governor-General in his discretion.[55] For superior judges, apart from the Chief Justice himself, the responsibility for setting the machinery in motion rests with the Chief Justice; before removal can be ordered a reference must be made to the Judicial Committee of the Privy Council.[56]

If, of course, the Governor-General were to be an obedient instrument of an authoritarian Prime Minister, these safeguards would be valueless. It was therefore agreed at the 1965 Conference that established conventions relating to the appointment and removal of a Governor-General of an independent Commonwealth country would be varied in the case of Mauritius. First, in recommending the appointment, "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 personal or communal considerations." Secondly, the first Governor-General would be a non-Mauritian and his name would be agreed between the British Government and the Mauritian Prime Minister before it was submitted to Her Majesty; in fact the first Governor-General of Mauritius was Sir John Rennie, the last Governor of Mauritius, and he was succeeded six months later by Sir Leonard Williams, formerly General Secretary of the Labour Party. Thirdly, once appointed the Governor-General would not be removed "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."[57]

Internal Security

Mauritius has a regular police force and a small but efficient special mobile force; they were not able to cope with the communal rioting early in 1968 without the assistance of British contingents.

The police force is under the command of a Commissioner of Police; at present he is an expatriate. He is appointed by the Police Service Commission after consultation with the Chief Minister,

[55] ss. 78 (4)–(6), 92.
[56] s. 78 (3).
[57] Cmnd. 2797 (1965), p. 8. These provisions do not appear in the Constitution; it was considered inappropriate to limit Her Majesty's prerogative powers in these matters by means of the formal terms of a constitutional instrument.

and has judicial security of tenure; as has been noted, only the Commission can initiate the procedure for his removal. In the operational control of the police the Commissioner is subject to *general* directions of policy with respect to the maintenance of public safety and order given by the responsible Minister[58]; the Minister exercising these functions is in fact the Prime Minister.

In accordance with an inter-governmental Agreement,[59] provision has been made for assistance and advice on the staffing, administration and training of the police forces to be supplied by volunteer members of the British armed forces stationed in Mauritius. If a threat to the internal security of Mauritius arises, the British and Mauritian Governments will consult together.[60]

Courts and Judiciary

Reference has already been made to the Judicial and Legal Service Commission, which appoints and removes judicial officers.[61] There is a Supreme Court, consisting of the Chief Justice (appointed by the Governor-General in his discretion after consultation with the Prime Minister), the Senior Puisne Judge (appointed on the advice of the Chief Justice) and other puisne judges appointed on the advice of the Judicial and Legal Service Commission (ss. 77, 78, 80). The jurisdiction of the Supreme Court is set out in the Constitution; it has original jurisdiction in cases where contravention of the guarantees of fundamental rights is alleged and in other constitutional questions, and questions of constitutional interpretation arising before other courts are referable to the Supreme Court.[62] Provision is made for the circumstances in which appeals will lie to the Privy Council.[63]

Fundamental Rights

The constitutional Bill of Rights (Chapter II) has seventeen sections; its terms are similar to those adopted in other Commonwealth constitutions, but there are some special features.

(i) The declaratory section (s. 3) lists "freedom to establish schools" among the fundamental freedoms; and there is a separate section (s. 14) guaranteeing the right to send children to non-government schools and the right (subject to qualifications) of religious denominations and religious, social, ethnic and cultural organisations to establish and

[58] Constitution, ss. 72, 90, 91, 93.
[59] Cmnd. 3635 (1968).
[60] Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968), art. 4).
[61] See also ss. 85, 86; Sched. 2; and p. 614, *ante*. The Commission is composed of the Chief Justice as chairman, the Senior Puisne Judge, another judicial member appointed on the advice of the Chief Justice, and the Chairman of the Public Service Commission.
[62] ss. 17, 83, 84.
[63] s. 81; see also S.I. 1968 No. 294.

maintain schools at their own expense. In fact Government aid is provided to denominational schools.

(ii) The guarantee of freedom from discrimination expressly mentions differential treatment attributable to caste (s. 16 (3)).

(iii) Derogation from basic freedoms (*e.g.*, privacy, conscience, expression, assembly, association, movement) is permissible for prescribed purposes unless the restriction in question is shown "not to be reasonably justifiable in a democratic society." The onus of proving unreasonableness is thus cast upon the person complaining of unconstitutional restraint; the formulation of the permissible grounds for derogation departs from the convoluted wording of recent constitutions and reverts to the original Nigerian model.

(iv) Three of the provisions under which liberty of the person may be restricted are of interest: arrest under an order of the Commissioner of Police upon reasonable suspicion of engaging in activities likely to cause a serious threat to public safety or order (s. 5 (1) (*k*)); an order restricting a person's movement or residence or his right to leave Mauritius (s. 15 (3) (*a*), (*b*)); and a preventive detention order made during a state of emergency (s. 18). In each of these situations the person affected is entitled to have his case reviewed before an independent tribunal, with a legal chairman, appointed by the Judicial and Legal Service Commission; procedural safeguards are provided; in the first two of these situations the decision or recommendation of the tribunal is binding but in the last the recommendation is advisory only.

(v) A proclamation of a state of emergency (under which a number of the guarantees may be partly suspended) lapses unless it is approved within a short period by a two-thirds' majority of the full membership of the Assembly (ss. 18 (1) (2)).

The Ombudsman

The constitutional provisions for the office of Ombudsman [64] are based on the writer's own recommendations of 1964,[65] with modifications made in the light of subsequent discussions and the rules adopted for the Ombudsman in Guyana [66] and the Parliamentary Commissioner for Administration in Britain.[67]

The main differences between the Mauritian Ombudsman and the British Parliamentary Commissioner are the following:

[64] Constitution, ss. 92, 96–100.
[65] Mauritius Legislative Assembly, Sess.Pap. No. 2 of 1965, paras. 37–48.
[66] S.I. 1966 No. 575, Sched. 2, arts. 52–56 and 3rd Sched.
[67] Parliamentary Commissioner Act 1967.

(i) The Mauritian Ombudsman is appointed not on the advice of the Prime Minister but by the Governor-General in his personal discretion.

(ii) He is removable not by parliamentary action but in pursuance of an adverse report by a judicial tribunal of inquiry.

(iii) He has power to entertain complaints of injustice sustained by maladministration perpetrated by central government departments and officials when they are put to him directly by members of the public, and can conduct investigations purely on his own initiative.

(iv) He can investigate complaints against the police and persons or boards inviting tenders for government contracts.

(v) He is entitled to report adversely if he concludes that the action in respect of which the complaint was made was, *inter alia*, "based wholly or partly on a mistake of law or fact" or "otherwise unjust or manifestly unreasonable" (s. 100 (1)), and the types of recommendations that he is empowered to make (see s. 100 (2)) include reform of the law.

(vi) He is not precluded from investigating a complaint merely because the subject-matter falls within the constitutional guarantees of fundamental rights (s. 97 (6)).

(vii) He must not, however, conduct an investigation if he is given notice by the Prime Minister that the action complained of was taken by a Minister or Parliamentary Secretary in the exercise of his deliberate judgment (s. 97 (7)) or that the investigation of the matter would not be in the interests of the security of Mauritius (s. 97 (9)); nor can the Ombudsman call for any document or information if the Attorney-General notifies him that its disclosure, or the disclosure of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or public security (s. 99 (5)).

Although the exclusions from the Ombudsman's area of competence are generally narrower than in Britain, the first of the three mentioned above is obviously open to criticism; it indicates that there were problems in securing agreement on the establishment of the office.

An Ombudsman for Mauritius will not be a panacea for all ills; he can nevertheless be expected to fulfil functions more important than in Britain, for in Mauritius allegations of official malpractices are far from being uncommon. Because of inter-communal suspicions, it was generally felt desirable that the first Ombudsman ought to be appointed from outside Mauritius. It is a sad comment on the problems of small and far-away countries that seven months after independence the institution still existed only on paper.

Constitutional Amendment

The Constitution of Mauritius is rigid. Bills for ordinary constitutional amendments require the support of two-thirds, and for the amendment of specially entrenched sections (comprising nearly a half of the Constitution) the support of three-quarters, of the total membership of the Assembly at the final vote.[68] At the present time this means that it will be impossible to alter any specially entrenched section, and difficult to alter other sections of the Constitution, in the absence of the acquiescence of the official Opposition.

Miscellaneous

The Constitution also includes provisions relating to citizenship (Chap. III)[69] and the independent offices of Director of Public Prosecutions (s. 72) and Director of Audit (s. 110). Salaries of the holders of major non-political offices are charged on the Consolidated Fund and are not reducible during the tenure of the occupant (s. 109).

Although the general regulation of the public service is placed within the exclusive jurisdiction of the Public Service Commission, the principal representatives of Mauritius abroad are appointed on the Prime Minister's advice; he must consult the Commission before any such appointment is made from within the public service (s. 87). Appointments of departmental heads within Mauritius and to the office of Secretary to the Cabinet are made by the Public Service Commission, but only with the Prime Minister's concurrence (s. 89 (4)).

Regulations or orders having the effect of depriving persons of personal liberty or restricting freedom of movement or creating new criminal offences or imposing new penalties must be laid before the Assembly subject to the negative resolution procedure; the requirement of laying may, however, be dispensed with by Parliament during a state of public emergency (s. 122).

VI. Retrospect and Prospect

The constitutional structure of Mauritius is directly attributable to communal and political divisions in the period immediately preceding independence. The structure is relatively rigid; if the picture in the kaleidoscope changes shape, it is to be hoped that the structure will not prove so rigid as to be unalterable by the prescribed procedures.

For all its peculiarities, Mauritius is a genuine liberal democracy. Some see it as an exemplar of government by discussion; some would wish for more government and less discussion. But the burdens of historical tradition, underlying communal tensions, claustrophobic remoteness and humid climatic conditions all tend to slow down the

[68] Constitution, s. 47.
[69] See also Mauritius Independence Act 1968, ss. 2, 3.

tempo of decision-making, urgent though the immediate problems may be. A higher value is placed on the achievement of a consensus than on dynamic leadership. The various constitutional provisions requiring the Prime Minister to consult the Leader of the Opposition are not mere formalities; indeed, Sir Seewoosagur Ramgoolam, fully aware of the damage that can be wrought by political acrimony aggravated by communal hostility, has maintained close personal relations with Mr. Duval, and the practice of consultation has extended far beyond the minimum constitutional standards. Perhaps a more satisfactory political system would be one bringing the present Opposition back into an all-party coalition government—Mauritius can ill afford a division between "ins" and frustrated "outs"—but such a team would be an unruly one, and at the moment personal resentment of the Opposition's recent tactics is too strong within the Government's ranks for such a prospect to be realised.

Meanwhile the Opposition's strength has been debilitated by defections. Because its support has rested primarily on a communal basis, it will have difficulty in achieving power by constitutional means in the foreseeable future. The main threat to the Government's position may come from the growing ranks of the underemployed, unemployed and unemployable; opposition attracting the support of those forces could, in time, be formidable.

The position of Rodrigues may also give rise to serious problems. Whether the establishment of an elected council on the island will mollify local feelings is doubtful. The alienation of Rodrigues, too long neglected by Britain and Mauritius, is a fact of life. Mauritius proclaims itself to be "the key to the Indian Ocean"; it maintains close political, economic and strategic links with Britain [70]; but if Rodrigues were to purport to cut itself adrift, the key could well change hands, for there is no reason to suppose that Mauritius unaided would be capable of exercising effective coercion.

On the Mauritian style of politics, an unending source of fascination, perhaps it is wisest to leave the last word to the voice of authority. "Why," said the Dodo, "the best way to explain it is to do it." [71]

S. A. DE SMITH *

[70] Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968)). The United Kingdom is empowered to station forces on the island, to operate a telecommunications system and to exercise landing rights at Plaisance Airport, but it cannot intervene in the internal affairs of Mauritius without the request and consent of the Government of Mauritius and is under no obligation to act on such a request.

[71] Lewis Carroll, *Alice in Wonderland*, Chap. 3 (on the Caucus race).

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ANNEX 22

Mauritius Constitutional Conference 1965, Presented to Parliament by the Secretary of State for the Colonies by Command of her Majesty October 1965, Cmnd. Paper 2797

MAURITIUS CONSTITUTIONAL CONFERENCE 1965

Presented to Parliament by the Secretary of State for the Colonies
by Command of Her Majesty
October 1965

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CONTENTS

	Page
REPORT BY THE CHAIRMAN	3
List of those taking part in the Conference	10
Annex A. The Final Communique issued after the Mauritius Constitutional Review Talks, 1961	12
Annex B. Despatch of 8th June, 1965, from the Secretary of State for the Colonies to the Governor of Mauritius	16
Annex C. Opening Statements by Mr. Greenwood, Sir Seewoosagur Ramgoolam, Mr. Koenig, Mr. Mohamed and Mr. Bissoondoyal...	18
Annex D. The Constitutional Framework	22
Annex E. Citizenship	31

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MAURITIUS CONSTITUTIONAL CONFERENCE, 1965

REPORT BY THE CHAIRMAN

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.

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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 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 per cent. of the votes cast.

The Parti Mauricien Social Démocrate (Leader The Hon. J. Koenig, Q.C.) which won 8 seats and polled 18·9 per cent. of the votes.

The Independent Forward Bloc (Leader The Hon. S. Bissoondoyal) which won 7 seats and polled 19·2 per cent. of the votes.

The Muslim Committee of Action (Leader The Hon. A. R. Mohamed) which won 4 seats and polled 7·1 per cent. 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 these 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 discuss 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

(ii) the boundaries of electoral constituencies.

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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, 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.

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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 these 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 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

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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 per cent. 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 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.

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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 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.

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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.

Signed: ANTHONY GREENWOOD,
Chairman.

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., O.B.E.

Mauritius Delegation

Sir Seewoosagur Ramgoolam.
Hon. J. Koenig, Q.C.
Hon. S. Bissoondoyal.
Hon. A. R. Mohamed.
Hon. J. M. Paturau, D.F.C.
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. M. Cure.
Hon. V. Govinden, M.B.E.
Hon. H. Ramnarain.
Hon. S. Virah Sawmy.
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. H. R. Abdool.
Hon. A. H. Osman.

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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

FINAL COMMUNIQUE ISSUED AFTER CONSTITUTIONAL REVIEW TALKS, 1961

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 (7th July, 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 26th June to 7th July 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 5th and 6th July.

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.

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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.

(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.

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(*i*) An Unofficial Deputy Minister for Home Affairs would be appointed.

(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 these 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 Mauritius 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

DESPATCH FROM THE SECRETARY OF STATE TO THE GOVERNOR OF MAURITIUS

COLONIAL OFFICE,
LONDON.

8th June, 1965

SIR,

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,

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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 de Smith's report will provide a useful basis for discussion.

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 par-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.

I have the honour to be,
Sir,
Your most obedient
humble servant,

ANTHONY GREENWOOD.

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ANNEX C

OPENING STATEMENTS BY MR. GREENWOOD, SIR SEEWOOSAGUR RAMGOOLAM, MR. KOENIG, MR. MOHAMED AND MR. BISSOONDOYAL

1. STATEMENT BY THE SECRETARY OF STATE

MR. GREENWOOD said—

"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

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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.

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."

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2. STATEMENT BY THE PREMIER OF MAURITIUS AND LEADER OF THE MAURITIUS LABOUR PARTY

SIR R. SEEWOOSAGUR RAMGOOLAM said—

"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.

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 orthodox 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."

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3. STATEMENT BY THE LEADER OF THE PARTI MAURICIEN SOCIAL DÉMOCRATE

MR. KOENIG said—

"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.

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."

4. STATEMENT BY THE LEADER OF THE MUSLIM COMMITTEE OF ACTION

MR. MOHAMED said—

"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."

5. STATEMENT BY THE LEADER OF THE INDEPENDENT FORWARD BLOC

MR. BISSOONDOYAL said—

"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.

(*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.

* 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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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.

The Queen's Representative

4. 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.

The Council of Ministers

7. 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).

The Legislature

13. 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 from among the members of

* See paragraph 8 of the Report.

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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.

The Judicature

20. 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 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

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have been judges have investigated any complaints 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.

The Director of Public Prosecutions

27. 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.

The Public Service

28. 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.

The Police

32. The Chief of Police will be appointed by the Police Service Commission 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 four* 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 initiated 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.

* The word " three " was inserted inadvertently in the advance copies of this Report.

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The Ombudsman

36. 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 Ombudsman 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 months' 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

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a special report to the Legislative Assembly. The principal functions of the Ombudsman will be included in the Constitution, the supplementary provision being made in an ordinary law of Mauritius.

Financial procedure

40. 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.

The Prerogative of Mercy

43. 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.

Alteration of the Constitution

44. 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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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 23

Mauritius Independence Act 1968 (1968 c. 8), 29 February 1968

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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.

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

(*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".

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 24

Colonial Office Telegram No. 198 to Mauritius, No. 219 to Seychelles, 19 July 1965

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SECRET

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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SECRET

(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

SECRET

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COMMISSION

SECRET

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.

/In

SECRET

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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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SECRET

OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

please emphasise strictly confidential nature of proposals and secret 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

SECRET

ANNEX 25

Mauritius Telegram No. 170 to the Colonial Office, 23 July 1965

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Extra
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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)

Mr Morland

IMMEDIATE
SECRET AND PERSONAL
PERSONAL NO. 170.

for entry if needed
other pt return
EP 26/7

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 26

Mauritius Telegram No. 175 to the Colonial Office, 30 July 1965

Reference: FO 371/184526

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INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

FROM MAURITIUS (Sir J. Rennie)

- 3 AUG 1965

Z4/123

(10)

Cypher

D. 30th July, 1965
R. 30th " " 17.00 hrs.

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.

SECRET

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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

ANNEX 27

Mauritius Telegram No. 188 to the Colonial Office, 13 August 1965

371/184526

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SECRET

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 / 23

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 28

United Kingdom record of Colonial Secretary meeting with Lord Taylor, Sir S Ramgoolam and Mr A.J. Fairclough, 10:00am, 3 September 1965

Note of a Meeting with the Secretary of State at 10 a.m. on 3rd September 1965

Present:

The Secretary of State for the Colonies
Lord Taylor
Sir Seewoosagur Ramgoolam
Mr. A. J. Fairclough

Sir Seewoosagur Ramgoolam paid a courtesy call on the Secretary of State in the course of which the following points of interest were mentioned:-

(i) Sir Seewoosagur Ramgoolam said that the Parties had found a lot of things on which they agreed - except on the independence issue. The Parti Mauricien were still against independence although they had dropped integration; they might mention it at the Conference but would not press it. The I.F.B. supported independence. As regards the M.C.A., Mr. Mohamed was vacillating as the Parti Mauricien had offered the "bribe" of a separate communal electoral roll.

(ii) The Secretary of State said that it seemed to him things were more fluid than when he visited Mauritius in April. Sir Seewoosagur agreed and said that he thought it should be possible to reach some agreement at the Conference.

(iii) On the question of how long the Conference might take, which Sir Seewoosagur raised, the Secretary of State said that he had no firm view - it depended upon how conciliatory the Labour Party and the Parti Mauricien were prepared to be. Sir Seewoosagur commented that on the last occasion the constitutional discussions had lasted 12 days and had been brought to a conclusion then by Mr. Macleod imposing a solution. [Sir Seewoosagur appeared to imply that a solution imposed by the Secretary of State might be necessary on this occasion also.]

(iv) The Secretary of State agreed that it was unfortunate that discussions on the UK/US defence proposals came at the same time as the Conference; he said that it would be necessary to discuss these separately and in parallel and not let them get mixed up with the Conference. Sir Seewoosagur Ramgoolam agreed.

(v) On the question of a separate Muslim electoral roll, Sir Seewoosagur Ramgoolam said that he felt this must be resisted. He added that it would benefit him politically to agree to it but it was against his Socialist principles and would fragment the country. It should be avoided.

(A. J. Fairclough)
6th September 1965

ANNEX 29

United Kingdom record of the meeting on "Mauritius - Defence Matters", 9:00am, 20 September 1965

SECRET
U.K. EYES ONLY

MAURITIUS - DEFENCE ISSUES

RECORD OF A MEETING IN THE COLONIAL OFFICE

2 A.M. ON MONDAY, 20TH SEPTEMBER, 1965

24/169

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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U.K. EYES ONLY

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SECRET
U.K. EYES ONLY

MAURITIUS - DEFENCE ISSUES

RECORD OF A MEETING IN THE COLONIAL OFFICE AT 9.00 A.M. ON MONDAY, 20TH SEPTEMBER, 1965

ANC 24/169

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

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U.K. EYES ONLY

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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 States Embassy to argue for assistance over and above financial compensation; they wanted arrangements assistance with trade. Sir Seewoosagur

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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. Faturau 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 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 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

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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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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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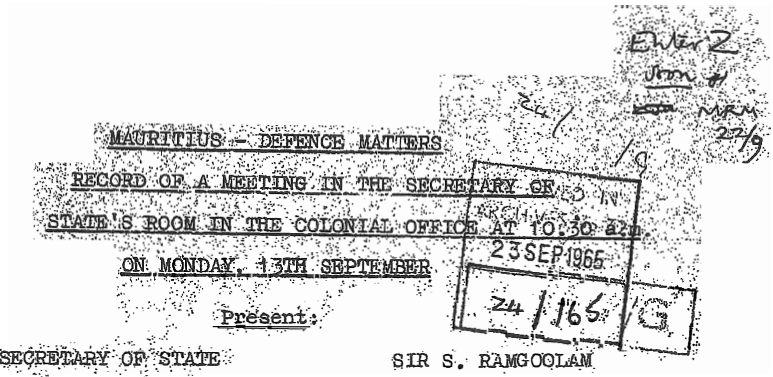
ANNEX 30

United Kingdom record of the meeting on "Mauritius - Defence Matters", in the Secretary of State's Room in the Colonial Office, 10:30am, 13 September 1965



MAURITIUS - DEFENCE MATTERS

RECORD OF A MEETING IN THE SECRETARY OF STATE'S ROOM IN THE COLONIAL OFFICE AT 10.30 a.m. ON MONDAY, 13TH SEPTEMBER

Present:

THE SECRETARY OF STATE	SIR S. RAMGOOLAM
LORD TAYLOR (from 11.0 a.m.	MR. KOENIG
SIR JOHN RENNIE	MR. MOHAMED
MR. A.N. GALSWORTHY	MR. BISSOONDOYAL
MR. TRAFFORD SMITH	MR. PATURAU
MR. FAIRCLOUGH	
MR. STACPOOLE	
MR. NOAKES	

THE SECRETARY OF STATE explained that the purpose of the meeting was to discuss the proposals for defence facilities in the Chagos archipelago which had been put to the Council of Ministers in Mauritius by the Governor. He had been anxious to hold this discussion outside the conference so as to avoid the two subjects becoming confused. He was grateful to Mauritius Ministers for suggesting that the opportunity of their presence in London for the conference should be used to discuss this proposal further. Since receiving their initial comments the British Government had discussed the matter further with the United States Government and there were difficulties about the terms which Mauritius Government had proposed:

(i) The United States Government were not prepared to consider a lease but required a firm assurance of permanency; the Secretary of State himself feared lest a lease might become a divisive factor in Mauritius politics.

(ii) With regard to compensation, the United States

/Government's

Government's reaction to the proposals about facilitating importation of sugar by the United States from Mauritius, and the immigration of Mauritians into the United States had not been receptive. Representations had been made to the United States Government, but there was little hope of securing a favourable response on these two points. The only proposal on which the British Government could react positively was the suggestion that Mauritius should receive a substantial lump sum payment by way of compensation.

The Secretary of State invited Ministers to comment on this explanation of the position, adding that he was anxious to report to his colleagues on their general attitude to the proposal within a few days.

In answer to an enquiry from MR. MOHAMMED, it was explained that if the islands were detached from Mauritius, Britain would take direct responsibility for their administration. The United States Government would construct communications and support facilities on the islands and Britain and the United States would use the facilities jointly. Only the Chagos Archipelago would be affected - Agalega was not concerned. THE SECRETARY OF STATE emphasised that the existence of these facilities would be a general stabilising influence in the area. He also emphasised the link between the existence of such facilities and Britain's ability to give Mauritius defence help.

MR. BISSOONDOYAL said that, without committing himself on the major issue, he would like to know how large a sum by way of compensation Mauritius could expect.

THE SECRETARY OF STATE replied that it would be difficult to quantify compensation at that stage. There would be two elements: compensation to landowners and the costs of resettling the displaced population of the Islands on the one hand, which were calculable; and the proposed payment to the Mauritius Government for capital

/development

development which would have to be negotiated. He mentioned £1,000,000 as an indication of the order of sum which might be considered.

MR. MOHAMED said that Mauritius wanted help of a continuing nature in such matters as providing a favourable market for sugar exports and an outlet for surplus population. It would be useful for Mauritius to have British and United States forces available in the area. It was very unfortunate that all the requests they had made had been rejected. Nevertheless, they would agree with pleasure to the establishment of a base, bearing in mind their desire for British intervention in case of a need for help against external aggression or internal disorder, provided that the compensation took the form of assistance of a continuing nature. Members of the BRITISH DELEGATION pointed out that capital assistance for development purposes, if properly used, should have a continuing beneficial effect on the economy of Mauritius.

MR. GALSWORTHY then explained the difficulties which stood in the way of securing a large quota, such as the Mauritius Government desired, in United States sugar imports at a preferential price. These quotas were awarded not by the U.S. administration but by Congress, and the administration advised strongly that the way to get an optimum quota for the Commonwealth as a whole was to rely on the "past performance" formula. If the Commonwealth, or individual members of the Commonwealth, were to abandon this formula and press for specially favourable treatment, the door would be opened to general lobbying in which the South American states would be sure to do better than the Commonwealth, or even squeeze the Commonwealth out altogether. By pressing unilaterally for a larger quota Mauritius might thus easily prejudice the interests of the Commonwealth as a whole. The prospect was that, under present arrangements, Mauritius would obtain a quota of 12,000 tons a year for 5 years.

/MR. PATURAU

MR. FATURAU said that this contrasted unfavourably with Fiji's quota of 45,000 tons and a much larger quota for Australia. Mauritius could supply 60,000 tons. He thought that Mauritius should withhold its cooperation over the bases proposal until the United States Government made a better offer, and MR. MOHAMMED endorsed this.

SIR S. RAMGOOLAM enquired about the possibility of a general trade agreement between Mauritius and the United States covering such commodities as wheat and rice. Other Mauritian delegates pointed out that the United States was disposing of surplus wheat at low prices and suggested that an agreement between the two countries, covering commodities of which each had a surplus for disposal, should be practicable.

MR. GALSWORTHY said that in connection with the United States surplus wheat exported under Public Law 480 the Commonwealth had agreed some years ago not to arrange consignments unless it could be shown that they were additional to normal supplies. The purpose of this was to avoid disrupting normal trade arrangements. This concept of "additionality" as a basis for deals under Public Law 480 had been accepted for some time, both by the Commonwealth and by the United States.

Such deals were normally not give-away arrangements but were paid for - but in local currency.

Everyone was opposed to commodity barter agreements since they were restrictive and tended to limit trade opportunities. An arrangement whereby sugar from Mauritius was bought by the United States on condition that Mauritius bought rice and wheat from the United States was to be an objectionable barter agreement of this kind.

MR. MOHAMMED made the point that what Mauritius was seeking to do would not disrupt Commonwealth trade. At present Mauritius imported flour from, e.g. France and West Germany; she would like to take flour instead from the United States, and obtain an export

/benefit

benefit thereby. The United States was seeking to obtain something (i.e. the Chagos Archipelago) which belonged to Mauritius; Mauritius was naturally trying to bargain for something that would be of benefit to her. Speaking frankly, compensation by way of capital aid was not really what Mauritius needed; what she needed was trade, and in particular openings for sugar exports, which would continue long term.

MR. GALSWORTHY made two points in relation to the suggested replacement of wheat imports from other sources by United States wheat -

(i) if German wheat was shut out the prospects of German economic aid would be dim;

(ii) if Candadian wheat (which he said Mauritius bought occasionally) were shut out, Canada might not continue to be so willing to import Mauritius sugar, which at present she did under the Commonwealth Sugar Agreement.

THE SECRETARY OF STATE suggested that Mauritius ministers might wish to consider all these points which had been made very carefully, since they would obviously not wish to pursue any arrangements which might have adverse consequences for Mauritius. It might be possible to arrange for someone from the United States Embassy to meet the Mauritius ministers to explain the working of Public Law 480 arrangements and to see if something could be worked out which would be of assistance to Mauritius.

SIR JOHN RENNIE made the point that Mauritius has an interest from the point of view of sugar exports, which coincides with the general Commonwealth view over commodity barter agreements - their interest was that no market should be closed to Mauritius sugar by any such agreements.

There was then some general discussion on points arising in connection with the proposed detachment of the Chagos Archipelago; important points made were:-

/(i)

(i) If the Islands were detached, they would remain British; they would not become American territory; the Americans would provide and own the facilities constructed on the Islands, of which we would have joint use; but the territory would remain British;

(ii) The availability to Britain of defence facilities in Chagos and in the Seychelles Islands could, with Aden due to become independent and with other changes in the area, be of very great importance to Mauritius herself from the point of view of bringing assistance to Mauritius, if it were ever needed;

(iii) Compensation payments made in connection with detachment would be over and above ordinary development aid;

(iv) The present administration costs of Chagos were minimal. Mauritius provided teachers, nurses, drugs and magistrates on a limited scale, but the Company (which was Seychelles registered and did not benefit Mauritius directly as copra was now exported through Seychelles) made payments for these services.

MR. MOHAMMED said that he recognised that Mauritius must in her own interests make facilities available. He stressed, however, the importance of securing some benefit in exchange; Mauritius ministers were prepared if necessary to go to the United States and bargain on the matter. MR. PATURAU also said that he recognised the necessity for defence facilities of this sort and felt that Mauritius should agree; they could not remain in a void in the Indian Ocean; but Mauritius must get something out of it. To him it seemed incomprehensible that Fiji should get a 45,000 ton sugar quota under the United States legislation whilst Mauritius got only 12,000 tons.

In further discussion about United States sugar quotas, MR. GALSWORTHY again stressed that these were determined not by the

/United States

United States administration, but by Congress. In 1962 the administration had asked for a 100,000 tons quota for Mauritius; for unknown reasons Congress had cut it out altogether. As regards the latest United States proposals, legislation had already been published with the proposed quotas included, within a specified overall total. If Mauritius were now to get an increase in its quota, it would have to be at the expense of someone else, and this would be publicly apparent; there was no real possibility of this happening.

THE SECRETARY OF STATE reiterated his suggestion that British ministers might meet someone from the United States Embassy - he hoped within two or three days.

THE SECRETARY OF STATE, summing up the discussion, undertook to seek to arrange for an appropriate official of the United States Embassy to meet Mauritius ministers, he hoped within the next few days. He expressed the hope that the Ministers would, meanwhile, give further thought to the formulation of their compensation requests and to their general attitude to the proposals. He recognised that MR. BISSOONDOYAL had reserved his position to resume discussions between Mauritius Ministers and himself in the near future.

ANNEX 31

Colonial Office note for the Prime Minister's Meeting with Sir S Ramgoolam, 22 September 1965

PRIME MINISTER

This is a quick brief on [illegible] to be established, either by calling [illegible] or by [illegible] 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

SECRET

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.

A.G.

Lancaster House

22nd September, 1965

SECRET

Copy sent to Sir B. Trend 22.9.

SECRET

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. /The U.S. Government has secretly agreed to contribute half these costs indirectly, by writing off equivalent British payments towards Polaris development costs./

NOT FOR MENTION

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.

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,

/followed

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.

ANNEX 32

United Kingdom record of a conversation between the Prime Minister and the Premier of Mauritius at No.10 Downing Street, 10:00am, 23 September 1965

CO
FO
M/Def

Sir B. Trend
CRO
Enter
Z Soon

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 unreasonablenes 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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ANNEX 33

Record of a meeting held at Lancaster House on "Mauritius Defence Matters", 2.30pm, 23 September 1965

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	

- - - - - - - -

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

/(iv)

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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.

/18.

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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:

/(a)

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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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ANNEX 34

Sir S Ramgoolam manuscript letter, 1 October 1965

From Sir S. Ramgoolam

Strand Palace Hotel

STRAND LONDON. W.C.2

TELEPHONE: TEMPLE BAR 8080 CABLES: LUXURY, LONDON WC2

273

Ack. in Secret Wright 1st Oct. 65 -
S.1/10

Dear Mr Trafford-Smith,

I and Mr. Mohamed have gone through the enclosed paper on 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 formed

part of the original requirements submitted to H. M. G. We think that these can be incorporated in any final agreement.

With kind regards

Yours sincerely

S. Ranque

P.S. The two copies handed over to me are herewith enclosed

SR

Strand Palace Hotel
STRAND LONDON. W.C.2
TELEPHONE: TEMPLE BAR 8080 CABLES: LUXURY, LONDON WC2

(See below).

(VII) Navigational & Meteorological facilities 9.2.[illegible]

(VIII) Fishing rights

(IX) Use of Air Strip for Emergency landing and if required for development of the other islands.

(X) Any mineral or oil discovered on or near islands to revert to the Mauritius Government.

(Cf J Ramgoolam's proposed additions to Clause 6 (1) (a) of record of L.H. Mtg. 28th Sept 1965

H.B. Penciled note my Co. Office (Mr Trafford Smith)

ANNEX 35

Colonial Office Telegram No. 423 to the Governor of Mauritius, 6 October 1965

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 36

Report of the Mauritius Select Committee on the Excision of the Chagos Archipelago, Appendix P (Extract from Minutes of Proceedings of the Meeting of the Council of Ministers held on 5 November 1965), 1 June 1983, p.63

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 37

United Kingdom Telegram No. 247 to the Colonial Office, 5 November 1965

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

NOV 1965

COPY FOR REGISTRATION

FROM MAURITIUS (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 - F.A.K. Harrison
" " - Mr. T.W. Hall
Treasury - Mr. P. Nicholls
Foreign Office - Mr. G.G. Arthur
" " - Mr. Morella

ANNEX 38

Debate in Mauritius Legislative Assembly, 21 December 1965

Extract Debates of the Legislative Assembly
(Mauritius)
21st December, 1965

Excision of the Chagos Archipelago from Mauritius

(No. H/266) Mr. C.G. Duval (Curepipe) asked the Premier and Minister of Finance:

Whether, in exchange for the agreement of this Government to the excision of the Chagos Archipelago from Mauritius, the following obligations have definitely been undertaken by the British Government:-

(a) the British Government will ensure the defence of Mauritius against external aggression and British troops would intervene in case of a 'coup d'etat' against the legal Government of Mauritius, if so requested by the Government;

(b) all fishing facilities around Diego will be safeguarded;

(c) all the meteorological data collected in Diego Garcia will be at the expense of Great Britain and made available to Mauritius free of charge;

(d) an aerodrome will be constructed in Diego Garcia, which could be made use of by planes coming to and going from Mauritius, in case Plaisance Aerodrome is out of use, for one reason or another;

(e) in case America and England do not for any reason make use of the Chagos Archipelago, the Archipelago will be returned to Mauritius with such installations as can be made use of by this country;

(f) all the Mauritians now living in Diego will be resettled in Mauritius. The costs of repatriation will be met from the British Exchequer and all costs of rehousing them will be met by the British, and that work would be found for them by the British Government;

(g) that Great Britain will buy all building materials required and use Mauritian labour for the construction of the base;

(h) Mauritians trained at H.M.S. Mauritius will be employed at the telecommunications centre in Diego Garcia;

(i) that if mines of bauxite and uranium were to be found in the Chagos Archipelago, Mauritius would be the only country entitled to exploit them; and

University and one million one hundred and fifty rupees annually for ten years.

If so, whether in view of the contradictory statement made by the Secretary of State for the Colonies on Wednesday the 10th November, circulated at the last sitting, Government will publish the correspondence between the British Government and the Mauritian Government in that connection?

If not, whether he will state which of the items have not been definitely agreed to by the British Government?

Mr. Forget (on behalf of the Premier and Minister of Finance):

(1) (a) I would refer the Hon. Member to the penultimate paragraph of the closing speech by the Secretary of State for the Colonies at the end of the Mauritius Constitutional Conference in September, the Report of which was subsequently published in Mauritius as Sessional Paper No. 6 of 1965.

(b) I am not clear what the Hon. Member means by the word "safeguarded". So far as I am aware the only fishing that now takes place in the territorial waters of Diego Garcia is casual fishing by those employed there and as the Hon. Member is aware, they will be resettled elsewhere.

(c) The question of responsibility for the collection of meteorological data in Diego Garcia has not been discussed in detail, but the British Government is alive to the great importance of such data to Mauritius and no difficulty is foreseen. It may be of interest to the Hon. Member to know that members of the World Meteorological Organisation are required to supply each other with weather data and that the Director of the Meteorological Services has never heard of a charge being made.

(d) No decision has yet been taken to construct any facilities on Diego Garcia. Any airfield which might be constructed on Diego Garcia would be intended for purely defence purposes but if an aircraft were obliged to have recourse to it in such an emergency as is indicated in the question, I have no doubt that permission would be granted.

(e) If the British Government decides that the Chagos Archipelago is no longer required for defence purposes, the islands will be returned to Mauritius. The question what would happen in such circumstances to any installations in the Chagos Archipelago is, of course, a hypothetical one, and would no doubt be discussed between the interested Governments in the light of practical requirements and considerations at the time.

(f) The British Government has undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago.

(g) The extent to which it would be practicable to use Mauritian labour and materials is a matter for further consideration when the respective requirements and responsibilities for construction of the British and American Governments have been defined. But the desire of the Mauritius Government that Mauritian labour and building materials should be used to the maximum extent has been brought to the notice of the British Government.

(h) I refer the Honourable Member to the first sentence of my reply to question (d) above.

(i) The Honourable Member's question is, again, a hypothetical one and I should make clear that there has never been any indication of minerals in the Chagos Archipelago, which is a string of coral atolls. The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes. For the position thereafter, I would refer the Honourable Member to the first sentence of of the reply to Question (e).

(j) No Sir. I would refer the Honourable Member to the statement on the Chagos Archipelago already issued by the Government and to what my colleague the Minister of Education and Cultural Affairs said in the House on Tuesday the 7th December 1965 in relation to financial aid from Great Britain for the University of Mauritius.

The aid for the University does not form part of the £7,000,000 of additional aid referred to in the former statement and, like the detachment of the Chagos Archipelago, is an illustration of the mutual association between Mauritius and Britain to which the Government attaches importance.

ANNEX 39

The Mauritius Independence Order 1968, 4 March 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.

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.

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.-(1) 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 Orders 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.

SCHEDULE TO THE ORDER

THE CONSTITUTION OF MAURITIUS

ARRANGEMENT OF SECTIONS

CHAPTER I

THE STATE AND THE CONSTITUTION

Section
1. The State.
2. Constitution is supreme law.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. Fundamental rights and freedoms of the individual.
4. Protection of right to life.
5. Protection of right to personal liberty.
6. Protection from slavery and forced labour.
7. Protection from inhuman treatment.
8. Protection from deprivation of property.
9. Protection for privacy of home and other property.
10. Provisions to secure protection of law.
11. Protection of freedom of conscience.
12. Protection of freedom of expression.
13. Protection of freedom of assembly and association,
14. Protection of freedom to establish schools.
15. Protection of freedom of movement.
16. Protection from discrimination on the grounds of, race, etc.
17. Enforcement of protective provisions.
18. Derogation from fundamental rights and freedom under emergency powers.
19. Interpretation and savings.

CHAPTER III

CITIZENSHIP

20. Persons who become citizens on 12th March 1968.
21. Persons entitled to be registered, etc., as citizens.
22. Persons born in Mauritius after 11th March 1968.
23. Persons born outside Mauritius after 11th March 1968.
24. Marriage to a citizen of Mauritius.
25. Commonwealth citizens.
26. Powers of Parliament.
27. Interpretation.

CHAPTER IV
THE GOVEERNOR-GENERAL

28. Establishment of office of Governor-General.
29. Acting Governor-General.
30. Oaths to be taken by Governor-General.

CHAPTER V
PAPLIAMENT
PART I
The Legislative Assembly

31. Parliament of Mauritius.
32. Speaker and Deputy Speaker.
33. Qualifications for membership.
34. Disqualification for membership.
35. Tenure of office of members.
36. Vacation of seat on sentence.
37. Determination of questions as to membership.
38. Electoral Commissions.
39. Constituencies.
40. Electoral Commissioner.
41. Functions of Electoral Supervisory Commission and Electoral Commissioner.
42. Qualifications of electors.
43. Disqualification of electors.
44. Right to vote at elections.
45. Power to make laws.
46. Mode of exercise of legislative power.
47. Alteration of Constitution.
48. Regulation of procedure in Legislative Assembly.
49. official language.
50. Presiding in Legislative Assembly
51. Legislative Assembly may transact business notwithstanding vacancies.
52. Quorum.
53. Voting.
54. Bills, motions and petitions.
55. oath of allegiance.
56. Sessions on and dissolution Of Parliament.
57. Prorogation

CHAPTER VI
THE EXECUTIVE
Executive authority of Mauritius.

59. Ministers.
60. Tenure of Ministers.
61. The Cabinet.

62. Assignment of responsibilities to Ministers.
63. Performance of functions of Prime Minister during absence or illness.
64. Exercise of Governor-General's functions.
65. Governor-General to be kept informed.
66. Parliamentary Secretaries.
67. Oaths to be taken by Ministers, etc.
68. Direction, etc., of government departments.
69. Attorney-General.
70. Secretary to the Cabinet.
71. Commissioner of Police.
72. Director of Public Prosecutions.
73. Leader of Opposition.
74. Constitution of offices.
75. Prerogative of mercy.

CHAPTER VII
THE JUDICATURE

76. Supreme Court.
77. Appointment of judges of Supreme Court.
78. Tenure of office of judges of supreme Court.
79. Oaths to be taken by judges.
80. Courts of Appeal.
81. Appeals to Her Majesty in Council.
82. Supreme Court and subordinate courts.
83. Original jurisdiction Of Supreme Court in constitutional questions.
84. Reference of constitutional questions to Supreme Court.

CHAPTER VIII
SERVICE COMMISSIONS AND THE PUBLIC SERVICE

85. Judicial and Legal Service Commission.
86. Appointment, etc., of judicial and legal officers
87. Appointment of principal representatives of Mauritius abroad.
88. Public Service Commission.
89. Appointment, etc., of public officers.
90. Police Service Commission.
91. Appointment, etc., of Commissioner of Police and other members of Police Force.
92. Tenure of office of members of Commissions and the Ombudsman.
93. Removal of certain officers.
94. Pension laws and protection of pension rights.
95. Power of Commissions in relation to pensions, etc.

CHAPTER IX
THE OMBUDSMAN

96. Office of Ombudsman.
97. Investigations by Ombudsman.
98. Procedure in respect of investigations.
99. Disclosure of information, etc.
100. Proceedings after investigation.
101. Discharge of functions of Ombudsman
102. Supplementary and ancillary provision.

CHAPTER X

FINANCE

103. Consolidated Fund.
104. Withdrawals from Consolidated Fund or other public funds.
105. Authorisation of expenditure.
106. Authorisation of expenditure in advance of appropriation.
107. Contingencies Fund.
108. Remuneration of certain officers.
109. Public debt.
110. Director of Audit.

CHAPTER XI
MISCELLANEOUS

111. Interpretation.
112. References to public office, etc.
113. Appointments to certain offices for terms of years.
114. Acting appointments.
115. Reappointment and concurrent appointments.
116. Removal from office
117. Resignations.
118. Performance of functions of Commissions and tribunals.
119. Having for jurisdiction of courts.
120. Power to amend and revoke instruments, etc.
121. Consultation.
122. Parliamentary control over certain subordinate legislation.

SCHEDULE 1 TO THE CONSTITUTION
ELECTION OF MEMBERS OF LEGISLATIVFE ASSEMBLY

SCHEDULE 2 TO THE CONSTITUTION
OFFICES WITHIN JURISDICTION OF JUDICIAL AND LEGAL SERVICE COMMISSION

SCHEDULE 3 TO THE CONSTITUTION OATHS

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;

(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 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.

4.-(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) 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, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable-

(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.

5.-(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-

(a) In consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of a court punishing him for contempt of that court or of another court;

(c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) for the purpose of bringing him before a court in execution of the order of a court;

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto;

(j) upon reasonable suspicion of his being likely to commit breaches of the peace; or

(k) in execution of the order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order.

(2) Any person who is arrested or detained shall be informed soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention,

(3) Any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of a court;
(b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or
(c) upon reasonable suspicion of his being likely to commit breaches of the peace,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) of this sub-section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (e) of this subsection is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour then, without prejudice to any further proceedings that may be brought against him he shall be released unconditionally.

(4) When a person is detained in pursuance of any such provision of law as is referred to in paragraph (k) of subsection (1) of this section, the following provisions shall apply, that is to say

(a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention. be furnished with a statement in writing in a

language that, he understand, specifying in detail the grounds upon which he is detained;

(b) not more than seven days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than fourteen days after the commencement of his detention and thereafter during his detention at intervals of not more than thirty days, his case shall be reviewed by an independent and impartial tribunal and consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of his case;

(e) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice and, unless the tribunal otherwise directs, the hearing shall be held in public;

(f) at the conclusion of any review by a tribunal in pursuance of this subsection in any case, the tribunal shall announce its decision in public, stating whether or not there is, in its opinion, sufficient cause for the detention, and if, in its opinion, there is not sufficient cause, the detained person shall forthwith be released and if during the period of six months from his release he is again detained as aforesaid the tribunal established as aforesaid for the review of his case shall not decide that, in its opinion, there is sufficient cause for the further detention unless it is satisfied that new and reasonable grounds for the detention exist.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(6) In the exercise of any functions conferred upon him for the purposes of subsection (1)1(k) of this section, the Commissioner of Police shall not be subject to the direction or control of any other person or authority.

6.-(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include-

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of

hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

7.-(1) No person shall be subjected to torture or to inhuman from or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11th March 1964 being the day before the day on which section 5 of the Constitution set out in Schedule 2 to the Mauritius (Constitution) Order 1964 came into force.

8.-(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say-

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit;

(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition-

(i) for the prompt payment of adequate compensation; and
(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last preceding subsection to the extent that the law in question authorises-

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party;
(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted; or
(c) the imposition of any deduction, charge or tax that is made or levied generally in respect of the remission of moneys from Mauritius and that is not discriminatory within the meaning of section 16(3) of this Constitution.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property-

(i) in satisfaction of any tax, rate or due;
(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law.
(iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract;
(iv) in the execution of judgments or orders of courts;
(v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
(vi) in consequence of any law with respect to the limitations of actions or acquisitive prescription;
(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-

(A) of work of soil conservation or the conservation of other natural resources; or
(B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of-

(i) enemy property;
(ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body, corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides. for the vesting in the Crown of the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where, that property, interest or right is held by a body corporate established by law for public purpose-, in which no moneys have been invested other than moneys provided from public funds.

9.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
(b) for the purpose of protecting the rights or freedoms of other persons;
(c) to enable an officer or agent of the Government or a Local Authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, the Local Authority or that body corporate, as the case ma be; or
(d) to authorise, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any

person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10.-(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;
(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
(c) shall be given adequate time and facilities for the preparation of his defence;
(d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative pro- vided at the public expense;
(e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal one on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be

tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority-

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the privacy of persons concerned in the proceedings; or
(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or, in contravention of-

(a) subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2) (e) of this section, to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any

punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention Of Persons Professing any other religion or belief,

except so far as that provision, or as the case may be, the thing done under the authority thereof 'is shown not to be reasonably justifiable in a democratic society.

12.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting television, public exhibitions or public entertainment; or
(c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

13.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) in the interests of defence, public safety, public order, public morality or public health;
(b) for the Purpose of protecting the rights or freedoms of Other persons; or
(c) for the imposition Of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown -not to be reasonably justifiable in a democratic society.

14.-(1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question makes provision-

(a) in the interests of defence, public safety, public order, public morality or public health; or
(b) for regulating such schools in the interests of persons receiving instruction therein,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.

(4) In the preceding subsection "child" includes a stepchild and a child adopted in a manner recognised by law; and the word "parent" shall be construed accordingly.

15.-(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) for the imposition of restrictions on the movement or p residence within Mauritius of any person in the interests of defence, public safety, public order, public morality or public health;
(b) for the imposition of restrictions on the right of any person to leave Mauritius in the interests of defence, public safety, public order, public morality or public health or of securing compliance with any international obligation of the Government particulars of which have been laid before the Assembly;
(c) for the imposition of restrictions, by order of a court, on the movement or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius;
(d) for the imposition of restrictions on the movement or residence within Mauritius of any person who is not a citizen of Mauritius or the exclusion or expulsion from Mauritius of any such person;
(e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius;
(f) for the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or
(g) for the imposition of restrictions on the right of any person to leave Mauritius in order to secure the fulfilment of any obligations imposed upon that person by law,

except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted in pursuance of any such provision of law as is referred to in paragraph (a) or (b) of the preceding subsection so requests, the following provisions shall apply, that is to say-

(a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the making of the request, be furnished with a statement in writing in a language that he understands specifying the grounds for the imposition of the restriction;
(b) not more than fourteen days after the making of the request, and thereafter during the continuance of the restriction at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;
(c) he or a legal representative of his own choice shall be permitted to make representations to the tribunal appointed for the review of his case;
(d) on any review by a tribunal in pursuance of this subsection in any case, the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction in question to the authority by which it was ordered and that, authority shall act in accordance with any recommendation for the removal or relaxation of the restriction:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Supreme Court.

16.-(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision-

(a) for the appropriation of revenues or other funds of Mauritius;
(b) with respect to persons who are not citizens of Mauritius; or
(c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with

respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a Local Authority or any office in a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes pro- vision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15 of this Constitution, being such a restriction as is authorised by section 9(2), 11(b), 12(2), 18(2), 14(2) or 15(8) of this Constitution, as the case mav be.

(8) Subsection (2) of this section shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person I)y or under this Constitution or any other law.

17.-(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time. within which applications to that court may be made).

18.-(1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 16 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period;

Provided that no law, to the extent that it authorises the taking during a period of public emergency other than a period during which Mauritius is at war of measures that would be inconsistent with or in contravention of section 5 or section 16 of this Constitution if taken otherwise than during a period of public emergency, shall have effect unless there is in force a Proclamation of the Governor General declaring that, because of the situation existing at the time, the measures authorised by the law are required in the interests of peace, order and good government.

(2) A Proclamation made by the Governor-General for the purposes of this section-

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;
(b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days, it meets and approves tae Proclamation by resolution;
(c) shall, if approved by resolution, remain in force for such period, not exceeding six months, as the Assembly may specify in the resolution;
(d) may be extended in operation for further periods not exceeding six months at a time by resolution of the Assembly;
(e) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a), (b), (c) or (d) of this subsection shall be passed unless it is supported by the votes of at least two-thirds of all the members of the Assembly-

(3) When a person is detained by virtue of any such law as is referred to in subsection (1), of this section of this Constitution (not being a person who is detained because he is a person who, not being a citizen of Mauritius, is a citizen of a country with which Mauritius is at war or has been engaged in hostilities against Mauritius in association with or on behalf of such a country or otherwise assisting or, adhering to such a country) the following provisions shall apply, that is to say: -

(a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained,

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) at the hearing of hi s case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(4) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

19.-(1) In this Chapter, unless the context otherwise requires-

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be consumed accordingly;

"court" means any court of law having jurisdiction in Mauritius, including Her Majesty in Council but excepting, save in sections 4 and 6 of this Constitution and this section, a court established by a disciplinary law;

"legal representative" means a person lawfully in or entitled to be in Mauritius and entitled to practise in Mauritius as a barrister or, except in relation to proceedings before a court in which an attorney-at-law has no right of audience, as an attorney-at-law;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in section 5(4), 15(4) or 18(3) of this Constitution shall be construed as entitling a person to legal representation at public expense.

(3) Nothing contained in sections 12, 13 or 15 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(4) In relation to any person who is a member of a disciplined force of Mauritius, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(5) In relation to any person who is a member of a disciplined force that is not a disciplined force of Mauritius and who is present in Mauritius in pursuance of arrangements made between the Government of Mauritius and another Government or an international Organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) No measures taken in relation to a person who is a member of a disciplined force of a country with which Mauritius is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(7) In this Chapter "period of public emergency" means any period during which-

(a) Mauritius is engaged in any war; or
(b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or
(c) there is in force a resolution of the Assembly supported by the votes of a majority of all the members of the Assembly declaring that democratic institutions in Mauritius are threatened by subversion.

(8) A Proclamation made by the Governor-General for the purposes of the preceding subsection-

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;
(b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days it meets and approves the Proclamation by resolution;
(c) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a) or (b) of this subsection shall be passed unless it is supported by the votes of a majority of all the members of the Assembly.

(9) A resolution passed by the Assembly for the purposes of subsection 7 (c) of this section-

(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.

Provided that, in the case of any woman who on the 12th March 1968 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

22. Every person born in Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of his birth his father-

(a) possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Mauritius and neither of his parents is a citizen of Mauritius;
(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

23. A person born outside Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth if at that date his father is a citizen of Mauritius otherwise that by virtue of this section or section 20(3) of this Constitution.

24. Any woman who, after 11th March 1968 marries a person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed 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:

Provided that the right to be registered as a citizen Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

25.-(1) Every person who under this Constitution or any other law is a citizen of Mauritius or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965(a) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) R & R - A.48/91

26. Parliament may make provision-

(a) for the acquisition of citizenship of Mauritius by persons who are not eligible or who are no longer eligible to become

citizens of Mauritius by virtue of the provisions of this Chapter;

(b) for depriving of his citizenship of Mauritius any person who is a citizen of Mauritius otherwise than by virtue of sections 20, 22 or 23 of the Constitution,

(c)-(e) deleted - A. 23/95

27.-(1) In this Chapter "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948.

(2) Deleted-(A.23/95)

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country. shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 12th March 1968 and the birth occurred after the 11th March 1968 the national status that the father would have had if he had died on 12th March 1968 shall be deemed to be his national status at the time of his death.

CHAPTER IV

THE GOVERNOR-GENERAL
(R & R: A. 48/91)

CHAPTER IV

PARLIAMENT

31.-(1) There shall be a Parliament for Mauritius, which shall consist of Her Majesty and a Legislative Assembly.

(2) The Assembly shall consist of persons elected in accordance with schedule I to this Constitution, which makes provision for the election of seventy members.

32. (1-4) - R & R:A. 1/96

(5) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the Assembly and the office shall become vacant when the writing is received by the Clerk to the Assembly.

(6) No business shall be transacted in the Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.

33. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he-

(1) is a Commonwealth citizen of not less than twenty-one years of age;

(2) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(3) has resided in Mauritius for a period of not less than six months immediately before that date; and

(4) 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 Assembly.

34.-(1) No person shall be qualified to be elected as a member of the Assembly who-

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a power or state outside the Commonwealth;
(b) is a public officer or a local government officer;
(c) 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 for or on account of the public service, and has not, within fourteen days after his nomination as a candidate for election, published in the English language in the Gazette and in a newspaper circulating in the constituency 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;
(d) has been adjudged or otherwise declared bankrupt under any law in force in an part of the Commonwealth and has not been discharged or has obtained the benefit of a cessio bonorum in Mauritius;
(e) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius;
(f) is under sentence of death imposed on him by a court in any part of the Commonwealth, 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) is disqualified for election by any law in force in Mauritius by reason of his holding, or acting in, an 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 Assembly by any law in force in Mauritius relating to offences connected with elections.

(2) If it is prescribed by Parliament that any office in the public service or the service of a Local Authority is not to be regarded as such an office for the purposes of this section, a person shall not be regarded for the purposes of this section as a public officer or a local government officer, as the case may be, by reason only that he holds, or is acting in, that office

(3) For the purpose of this section-

(a) 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; and
(b) imprisonment in default of payment of a fine shall be disregarded.

35.-(1) The seat in the Assembly of a member thereof shall become vacant-

(a) upon a dissolution of Parliament;
(b) if he ceases to be a Commonwealth citizen;
(c) if he becomes a party to any contract with the Government 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 fin-n 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 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 exempt any 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 Speaker or, as the case may be, the Deputy Speaker the nature of such contract and his interest or the interest of any such firm or company therein;

(d) if he ceases to be resident in Mauritius;
(e) if, without leave of 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) previously obtained, he is absent from the sittings of the Assembly for a continuous period of three months during any session thereof for any reason other than his being in lawful custody in Mauritius;
(f) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (d), (e), (g) or (h) of the preceding section;

(2) A member of the Assembly may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules and orders of the Assembly.

36.-(1) Subject to the provisions of this section, if a member of the Assembly is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Assembly and his seat in the Assembly 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 of 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 Assembly 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 twelve months or a punishment other than imprisonment is substituted, his seat in the Assembly shall not become vacant under the preceding subsection and he may again perform his functions as a member of the Assembly.

(3) For the purpose of this section-

(a) 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; and
(b) imprisonment in default of payment of a fine shall be disregarded.

37.-(1) The Supreme Court shall have jurisdiction to hear and determine any question whether-

(a) any person has been validly elected as a member of the Assembly;
(b) any person who has been elected as Speaker or Deputy Speaker was qualified to be so elected or has vacated the office of Speaker or Deputy Speaker as the case may be; or
(c) any member of the Assembly has vacated his seat or is required, under the provisions of section 36 of this Constitution, to cease to perform his functions as a member of the Assembly.

(2) An application to the Supreme Court for the determination of any question under subsection (1)(a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, if it is made by a person other than the

Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(b) of this section may be made by any member of the Assembly or by the Attorney-General and, if it is made by a person other than the Attorney- General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1)(c) of this section may be made-

(a) by any member of the Assembly or by the Attorney-General; or
(b) by any person registered in some constituency as an elector, and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to-

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and
(b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) A determination by the Supreme Court in proceedings under this section shall not be subject to an appeal;

Provided that an appeal shall lie in such cases as may be prescribed by Parliament.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

38.-(1) There shall be an Electoral Boundaries Commission which shall consist of a chairman and not less than two nor more than four other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(2) There shall be an Electoral Supervisory Commission which shall consist of a chairman appointed by the Governor- General in accordance with the advice of the judicial and Legal Service Commission and not less than two nor more than four other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(3) No person shall be qualified for appointment as a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission if he is a member of, or a candidate for election to, the Assembly or any Local Authority or a public officer or a local government officer.

(4) Subject to the provisions of this section, a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission shall vacate his office-

(a) at the expiration of five years from the date of his appointment; or
(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) The provisions of section 92(2) to (5) of this Constitution shall apply to a member of the Electoral Boundaries Commission or of the Electoral Supervisory Commission as they apply to a Commissioner within the meaning of that section.

39.-(1) There shall be twenty-one constituencies and accordingly-

(a) the Island of Mauritius shall be divided into twenty constituencies;
(b) Rodrigues shall form one constituency:

Provided that the Assembly may by resolution provide that any island forming part of Mauritius that is not comprised in the Island of Mauritius or Rodrigues shall be included in such one of the constituencies as the Electoral Boundaries Commission may determine and with effect from the next dissolution of Parliament after the passing of any such resolution the pro- visions of this section shall have effect accordingly.

(2) The Electoral Boundaries Commission shall review the boundaries of the constituencies at such times as will enable them to present a report to the Assembly ten years, as near as may be, after the 12th August 1966 and, thereafter, ten years after presentation of their last report:

Provided that the Commission may at any time carry out a review and present a report if it is considers it desirable to do so by reason of the holding of an official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly in pursuance of the preceding subsection.

(3) The report of the Electoral Boundaries Commission shall make recommendations for such alterations (if any) to the boundaries of the constituencies as appear to the Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota;

Provided that title number of inhabitants of a constituency may be uea4ler or less than the population quota in order to take account of means of communication, geographical features, density of population and the boundaries of administrative areas.

(4) The Assembly may, by resolution, approve or reject the recommendations of the Electoral Boundaries Commission, but may not vary them; and, if so approved, the recommendations shall have effect as from the next dissolution of Parliament.

(5) In this section "population quota" means the number obtained by dividing the number of inhabitants of the Island of Mauritius (including any island included in any constituency in the Island of Mauritius by virtue of any resolution under subsection (1) of this section) according to the latest official census of the population of Mauritius by twenty.

40.-(1) There shall be an Electoral Commissioner, whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(2) No person shall be qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practise as a barrister in Mauritius.

(3) Without prejudice to the provisions of the next following section, in the exercise of his functions under this Constitution the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.

41.-(1) The Electoral Supervisory Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of members of the Assembly and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed; and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for their advice or decision any question relating to his functions.

(3) Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

(4) The Electoral Supervisory Commission may make such reports to the Governor-General their supervision, or any draft Bill or instrument that is referred to them, as they may think fit and if the Commission so requests in any such report other than a report on a draft Bill or instrument that report shall be laid before the Assembly.

(5) The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any court of law.

42.-(1) Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless-

(a) he is a Commonwealth citizen of not less than twenty-one years of age; and
(b) either he has resided in Mauritius for a period of not less than two years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident therein on the prescribed date.

(2) No person shall be entitled to be registered as an elector-

(a) in more than one constituency; or
(b) in any constituency in which he is not resident on the prescribed date.

43. No person shall be entitled to be registered as an elector who-

(a) is under sentence of death imposed on him by a court in any part of the Commonwealth, 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;
(b) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius; or
(c) is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

44.-(1) Any person who is registered as an elector in a constituency small be entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because-

(a) he is a returning officer; or
(b) he has been concerned in any offence connected with elections:

Provided that no such person shall be entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for any constituency who is not registered as an elector in that constituency.

45.-(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Mauritius.

(2) Without prejudice to the generality of subsection (1) of this section, Parliament may by law determine the privileges, immunities and powers of the Assembly and the members thereof.

46.-(1) The power of Parliament to make laws shall be exercisable by bills passed by the Assembly and assented to by the Governor-General on behalf of Her Majesty.

(2) R & R: A. 48/91

(3) When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Mauritius".

47.-(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, that is to say -

(a) this section;
(b) Chapters II, VII, VIII and IX;
(c) schedule 1; and
(d) Chapter XI, to the extent that it relates to any of the provisions specified in the preceding paragraphs,

shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three-quarters of all the members of the Assembly.

(3) A bill for an Act of parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2) of this section) shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than two-thirds of all the members of the Assembly-

shall not be passe this section references to altering this Constitution or de references-

(4) In this section references to altering the Constitution or any part of this Constitution include references-

(a) to revoking it, with or without reenactment thereof or the making of different provision in lieu thereof;
(b) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
(c) to suspending its operation for any period, or terminating any such suspension.

48. Subject to the provisions of this Constitution, the Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

49. The official language of the Assembly shall be English but any member may address the chair in French.

50. The Speaker or in his absence the Deputy Speaker or in their absence a member of the Assembly (not being a Minister elected by the Assembly for the sitting, shall preside at any sitting of the Assembly.

51. The Assembly may act notwithstanding any vacancy in the membership (including any vacancy not filled when the Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

52.-(1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed by the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section the quorum shall consist of seventeen members of the Assembly in addition to the person presiding.

53.-(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting; and a member of the Assembly shall not be precluded from so voting by reason only that he holds the office of Speaker or Deputy Speaker or is presiding in the Assembly.

(2) If, upon any question before the Assembly that falls to be determined by a majority of the members present and voting, the votes cast are equally divided, the Speaker or other person presiding shall have and shall exercise a casting vote.

54. Except upon the recommendation of a Minister, the Assembly shall not-

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes-

(i) for the imposition of taxation or the alteration of, taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the Consolidated Fund or other public funds of Mauritius or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the Consolidated Fund or other public funds of Mauritius of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person

presiding, would be to make provision for any of those purposes; or

(c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

55. No member of the Assembly shall take part in the proceedings of the Assembly (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Assembly the oath of allegiance prescribed in schedule 3 to this Constitution.

56.-(1) The sessions of the Assembly shall be held in such place and begin at such time as the Governor-General by Proclamation may appoint:

Provided the place at, which any session of the Assembly is to be held may be altered from time to time during the course of the session by a further proclamation made by the Governor- General.

(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 last sitting of the Assembly in one session and its first sitting in the next session.

(3) Writs for a general election of members of the Assembly shall be issued within sixty days of the date of any dissolution of Parliament and a session of the Assembly shall be appointed to commence within thirty days of the date prescribed for polling at any general election.

57.-(1) The Governor-General acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that-

(a) if the Assembly passes a resolution that it has no confidence in the Government and the Prime Minister does not within thee days either resign from his office or advise the Governor-General to dissolve Parliament within seven days or at such later time as the Governor-General, acting in his own deliberate judgment, may consider reasonable, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament;

(b) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament.

(2) Parliament unless sooner dissolved, shall continue for five years from the date of the first sitting of the Assembly after any general election and shall then stand dissolved.

At any time when Mauritius it at war Parliament may from time to time extend the period of five years specified in the preceding subsection not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) At any time when there is in force a Proclamation by the Governor-General declaring, for the purposes of section 19 (7) (b) of this Constitution, that a state of public emergency exists Parliament may from time to time extend the period of five years specified in subsection (2) of this section by not more than six months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than one year.

(5) If, after a dissolution and before the holding of the election of members of the Assembly, the Prime Minister advises the Governor-General that, owing to the existence of a state of war or of a state of emergency in Mauritius or any part thereof, it is necessary to recall Parliament, the Governor-General shall summon the Parliament that has been dissolved to meet.

(6) Unless the life of Parliament is extended under subsection (3) or subsection (4) this section, the election of members of the Assembly shall proceed notwithstanding the summoning of Parliament under the preceding subsection and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day prescribed for polling at that election.

CHAPTER VI
THE EXECUTIVE

58.-(1) The executive authority of Mauritius is vested in Her Majesty.

(2) Save as otherwise provided in this Constitution, that authority may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorises other than the Governor-General from exercising such functions as may be conferred upon them by any law.

59.-(1) There shall be a Prime Minister, who shall be appointed by the Governor-General.

(2) There shall be, in addition to the offices of Prime Minister and of Attorney-General, such other offices of Minister of the Government as may be. prescribed by Parliament or, subject to the provisions of any law, established by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the number of offices of Minister other than the Prime Minister shall not be more than fourteen.

(3) The Governor-General acting in his own deliberate judgment, shall appoint as Prime Minister the member of the Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime

Minister, appoint the Attorney General and the other Ministers from among the members of the Assembly:

Provided that-

(a) if occasion arises for making an appointment while Parliament is dissolved a person who was a member of the Assembly immediately before the dissolution may be appointed; and
(b) a person may be appointed Attorney-General notwithstanding that be is not, (or, as the case may be, was not) a member of the Assembly.

60.-(1) If a resolution of no confidence in the Government is passed by the Assembly and the Prime Minister does not within three days resign from his office the Governor-General shall remove the Prime Minister from office unless, in pursuance of section 57(1) of this Constitution, Parliament has been or is to be dissolved in consequence of such resolution.

(2) If at any time between the holding of a general election and the first sitting of the Assembly thereafter the Governor-General, acting in his own deliberate judgment, considers that, in consequence of changes in the membership of the Assembly resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly of the Governor-General may remove the Prime Minister from Office:

Provided that the Governor-General shall not remove the Prime Minister from office within the period of ten days immediately following the date prescribed for polling at that general election unless be is satisfied that a party or party alliance in opposition to the Government and registered for the purposes of that general election under paragraph 2 of schedule I to this Constitution has at that general election gained a majority of all the seats in the Assembly.

(3) The office of Prime Minister or any other Minister shall become vacant-

(a) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or
(b) if, at the first sitting of the Assembly after any general election, he is not a member of the Assembly:

Provided that paragraph (b) of this subsection shall not apply to the office of Attorney-General if the holder thereof was not a member of the Assembly in the preceding dissolution of Parliament.

(4) The office of a Minister (other than the Prime Minister) shall become vacant-

(a) if the Governor-General acting in accordance with the advice of the Prime Minister, so directs;
(b) if the Prime Minister resigns from office within three days after the passage by the Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) or subsection (9) of this section; or
(c) upon the appointment of any person to the office of Prime Minister.

(5) If for any period the Prime Minister or any other Minister is unable by reason of the provisions of section 36(1) of this Constitution to perform his functions as a member of the Assembly he shall not during that period perform any of his functions as Prime Minister or Minister, as the case may be,

61.-(1) There shall be a Cabinet for Mauritius, consisting of the Prime Minister and the other Ministers.

(2) The functions of the Cabinet shall be to advise the Governor-General in the government of Mauritius and the Cabinet shall be collectively responsible to the Assembly for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of the last preceding subsection shall not apply in relation to-

(a) the appointment and removal from office of Ministers, the assigning of responsibility to any Minister under the next following section or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;
(b) the dissolution of Parliament; or
(c) the matters referred to in section 75 of this Constitution (which relate to the prerogative of mercy).

62. The Governor-General acting in accordance with the advice of the Prime Minister, may, by directions in writing assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department government.

63.-(1) Whenever the Prime Minister is absent from Mauritius or is by reason of illness or of the provisions of section 60 (5) of this Constitution unable to perform the functions conferred on him by this Constitution, the Governor-General may, by directions in writing, authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Mnister's absence or illness, or if the Prime Minister is unable to tender advice by reason of the provisions of section 60(5) of this Constitution, the Governor-General may exercise those powers without that advice and in his own deliberate judgment.

64.-(1) In the exercise of his functions under this Constitution or any other law, the Governor-General shall act in accordance with the advice

of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) Where the Governor-General is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the Governor-General is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

(4) During any period in which the office of Leader of Opposition is vacant by reason that there is no such opposition party as is referred to in subsection (2)(a) of section 73 of this Constitution and the Governor-General, acting in his own deliberate judgment, is of the opinion that no member of the Assembly would be acceptable to the leaders of the opposition parties for the purposes of subsection (2)(b) of that section or by reason that there are no opposition parties for the purposes of that section, the operation of any provision of this Constitution shall, to the extent that it requires the Prime Minister or the Public Service Commission to consult the Leader of the Opposition, be suspended.

65. The Prime Minister shall keep the Governor-General fully informed concerning @he general conduct of the government of Mauritius and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of Mauritius..

66. Act 3/96

67. A Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by schedule 3 to this Constitution.

68. Where any Minister has been charged with responsibility for the administration of any department of government he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or some other supervising officer whose office shall be a public office:

Provided that-

(a) any such department may be under the joint supervision of two or more supervising officers; and

(b) different parts of any such department may respectively be under the supervision of different supervising officers.

69.-(1) There shall be an Attorney-General who shall be principal legal adviser to the Government of Mauritius.

(2) The office of Attorney-General shall be the office of a Minister.

(3-5) Republished: GN 60/68

70.-(1) There shall be a Secretary to the Cabinet, whose office shall be a public office.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet or any committee thereof and for conveying the decisions of the Cabinet or any committee thereof to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

71.-(1) There shall be a Commissioner of Police, whose office shall be a public office.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 69, of this Constitution for the Organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and con- trolling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

72.-(1) There shall be a Director of Public Prosecutions whose office shall be a public office and who shall be appointed by the judicial and Legal Commission.

(2) No person shall be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a judge of the Supreme Court.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do-

(a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(5) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (3) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(6) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court, shall be deemed to be part of those proceedings: Provided that the power conferred on the Director of Public Prosecutions by subsection 3(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

73.-(1) There shall be a Leader of the Opposition who shall of be appointed by the Governor-General

(2) Whenever the Governor-General has occasion to appoint a Leader of the Opposition he shall in his own deliberate judgment appoint-

(a) if there is one opposition party whose numerical strength in the Assembly is greater than the strength of any other opposition party, the member of the Assembly who is the leader in the Assembly of that party; or

(b) if there is no such party, the member of the Assembly whose appointment would, in the judgment of the Governor-General, be most acceptable to the leaders in the Assembly of the opposition parties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed Leader of the Opposition.

(3) The office of the Leader of the Opposition shall become vacant-

(a) if, after any general election, he is informed by the Governor-General that the Governor-General is about to appoint another person as Leader of the Opposition;
(b) if, under the provisions of section 36(i) of this Constitution, he is required to cease to perform his functions as a member of the Assembly;
(c) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament;
(d) if, at the first sitting of the Assembly after any general election, he is not a member of the Assembly; or
(e) if his appointment is revoked under the next following subsection.

(4) If the Governor-General, acting in his own deliberate judgment, considers that a member of the Assembly other than the Leader of the Opposition has become the leader in the Assembly of the opposition party having the greatest numerical strength in the Assembly or, as the case may be, the Leader of the Opposition is no longer acceptable as such to the leaders of the opposition parties in the Assembly, the Governor-General may revoke the appointment of the Leader of the Opposition.

(5) For the purposes of this section "opposition party" means a group of members of the Assembly whose number includes a leader who commands their support in opposition to the Government.

74. Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Mauritius, make appointments to any such office and terminate any such appointment.

75. The Governor-General may, in Her Majesty's name and on Her behalf-

(a) grant to any person convicted of any offence 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 punishment imposed on that person for any offence;
(c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
(d) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the State on account of any offence.

(2) There shall be a Commission on the Prerogative of Mercy (hereinafter in this section referred to as "the Commission") consisting of a chairman and not less than two other members appointed by the Governor-General acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission-

(a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or
(b) if his appointment is revoked by the Governor-General acting in his own deliberate judgment.

(4) In the exercise of the powers conferred upon him by sub-section (1) of this section, the Governor-General shall act in accordance with the advice of the Commission.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Whenever any person has been sentenced to death (otherwise than by a court martial) for an offence, a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commission shall be taken into consideration at a meeting of the Commission which shall then advise the Governor—General whether or not to exercise his powers under subsection (1) of this section in that case.

(7) The provisions of this section shall not apply in relation to any conviction by a court established under the law of a country other than Mauritius that has jurisdiction in Mauritius in pursuance of arrangements made between the government of Mauritius and another Government or an international organisation relating to the presence in Mauritius of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.

CHAPTER VII
THE JUDICATURE

76.-(1) There shall be a Supreme Court for Mauritius which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) Subject to the provisions of the next following section, the judges of the Supreme Court shall be the Chief justice, the Senior Puisne judge and such number of Puisne judges as may be prescribed by Parliament:

Provided that the office of a judge shall not be abolished while any person is holding that office unless-he consents to its abolition.

77.-(1)The Chief Justice shall be appointed by the Governor-General acting after consultation with the Prime Minister.

(2) The Senior Puisne judge shall be appointed by the Governor-General acting in, accordance with the advice of the Chief justice.

(3) The Puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(4) No person shall be qualified for appointment as a judge of the Supreme Court unless he is, and has been for at least five years, a barrister entitled to practise before the Supreme Court.

(5) Whenever the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of the office, those functions shall be discharged by such one of the other judges of the Supreme Court as may from time to time be designated in that behalf by the Governor-General acting in accordance with the advice of the person holding the office of Chief Justice:

Provided that if the office of Chief Justice is vacant or if the person holding that office is on leave of absence, pending retirement, or if the Governor-General acting on his own deliberate judgment, considers that it is impracticable to obtain the advice of that person owing to that person's absence or illness, the Governor-General shall act after consultation with the Prime Minister.

(6) Whenever the office of Senior Puisne Judge is vacant or the person holding that office is acting as Chief Justice or is for any reason unable to perform the functions of the office, such one of the judges of the Supreme Court as the Governor-General acting in accordance with the advice of the Chief Justice, may appoint shall act in the office of Senior Puisne Judge.

(7) If the office at any Puisne judge is vacant or if a person holding the office of Puisne judge is acting as Chief justice or as Senior Puisne Judge or is for any reason unable to perform the functions of his office or if the Prime Minister, having been informed by the Chief justice that the state of business in the Supreme Court requires that the number of judges of the Court should be temporarily increased and having consulted with the Chief justice, request the Governor-General to appoint an additional judge, the Governor-General acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the Supreme Court to act as a Puisne judge of that court:

Provided that a person may act as a Puisne judge notwithstanding that he has attained the age, prescribed for the purposes of section 78(1) of this Constitution.

(8) Any person appointed -under this section to act as a Puisne Judge shall, unless he is removed from office under section 78 of this Constitution continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the in accordance with the advice of the Chief Justice:

Provided that a person whose appointment to act as a Puisne judge has expired or been revoked may, with the permission of the Governor-General acting in accordance with the advice of the Chief Justice, continue to art as such for such a period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

78.-(1) Subject to the provisions of this section, a person holding the office of a judge of the Supreme Court shall vacate that office on attaining the retiring age:

Provided that he may, with the permission of the Governor-General, acting in his own deliberate judgment in the case of the Chief Justice

or in any other case in accordance with the advice of the Chief Justice, continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising form infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of the next following subsection.

(3) R & R: A 48/91

(4) If the Chief justice or, in relation to the re person holding the office of Chief justice, the Governor-General considers that the question of removing a judge of Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then-

(a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-General 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 the Commonwealth 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-General and recommend to the Governor-General 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-General shall request that the question should be referred accordingly

(5) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (4) of this section, the-GovePR4r-Gener-a%nay suspend the judge from performing the functions of his office; and any such suspension may at any time be revoked by the and shall in any case cease to have effect-

(6) The functions of the Governor-General under this section shall be exercised by him in his own deliberate judgment.

(7) The retiring age for the purposes of subsection (1) of this section shall be the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that a provision of any Act of Parliament, to the extent that it alters the age at which judges of the Supreme Court shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect.

79. A Judge of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his Office as is prescribed by schedule 3 to this Constitution.

80.-(1) There shall be a Court of Civil Appeal and a Court of Criminal Appeal for Mauritius, each of which shall be a division of the Supreme Court.

(2) The Court of Civil Appeal shall have such jurisdiction and powers to hear and determine appeals in civil matters and the Court of Criminal Appeal shall have such jurisdiction and powers to hear and determine appeals in criminal matters as may be conferred upon them respectively by this Constitution or any other law.

(3) The judges of the Court Of Civil Appeal and the Court of Criminal Appeal shall be the judges for the time being of the Supreme Court.

81.An appeal shall lie from decisions of the Court of Appeal or the Supreme Court as of right in the following cases: -

(a) final decisions, in any civil or criminal proceedings on questions as to the interpretation of this Constitution
(b) where the matter in dispute on the appeal is of the value of Rupees 10,000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right Of the value of Rupees 10,000 @or upwards, final decisions in any civil proceedings;
(c) final decisions in proceedings under section 17 of this Constitution; and
(d) in such other cases as may be prescribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which ah appeal lies as of right from the Supreme Court to the Court of Appeal.

(2) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court with the leave of the court in the following cases: -

(a) (a) where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to final decisions in any civil proceedings; and
(b) in such other cases as may be pre-scribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies to the Court of Appeal, either as of right or by the leave of the Court of Appeal.

(3) The foregoing provisions of this section shall be subject to the provisions of section 37(6) of this Constitution and paragraphs 2(5), 3(2) and 4(4) of schedule I to this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(5) R & R: A 48/91

82.-(1) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make

such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) An appeal shall lie to the Supreme Court from decisions of subordinate courts in the following cases: -

(a) as of right from any final decision in any civil proceedings;
(b) as of right from any final decision in criminal proceedings whereby any person is adjudged to pay a fine of or exceeding such amount as may be prescribed or to be imprisoned with or without the option of a fine;
(c) by way of case stated, from any final decision in criminal proceedings on the ground that it is erroneous in point of law or in excess of jurisdiction; and
(d) in such other cases as may be prescribed:

Provided that an appeal shall not lie to the Supreme Court from the decision given by a subordinate court in any case if, under any law-

(i) an appeal lies as of right from that decision to the Court of Appeal;

(ii) an appeal lies from that decision to the Court of Appeal with the leave of the court that gave the decision or of some other court and that leave has not been withheld;

(iii) an appeal lies as of right from that decision to another subordinate court; or

(iv) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

83.-(1) Subject to the provisions of sections 41, 64(3) and 101(1) of this Constitution, if any person alleges that any of provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of the preceding sub- section or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this sub-section unless it is satisfied that the interests of the person by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to these proceedings, are being or are likely to be affected.

(3) Where the Supreme Court makes a declaration in pursuance of the preceding subsection that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Mauritius, as the Court considers appropriate.

(4) The Chief justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section 37 of this Constitution or paragraph 2(5), 3(2) or 4(4) of schedule I thereto otherwise than upon an application made in accordance with the provisions of that section or that paragraph, as the case may be.

Where any question as to the interpretation of this Constitution arises in any court of law established for Mauritius (other than the Court of Appeal, the Supreme Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal in accordance with the decision of the Court of Appeal or, as the case may be to Her Majesty in Council.

CHAPTER VIII
SERVICE COMMISSIONS AND THE PUBLIC SERVICE

85.-(1) There shall be a judicial and Legal Service Commission which shall consist of the Chief justice, who shall be chairman, and the following members-

(a) the Senior Puisne judge;
(b) the chairman of the Public Service Commission, and
(c) one other member (in this section referred to as "the appointed member") appointed by the Governor-General, acting in accordance with the advice of the Chief Justice.

(2) The appointed member shall be a person who is or has been a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

(3) If the office of the appointed member is vacant or the appointed member is for any reason unable to perform the functions of his office,

the Governor-General acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such a member to act as a member of the Commission and any person so appointed shall continue to act until his appointment is revoked by the Governor-General acting in accordance with the advice of the Chief Justice.

86.-(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in which offices and to remove such persons from office shall vest in the Judicial and Legal Service

(2) The offices to which this section applies are the offices specified in schedule 2 to this Con,3tfution and such other offices as may be prescribed:

Provided that-

(a) if the name of any such office is changed, or any such office is abolished, the provisions of this section and that schedule shall have effect accordingly;
(b) this section shall also apply to such other offices, being offices that in the opinion of the judicial and Legal Service Commission are offices similar to those specified in schedule 2 to this Constitution, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

87. The power to appoint persons to hold the offices of Ambassador, High Commissioner or other principal representative of Mauritius in any other country or accredited to any international Organisation and to remove such persons from office shall vest in the Governor-General acting in accordance with the advice of the Prime Minister:

Provided that before advising the Governor-General to appoint to any such office a person who holds or is acting in some other public office the Prime Minister shall consult the Public Service Commission.

88.-(1) There shall be a Public Service Commission, which shall consist of a chairman appointed by the Governor-General

(2) No person shall be qualified for appointment as a member of the Public Service Commission if he is a member of, a candidate for election to, the Assembly or any Local Authority a public officer or a local government officer.

(3) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the officers of the Commission as the Governor-General appoint.

(4) If at any time there are less than three members of Public Service Commission besides the chairman or if an such member is acting as chairman or is for any reason unable to perform the functions of his Office, the Governor-General may appoint a person qualified for appointment as a member of the Commission to act as a member, and any

person so appointed shall continue to act until his appointment is revoked by the Governor-General

(5) The functions of the Governor-General under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

89.-(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) R & R: A 19/90

(3) The provisions of this section shall not apply in relation to any of the following offices-

(a) the office of Chief Justice or Senior Puisne judge;
(b) except for the purpose of making appointments thereto or to act therein, the office of Director of Audit;
(c) the office of Ombudsman;
(d) any office, appointments to which are within the functions of the Judicial and Legal Service Commission or the Police Service Commission;
(e) any office to which section 87 of this Constitution applies;
(f) any ecclesiastical office;
(g) R: A 51/97
(h) any office of a temporary nature, the duties attaching to which are mainly advisory and which is to be filled by a person serving under a contract on non-pensionable terms.

(4) Before any appointment is made to the office of Secretary to the Cabinet, of Financial Secretary, of a Permanent Secretary or of any supervising officer within the meaning of section 68 of this Constitution, the Public Service Commission shall consult the Prime Minister and no appointment to the office of Secretary to the Cabinet, of Financial Secretary or of a Permanent Secretary, shall be made unless the Prime Minister concurs therein.

(5) Notwithstanding the preceding provisions of this section, the power to transfer any person holding any such office as is mentioned in the preceding subsection to any other such office, being an office carrying the same emoluments, shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(6) Before the Public Service Commission appoints to or to act in any public office any person holding or acting in any office the power to make appointments to which is vested in the judicial and Legal Service Commission or the Police Service Commission, the Public Service Commission shall consult that Commission.

(7) Before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(8) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the or in relation

to any person holding or acting in any such office, without the concurrence of the acting in his own deliberate judgment.

(9) References in this section to the office of Financial Secretary or of a Permanent Secretary are references to that office established on 11th March 1968 and include references to any similar office established after that date that carries the same or higher emoluments.

90.-(1) R & R: A 5/97

(2) No person shall be qualified for appointment as a member of the Police Service Commission if he is a member of, or a candidate for election to, the Assembly or any Local Authority, a public officer or a local government officer

(3) If at any time there are less than three members of the Police Service Commission besides the chairman or if any such member is for any reason unable to perform the functions of his office, the Governor General may appoint a person who is qualified for appointment as a member of the Commission to act as a member and any person so appointed shall continue to act until his appointment to act is revoked by the Governor General

(4) The functions of the Governor General under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

91.-(1) Subject to the provisions of section 93 of this Constitution, power to appoint persons to hold or act in any office in the Police Force (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Police Service Commission.

Provided that appointments to the office of Commissioner of Police shall be made after consultation with the Prime Minister.

(2) The Police Service Commission may, subject to such conditions as it thinks fit, by directions in writing delegate any of its powers of discipline or removal from office to the Commissioner of Police or to any other officer of the Police Force, but no person shall be removed from office except with the confirmation of the Commission.

92. (1) R & R: A. 2/82

(2) A Commissioner may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) A Commissioner shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection d the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Governor-General acting in his own deliberate judgment, considers that the question of removing a Commissioner ought to be investigated then-

(a) the Governor-General acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a chairman and not less than two other members, being 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 the Commonwealth or of a court having jurisdiction in appeals from such a court;

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Commissioner ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the Governor-General, acting in his own deliberate judgment, may suspend the Commissioner from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the that the Commissioner should not be removed.

(6) The offices to which this section applies are those of appointed member of the judicial and Legal Service Commission, chairman or other member of the Police Service Commission.

Provided that, in its application to the appointed member of the judicial and Legal Service Commission, subsection (4) of this section shall have effect as if for the words "acting in his own deliberate judgment" there were substituted the words "acting in accordance with the advice of the Chief Justice".

(7) The provisions of this section shall apply to the office of Ombudsman as they apply to a person specified in subsection 6) of this section:

Provided that subsection (1) shall have effect as if the words "four years" were substituted for the words "three years"

93.-(1) Subject to the provisions of this section, a person holding an office to which this section applies shall vacate the office on attaining the retiring age.

(2) Any such person may be removed from office only for inability to discharge the f-4nctions of his office (whether arising from infirmity of body -or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) Any such person shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has recommended to the Governor-General that he ought

to be removed from office for inability as aforesaid or for misbehaviour.

(4) if the appropriate Commission considers that the question of removing any such person ought to be investigated, then-

(a) the Governor-General acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a chairman and not less than two other members, being 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 the Commonwealth or a court having jurisdiction in appeals from such a court;
(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the Governor-General acting in his own deliberate judgment, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that he should not be removed.

(6) The offices to which this section applies are those of Electoral Commissioner, Director of Public Prosecutions, Commissioner of Police and Director of Audit.

(7) In this section "the appropriate Commission" means-

(a) in relation to a person holding the office of Electoral Commissioner or Director of Public Prosecutions the Judicial and Legal Service Commission;

(b) in relation to a person holding the office of Commissioner of Police, the Police Service Commission

(c) in relation to a person holding office of Director of Audit, the Public Service Commission.

(8) The retiring age for holders of the offices mentioned in subsection (6) of this section shall be the age of sixty years or such other age as may be prescribed:

Provided that a provision of any law, to the extent that it alters the age at which persons holding such offices shall vacate their offices, shall not have effect in relation to any such person after his appointment unless he consents to its having effect.

94.-(1) The law to be applied with respect to any pensions benefits that were granted to any person before 12th March 1968, shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which the preceding subsection applies) shall-

(a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 12th March 1968, be the law that was in force immediately before that date; and
(b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 11th March 1968, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable, to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund, to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may, be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

95.-(1) Where under any law any person or authority has a discretion-

(a) to decide whether or not any pensions benefit shall be granted; or
(b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under sub-section (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of Electoral Commissioner, Director of Public Prosecutions, judge of the Supreme Court, Commissioner of Police, Ombudsman or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission means—

(a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the judicial and Legal Service Commission or that have been granted in respect of such service, the Judicial and Legal Service Commission;
(b) in the case of benefits for which any person may be eligible in respect of the service in the public service of before he ceased to be a public officer, was a member of the Police Force.
(c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Mauritius may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius:

Provided that nothing in this subsection shall be construed as preventing---

(a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
(b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or of the widows, children, dependents or personal representatives of such persons in respect of such service.

CHAPTER IX
THE OMBUDSMM

96.-(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the opposition and such other persons, if any, as appear to the Governor-

General acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any Local Authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other offices as may be prescribed by the Governor-General acting after consultation with the Prime Minister.

97.-(1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of mal- administration in connection with the action so taken and in which-

(a) a complaint under this section is made;
(b) he is invited to do so by any Minister or other member of the Assembly; or
(c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities-

(a) any department of the Government;
(b) the Police Force or any member thereof;
(c) the Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;
(d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;
(e) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities-

(i) the Governor-General or his personal staff;
(ii) the Chief justice;
(iii) any Commission established by this Constitution or their staff;
(iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;
(v) any person exercising powers delegated to him by the Public Service Commission or the Police Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being-

(a) an authority of the Government or a Local Authority or other authority or body constituted for purposes of the public service or local government; or
(b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the last preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say-

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or
(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that-

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him-

(a) that the complaint is merely frivolous or vexatious;
(b) that the subject-matter of the complaint is trivial;

(c) that the person aggrieved has no sufficient interest in the subject-matter of the complaint; or
(d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section "action" includes failure to act.

98.-(1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

99.-(1) For the purposes of an investigation under section 97 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman 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.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this sub-section a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister

and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 97 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

100.-(1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject-matter of investigation was-

(a) contrary to law;
(b) based wholly or partly on a mistake of law or fact;
(c) unreasonably delayed; or
(d) otherwise unjust or manifestly unreasonable.

(2) If any case to which this section applies the Ombudsman is of opinion-

(a) that the matter should be given further consideration;
(b) that an omission should be rectified;
(c) that a decision should be cancelled, reversed or varied;
(d) that any practice on which the act, omission, decision or recommendation was based should be altered;
(e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
(f) that reasons should have been given for the decision; or
(g) that any other steps should be taken, the Ombudsman shall report his opinion, and his reasons there- for, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that office r to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the

Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

101.-(1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 97 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the Assembly.

102. There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision-

(a) for the procedure to be observed by the Ombudsman in performing his functions;
(b) for the manner in which complaints under section 97 of this Constitution may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);
(c) for the payment of fees in respect of any complaint or investigation;
(d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and
(e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

CHAPTER X
FINANCE

103. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

104.-(1) No moneys shall be withdrawn from the Consolidated Fund except-

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Mauritius; or

(b) where the issue of those moneys has been authorised by an Appropriation law or by a supplementary estimate approved by resolution of the Assembly or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 106 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Mauritius other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administration or the investment of any such moneys in such securities as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

105.-(1) The Minister responsible for finance shall cause to be prepared and laid before the Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Mauritius for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an Appropriation bill, introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found-

(a) that the amount appropriated by the Appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation law; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation law or for a purpose for which no amount has been appropriated by the Appropriation law,

a supplementary estimate showing the sums required or spent shall be laid before the Assembly and the heads of expenditure shall be included in a supplementary Appropriation bill introduced in the Assembly to provide for the appropriation of those sums, or in a motion or motions introduced into the Assembly for the approval of such expenditure.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the Assembly in accordance with the provisions of the preceding subsection, a supplementary Appropriation bill shall be introduced in the Assembly, not later than the end of the

financial year next following, providing for the appropriation of the sums so approved.

106. If the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of six months from the beginning of that financial year or the coming into operation of the Appropriation law, whichever is the earlier.

107.-(1) There shall be such provision as may be prescribed by Parliament for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if he ii satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Assembly, and a bill or motion shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

108.-(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary payable to any person holding any office to which this section applies or to his terms of office, other than allowances, that is to his disadvantage shad not have effect in relation to that person after his appointment unless he consents to its having effect.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of the last preceding subsection, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the office of Govenor-General, chairman or other members of the Electoral Boundaries Commission or of the Electoral Supervisory Commission, Electoral Commissioner, Director of Public Prosecutions, Chief Justice, Senior Puisne judge, Puisne judge, appointed member of the judicial and Legal Service Commission, chairman or other member of the Public Service Commission, appointed member of the Police Service Commission, Commissioner of Police, Ombudsman or Director of Audit.

109.-(1) All debt charges for which Mauritius is liable shall be a charge on the Consolidated Fund.

(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:

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

regarded as a single party for those purposes; and the provisions of the schedule shall be construed accordingly.

(2) Every candidate for election at any general election may at his nomination declare in such manner as may be prescribed that he belongs to a party that is registered as such for the purpose of that election, and, if h does so, he shall regarded as a member of that party for those purposes, while if he does not do so, he shall not be regarded as a member of any party for those purposes; and where any candidate is regarded as a member of a party for those purposes, the name of that party shall be stated on any ballot paper prepared for the purposes upon which his name appears.
for those purposes up

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall from time to time be furnished in such manner as may be prescribed with the names of at least two persons, any one of whom is authorised to discharge the functions of leader of that party for the purposes of the proviso to paragraph 5(7) of the Schedule.

(4)There shall be such provision as may be prescribed requiring g-) persons who make applications or declarations for the purposes of this paragraph to furnish evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(5) There shall be such provision as may be prescribed for the determination, by a single judge of the Supreme Court before the day appointed for the nomination of candidates at a general election, of any question incidental to any such application or declaration made in relation to that general election; and the determination of the judge therein shall not be subject to appeal.

3.-(1) Every candidate at any general election of members of the Assembly shall declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination.

(2) Within seven days of the nomination of any candidate for election at any general election an application may be made by any elector in such manner as may be prescribed to the Supreme Court to resolve any question as to the correctness of the declaration relating to his community made by that candidate in connection with his nomination, in which case the application shall (unless withdrawn) be heard and determined by a single judge of the Supreme Court, in such manner as may be prescribed, within fourteen days of the nomination; and the determination of the judge therein shall not be subject to appeal.

(3) For the purposes of this schedule, each candidate for election at any general election shall be regarded as belonging to the community to which he declared he belonged at his nomination as such or, if the Supreme Court has held in proceedings questioning the correctness of his declaration that he belongs to another community, to that other community; but the community to which any candidate belongs for those purposes shall not be stated upon any ballot paper prepared for those purposes.

(4) For the purposes of this schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and a Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those three communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.

4.-(1) If it is so prescribed, every candidate for election as a member of the Assembly shall in connection with his nomination make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity o any nomination of a candidate for election as a member of the Assembly.

(3) If a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings other than proceedings under section 37 of this Constitution.

(4) If a returning officer decides that a nomination is invalid, his decision may be questioned upon an application to a single judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the judge therein shall not be subject to appeal.

5.-(1) In order to ensure a fair and adequate representation of each community, there shall be eight seats in the Assembly, additional to the sixty-two seats for members representing constituencies which shall so far as is possible be allocated to persons if any, belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

(2) As soon as is practicable after all the returns have been made of persons elected at any general election as members to represent constituencies, the eight additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

(3) The first four of the eight seats shall so far as is possible each be allocated to the most successful unreturned candidate if any who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to.

(4) When the first four seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties other than the most successful party, shall be ascertained and so far as is possible that number of seats our of the second four seats shall one by one be allocated to the mod successful unreturned candidates (if any) belonging both to the second most successful of those parties and to the appropriate

community, and so on as respects any remaining seats and any remaining parties that have not received any of the eight seats.

(5) In the event that any of the eight seats remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the eight seats are filled, that is to seat one seat shall be allocated to the most successful unreturned candidate, if any belonging both to the most successful of the parties that have not received any of the eight seats and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful of those parties and to the appropriate community, and so on as respects any remaining seats, and any remaining parties that have not received any of the eight seats.

(6) In the event that any of the eight seats still remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the eight seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful party and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the third most successful party (if any) and to the appropriate community, and so on as respects any remaining seats and parties.

(7) If at any time before the next dissolution of Parliament one of the eight seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the most successful unreturned candidate (if any) available who belongs to the appropriate community and to the party to whom the person to whom the seat was allocated at the last general election belonged:

Provided that, if no candidate of the appropriate community who belongs to that party is available, the seat shall be allocated to the most successful unreturned candidate available who belongs to the appropriate community and who belongs to such other party as is designated by the leader of the party with no available candidate.

(8) The appropriate community means, in relation to the allocation of any of the eight seats, the community that has an unreturned candidate available (being a person of the appropriate party, if the seat is one of the second four seats) and that would have the highest number of pers4ns (as determined by reference to the results of the latest published overall census of the whole population of Mauritius) in relation to the number of seats in the Assembly held immediately before the allocation of the seat by persons belonging to that community (whether as members elected to represent constituencies or otherwise), if the seat were also held by a person belonging to that community:

Provided that, if, in relation to the allocation of any seat, two or more communities have the same number of persons as aforesaid preference shall be given to the community with an unreturned candidate who was more successful than the unreturned candidates of the other community or communities (that candidate and those other candidates

being persons of the appropriate party, if the seat is one of the second four seats).

(9) The degree of success of a party shall for the purposes of allocating any of the eight seats at any general election of members of the Assembly, be assessed by reference to the number of candidates belonging to that party returned as members to represent constituencies at that election as compared with the respective numbers of candidates of other parties so returned, no account being taken of a party that had no candidates so returned or of any change in the membership of the Assembly occurring because the seat of a member so returned becomes 'vacant for any cause,, and the degree of success of an unreturned candidate of a particular community (or of a particular party and community) at any general election shall be assessed by comparing the percentage of all the valid votes cast in the constituency in which he stood for election secured by him at that election with the percentages of all the valid votes cast in the respective constituencies in which they stood for election so secured by other unreturned candidates of that particular community (or, as the case may be, of that particular party and that particular community), no account being taken of the percentage of votes secured by any unreturned candidate who has already been allocated one of the eight seats at that election or by any unreturned candidate who is not a member of a party:

Provided that if, in relation to the allocation of any seat, any two or more parties have the same number of candidates returned as members elected to represent constituencies, preference shall be given to the party with an appropriate unreturned candidate who was more successful than the appropriate unreturned candidate or candidates of the other party or parties.

(10) Any number required for the purpose of sub-paragraph (8) this paragraph or any percentage required for the purposes of sub-paragraph (9) of this paragraph shall be calculated to not more than three places of decimals if it cannot be expressed as a whole number.

SCHEDULE 2 TO THE CONSTITUTION
(R & R: A. 48/91)

EXPLANATORY NOTE
(This Note is not Part of the Order)

By virtue of the Mauritius Independence Act 1968 Mauritius will attain fully responsible status within the Commonwealth on 12th March 1968. This Order makes provision for a Constitution for Mauritius to come into effect on that day, including provision for the legislature, executive government, the judicature and the public service. The Constitution also contains provisions relating to citizenship of Mauritius and fundamental rights and freedom of the individual.

ANNEX 40

Mauritius Note Verbale No. 51/69 (17781/16/18) from the Office of the Prime Ministers (External Affairs Division) to the British High Commission Port Louis, 19 November 1969

No. 51/69(17781/16/8)

19th November, 1969 (1)

PRIME MINISTER'S OFFICE

MAURITIUS

The Prime Minister's Office (External Affairs Division) presents its compliments to the British High Commission and has the honour to refer to the agreement between the Government of Mauritius and the British Government whereby the Chagos Archipelago was excised from the territory of Mauritius to form the British Indian Ocean Territory.

This excision, it will be recalled, was made on the understanding, inter alia, that the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Government of Mauritius.

The Government of Mauritius intends introducing, in the very near future, legislation vesting in its ownership the sea-bed and the sub-soil of the territorial sea and the continental shelf of all the islands under its territorial jurisdiction. The Government of Mauritius wishes to inform the British Government that it will, at the same time, vest in its ownership any minerals or oil that may be discovered in the off-shore areas of the Chagos Archipelago.

The Government of Mauritius also wishes to inform the British Government that it will, in the near future, issue licences for the exploration and prospecting of minerals and oil in the off-shore areas of the Chagos Archipelago.

The Prime Minister's Office (External Affairs Division) avails itself of this opportunity to renew to the British High Commission the assurances of its highest consideration.

PRIME MINISTER'S OFF. MAURITIUS

The British High Commission,
Corné House,
PORT LOUIS.

cc to Ol. esp
AMTD
UND
NewsD
Legal Adv.
SAD.
PIOD
MOD, PSN

ANNEX 41

United Kingdom Speaking Note, Pacific Indian Ocean Department (FCO) Visit of Sir S Ramgoolam, Prime Minister of Mauritius, 4 February 1970, 2 February 1970

(7)

VISIT OF SIR SEEWOOSAGUR RAMGOOLAM

PRIME MINISTER OF MAURITIUS

4 FEBRUARY, 1970

SPEAKING NOTE

A. Exploration for oil in the Chagos Archipelago

/If Sir S. Ramgoolam contests our interpretation of the legal position./

Our position was made perfectly clear in the Note handed to your government in mid-December. We consider it incontestable that as stated in that Note "The Sovereignty of the United Kingdom over the Chagos Archipelago extends to the territorial waters of the Archipelago including the sea bed and sub-soil under those waters. The United Kingdom is also entitled to exercise ... exclusive sovereign rights over the continental shelf of the Archipelago for the purpose of exploring it and exploiting its natural resources." I regret that we are unable to agree that the Mauritius Government have retained any rights over any minerals there may be in the Chagos Archipelago or its off-shore areas.

2. /It is probable that Sir S. Ramgoolam, while conceding our sovereign rights over the islands, may urge that we permit exploration for oil in the Chagos in the context of the Mauritius economy and the need for Mauritius to have any benefits now from oil or mineral resources found there./

I fully appreciate how important it would be for the economy of Mauritius if oil were to be discovered in marketable quantities in any of the territories or off-shore areas which belong to her.

/I

I can sympathize therefore with your desire that exploration should be permitted in the Chagos Archipelago in the hope that, under the understanding arrived at in the Lancaster House talks in 1965, Mauritius would receive the benefit of any oil discovered there while the Archipelago remains under United Kingdom sovereignty. I must remind you, however, that it was made absolutely clear at the discussions over the setting up of the British Indian Ocean Territory that as the islands were required by us for defence purposes there was no intention of permitting prospecting for minerals or oil on or near them. The question of any benefits arriving from oil exploration, it was pointed out, should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

3. This was fully understood by yourself and the Mauritian Government at that time. In fact it was officially stated in the Legislative Assembly on 21 December, 1965, "The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes". This remains the position today. As long as the islands are reserved for defence purposes (and this is likely to be the case for many years to come) I am afraid that there can be no question of our permitting exploration for oil or minerals in the Chagos Archipelago.

4. /If Sir S. Ramgoolam argues that the grant of oil exploration licences in the off-shore areas would not interfere with the use of the islands for defence purposes./

/We

We have, I assure you, already given very full and careful consideration to this possibility but are, with great regret, unable to agree. The grant of exploration licences would, if oil were found in marketable quantities, necessarily entail the grant of production licences, and oil production with all the staff, machinery and shipping involved would render the islands quite useless for the defence purposes for which they are needed. In fact, it was to ensure that we had the sole undisturbed use of the islands that we paid the Mauritius Government £3 million compensation for their cession to us in 1965.

Pacific and Indian Ocean Department,
2 February, 1970.

ANNEX 42

Mauritius letter from Prime Minister Sir S Ramgoolam to British High Commission, Port Louis, 4 September 1972

C O P Y

(Original at f.(29) in M.P. 1138)

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 Mauritius has no objection to the Government of United Kingdom making a public statement to this effect, should the need arise.

With my warmest regards.

(SD) S. RAMGOOLAM)
Prime Minister

His Excellency Mr. Peter A. Carter, CMG
British High Commissioner,
PORT LOUIS.

/VS

ANNEX 43

Mauritius letter from Prime Minister Sir S Ramgoolam to British High Commission, Port Louis, 24 March 1973

24th March, 1973

Please refer to the second paragraph of your letter 32/1 of the 7th February.

This is to acknowledge, with thanks, receipt of £650,000 by the Mauritius Government in full and final discharge of your Government's undertaking, given in 1965, to meet the settlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago.

The payment does not in any way affect the verbal agreement on minerals, fishing and prospecting rights reached at the meeting at Lancaster House on the 23rd September, 1965, and is in particular subject to:

(i) the British Government using their good offices with the U.S. Government in support of Mauritius request for concessions over sugar imports and the supply of wheat and other commodities

(ii) the British Government doing their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work on the islands

(iii) the British Government using their good offices with the U.S. Government to ensure that navigational and meteorological facilities in the Chagos Archipelago would remain available to the Mauritius Government.

(iv) Mauritius reserving to itself:

(a) fishing rights

(b) use of air strip for emergency landing and for refuelling civil aircraft without disembarkation of passengers.

(v) the right of prospection and the benefit of any minerals or oil discovered in or near the Chagos Archipelago reverting to the Mauritius Government.

(vi) the return of the islands to Mauritius without compensation, if the need for use by Great Britain of the islands disappeared.

(S. Ramgoolam)
Prime Minister

His Excellency Mr. P.A. Carter, CMG,
British High Commissioner,
Port Louis.

Copy to:-
Ministry of Finance

ANNEX 44

Mauritius Legislative Assembly, Committee of Supply, 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

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 renégociation 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

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 !

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

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.

ANNEX 45

United Kingdom record of Anglo-US Talks on Indian Ocean (Extracts), 7 November 1975

EXTRACT

SECRET

(173)

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 G 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

/facility

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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. 7
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 was satisfactory. The Americans understood that the British side did not think that agreement on Nuclear Powered Warships (NPWs) should be included 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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ANNEX 46

Debate in Mauritius Legislative Assembly (extracts), 26 June 1980

(10.26 p.m.)

The Attorney-General and Minister of Justice (Mr. Cheong 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 committing 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-

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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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the operation of the National Pension Fund. This situation could not continue and, therefore, we welcome this Bill, although we feel that it does not go far enough. The employers, we feel, should have been taken at their word, should have considered that the contribution to the National Pension Fund was an increase in fact in salary, and the whole of the severance allowance payable should have been maintained without any deduction at all. This is a half way measure. We understand that this is the best that the Minister concerned could obtain from all the forces that come into play when such matters have to be decided. Therefore, for the time being we will accept this, but we want to make it very clear, that this is un *pis aller* ; we are not going to stop there, the unions are not going to stop there ; we are going to press for the restoration of the usual right, the former severance allowance, without any deduction at all.

One further remark that I would like to make, Sir, concerns clause 4 subsection (5), where the worker retired by the employer on attaining the age of 60 is treated. We would have wished the Minister to go much further than he has gone there. In the original Labour Act of 1975, the faculty was given to the employer to retire a worker at the age of 60 on payment of severance allowance at the normal rate. This was a good thing, but it did not go far enough, inasmuch as the worker who attained 60 did not himself have the faculty to ask to be retired, or to retire himself and to obtain severance allowance. Throughout our legislation, ever since the Employment and Labour Ordinance was introduced, severance allowance has been treated as a form of pension, because deductions were allowed for pension schemes and gratuities payable outside that particular piece of law. So that to all intents and purposes severance allowance has been treated as a form of pension. Therefore it was anomalous that workers who attained the age of 60 could not themselves say : " All right, I am old now, I want to be retired, pay me my severance allowance ". In effect we have created two categories of workers, two categories of Mauritians : on the one hand, there were workers employed in the public service and in the parastatal bodies, who automatically, on attaining the age of 60, could claim their right to retire and to payment of a pension. In fact they were not normally allowed to stay on.

It was considered, for that class of Mauritians, that they could retire, that they had done their duty towards society and they had earned the rest that they deserved for the remainder of their lives. But, as far as the private sector was concerned, no such provision was made. It is only the employer who would decide that he was going to retire So and So. In practice, what happens, Sir ? The Minister is well aware of many concrete cases in the sugar industry, in the docks, particularly among large employers of labour. In practice, whenever an employee attains the age of 60, they just sit quiet, as if nothing had happened, they wait for the worker to retire, or to abandon his job, or even die in some cases, to fall ill, not to come to work, and to get rid of him in that manner without having to pay any compensation at all. I know of such cases, and, indeed, the hon. Minister knows cases like that. To-day, in the docks, there are 25 employees who are aged between 65 and 73 — there is even one employee who is aged 75, who has worked for 46 years in the docks. To-day he is half blind, Sir ! He is one of several hundreds in a work force. The employer has not considered that he has

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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. Cheng 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

UNCLASSIFIED

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 sovereign 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

UNCLASSIFIED

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. Gharbarran): 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 violated, because of the relationship. The major issue was to gain independence, and therefore the consent was violated, 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

UNCLASSIFIED

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. Dooagoor : 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

UNCLASSIFIED

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. Deongnor : 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 démarré, 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 République 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".

UNCLASSIFIED

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, Rient, ricannant, alors que nous parlons du cœur même de notre pays, alors que nous parlons d'une république 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 répéterai tant que j'aurais envie !

UNCLASSIFIED

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 Ornison, 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

UNCLASSIFIED

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 réconcilier ces deux choses ? Nous avons applaudi le ministre, de ce côté de la Chambre: les Chagos forment partie de l'Etat mauricien ! Où 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'Ile 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 minerales 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

UNCLASSIFIED

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'Ile 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 *Iloi*s, 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 said 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 *Iloi*s ? 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"

UNCLASSIFIED

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. Brittier. 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

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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 strife 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 said 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.

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ANNEX 47

United Kingdom Telegram No.124 from British High Commission, Port Louis to Foreign and Commonwealth Office, 28 June 1980

[illegible]
UNCLASSIFIED
[illegible] LOUIS 03/[illegible] JUN 80
TO IMMEDIATE FCO
TELEGRAM NUMBER 124 OF 28 JUN 80

DIEGO GARCIA

1. FOLLOWING IS TEXT OF PRESS STATEMENT BY MAURITIUS PRIME MINISTER BEFORE DEPARTURE 27 JUNE FOR LONDON EN ROUTE FOR OAU SUMMIT: BEGINS DIEGO GARCIA WAS EXCISED BY THE BRITISH GOVERNMENT BY AN ORDER IN COUNCIL BEFORE OUR INDEPENDENCE IN 1968. ACTUALLY, THE WHOLE PROCEDURE TOOK PLACE IN 1965. THIS WAS A VERY IMPORTANT DECISION TO TAKE. WE WERE CONSULTED AND WE AGREED TO GIVE AWAY DIEGO GARCIA AND THE BRITISH GOVERNMENT PAID US £3 MILLION AS COMPENSATION.
SINCE THEN THERE HAVE BEEN MANY DEVELOPMENTS. THE BRITISH GOVERNMENT GAVE A LARGE SUM OF MONEY FOR THE DISPLACEMENT OF THE PEOPLE IN DIEGO GARCIA, SOME OF WHOM CAME TO MAURITIUS. AND EVEN TODAY, AFTER SO MANY YEARS, THE MATTER IS STILL IN DISPUTE. THERE HAS BEEN NO FINAL SETTLEMENT OF THE INTERESTS OF THE PEOPLE IN DIEGO GARCIA.
AS A RESULT OF THE EXCISION, DIEGO GARCIA BECAME PART OF WHAT IS KNOWN AS THE BRITISH INDIAN OCEAN TERRITORIES. AND GREAT BRITAIN HAS SOVEREIGNTY OVER IT, ALTHOUGH WE, BY ARRANGEMENT WITH GREAT BRITAIN, HAVE PRESERVED OUR MINERAL RIGHTS, FISHING RIGHTS. AND THE DAY GREAT BRITAIN DOESN'T NEED DIEGO GARCIA, DIEGO GARCIA WILL BE RETURNED TO US WITHOUT COMPENSATION. I DON'T BRING THE UNITED STATES INTO IT, BECAUSE THE ARRANGEMENTS ARE WITH GREAT BRITAIN AND NOT WITH THE UNITED STATES.
LAST NIGHT, A REQUEST WAS MADE IN THE ASSEMBLY THAT WE SHOULD INCLUDE DIEGO GARCIA AS A TERRITORY OF THE STATE OF MAURITIUS. IF WE HAD DONE THAT, WE WOULD HAVE LOOKED RIDICULOUS IN THE EYES OF THE WORLD, BECAUSE AFTER EXCISION, DIEGO GARCIA DOESN'T BELONG TO US, ALTHOUGH WE HAD ALREADY LAID CLAIM FOR DIEGO GARCIA TO GREAT BRITAIN. AND I AND MY COLLEAGUE THE MINISTER FOR EXTERNAL AFFAIRS, WHILE WE ARE AT THE OAU CONFERENCE AND LATER ON IN ENGLAND, MEETING THE GOVERNMENT OF GREAT BRITAIN, WE WILL LAY FRESH CLAIMS TO THE GOVERNMENT OF GREAT BRITAIN AND ALSO MAKE KNOWN AT THE OAU OUR POSITION ON DIEGO GARCIA.
IT IS A COMPLEX PROBLEM. AS YOU SEE, WE COULD NOT SAY, LAST NIGHT, THAT DIEGO GARCIA WAS MAURITIUS TERRITORY, ALTHOUGH WE HAVE ALL THE MORAL AND THE ETHICAL RIGHTS ON DIEGO GARCIA. SO, FOR THE TIME BEING, THIS IS ALL WE CAN DO. THEN, OF COURSE, AS YOU KNOW, IT IS DIFFICULT TO SAY WHAT WILL HAPPEN TO THE DISPLACED PEOPLE OF DIEGO GARCIA, IF DIEGO GARCIA WERE TO RETURN TO MAURITIUS.
SO IT IS NOT SUCH A SIMPLE MATTER AS SOME PEOPLE TRIED TO MAKE IT IN THE ASSEMBLY LAST NIGHT. WE ARE A PEOPLE WITH MANY PROBLEMS. NOT ONLY WE MUST PRESERVE OUR INTERESTS, WE MUST ALSO WORK WITHIN THE FRAMEWORK OF PEACE AND FRIENDSHIP WITH OTHER COUNTRIES. SINCE DIEGO GARCIA WAS PASSED OVER TO THE BRITISH GOVERNMENT, IT HAS BECOME ONE OF THE FORTRESSES FOR THE ADVANCEMENT OF PEACE IN THE WORLD, BY THE BUILDING UP OF DETERRENT FORCES ON THAT ISLAND BY THE UNITED STATES. ENDS.

/2. POINTS

2. POINTS MADE IN ANSWER TO QUESTIONS:

(A) IT HAD BEEN AGREED WITH BRITISH GOVERNMENT THAT, FOR COMMUNICATIONS CENTRE, MEN AND PROVISIONS COULD BE TAKEN FROM MAURITIUS AND MAURITIUS GOVERNMENT HAD MADE THIS REQUEST TO BOTH BRITISH AND US GOVERNMENTS;

(B) MR LUCE HAD NOT RAISED QUESTION OF DIEGO BEING RENTED BUT NOW THAT IT WAS BEING DEVELOPED INTO MORE THAN A COMMUNICATIONS CENTRE THE INTERESTS OF MAURITIUS SHOULD BE MADE MORE APPARENT.

3. SEE MIFT.

WARD

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ANNEX 48

Debate in Mauritius Legislative Assembly, 25 November 1980

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 referendum 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) 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 49

Exchange of Notes constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the Availability for Defence Purposes of the "British Indian Ocean Territory", 30 December 1966, 603. *U.N.T.S*, 273 (No. 8737)

No. 8737

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND and UNITED STATES OF AMERICA

Exchange of notes constituting an agreement concerning the availability for defense purposes of the British Indian Ocean Territory (with annexes). London, 30 December 1966

Official text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 22 August 1967.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD et ÉTATS-UNIS D'AMÉRIQUE

Échange de notes constituant un accord en vue de rendre disponible, à des fins de défense, le Territoire britannique de l'océan Indien (avec annexes). Londres, 30 décembre 1966

Texte officiel anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 22 août 1967.

No. 8737. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE AVAILABILITY FOR DEFENCE PURPOSES OF THE BRITISH INDIAN OCEAN TERRITORY, LONDON, 30 DECEMBER 1966

I

The Ambassador of the United States of America to the Secretary of State for Foreign Affairs

Note No. 25

London, 30 December 1966

Sir,

I have the honor to refer to recent discussion between representatives of the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the availability, for the defense purposes of both Governments as they may arise, of the islands of Diego Garcia and the remainder of the Chagos Archipelago, and the islands of Aldabra, Farquhar, and Desroches constituting the British Indian Ocean Territory, hereinafter referred to as "the Territory". The United States Government has now authorized me to propose an Agreement in the following terms:

(1) The Territory shall remain under United Kingdom sovereignty.

(2) Subject to the provisions set out below the islands shall be available to meet the needs of both Governments for defense. In order to ensure that the respective United States and United Kingdom defense activities in the islands are correlated in an orderly fashion:

(*a*) In the case of the initial United States requirement for use of a particular island the appropriate governmental authorities shall consult with respect to the time required by the United Kingdom authorities for taking those administrative measures that may be necessary to enable any such defense requirement to be met.

(*b*) Before either Government proceeds to construct or install any facility in the Territory, both Governments shall first approve in principle the requirement for that facility, and the appropriate administrative authorities of the two

[1] Came into force on 30 December 1966 by the exchange of the said notes.

Governments shall reach mutually satisfactory arrangements concerning specific areas and technical requirements for respective defense purposes.

(*c*) The procedure described in sub-paragraphs (*a*) and (*b*) shall not be applicable in emergency circumstances requiring temporary use of an island or part of an island not in use at that time for defense purposes provided that measures to ensure the welfare of the inhabitants are taken to the satisfaction of the Commissioner of the territory. Each Government shall notify the other promptly of any emergency requirements and consultation prior to such use by the United States Government shall be undertaken as soon as possible.

(3) The United Kingdom Government reserves the right to permit the use by third countries of British-financed defense facilities, but shall where appropriate consult with the United States Government before granting such permission. Use by a third country of United States or jointly-financed facilities shall be subject to agreement between the United Kingdom Government and the United States Government.

(4) The required sites shall be made available to the United States authorities without charge.

(5) Each Government shall normally bear the cost of site preparation, construction, maintenance, and operation for any facilities developed to meet its own requirements. Within their capacities, such facilities shall be available for use by the forces of the other Government under service-level arrangements. However, there may be certain cases where joint financing should be considered, and in these cases the two Governments shall consult together.

(6) Commercial aircraft shall not be authorized to use military airfields in the Territory. However, the United Kingdom Government reserves the right to permit the use in exceptional circumstances of such airfields, following consultation with the authorities operating the airfields concerned, under such terms or conditions as may be defined by the two Governments.

(7) For its defense purposes on the islands, the United States Government may freely select United States contractors and the sources of equipment, material, supplies, or personnel, except that:

(*a*) the United States Government and United States contractors shall make use of workers from Mauritius and Seychelles to the maximum extent practicable, consistent with United States policies, requirements and schedules; and

(*b*) the appropriate administrative authorities of the two Governments shall consult before contractors or workers from a third country are introduced.

(8) The exemption from charges in the nature of customs duties and other taxes in respect of goods, supplies and equipment brought to the Territory in connection with the purposes of this Agreement by or on behalf of the United States Government, United States contractors, members of the United States Forces, contractor personnel or dependents, and the exemption from taxation of certain persons serving or employed in the Territory in connection with those purposes, shall be such exemption as is set out in Annex I to this Note.

(9) The arrangements regarding the exercise of criminal jurisdiction and claims shall be those set out in Annex II to this Note.

(10) For the purpose of this Agreement:

(*a*) "Contractor personnel" means employees of a United States contractor who are not ordinarily resident in the Territory and who are there solely for the purposes of this Agreement;

(*b*) "Dependents" means the spouse and children under 21 years of age of a person in relation to whom it is used; and, if they are dependent upon him for their support, the parents and children over 21 years of age of that person;

(*c*) "Members of the United States Forces" means

(i) military members of the United States Forces on active duty;

(ii) civilian personnel accompanying the United States Forces and in their employ who are not ordinarily resident in the Territory and who are there solely for the purpose of this Agreement; and

(iii) dependents of the persons described in (i) and (ii) above;

(*d*) "United States authorities" means the authority or authorities from time to time authorized or designated by the United States Government for the purpose of exercising the powers in relation to which the expression is used;

(*e*) "United States contractor" means any person, body or corporation ordinarily resident in the United States of America, that, by virtue of a contract with the United States Government, is in the Territory for the purposes of this Agreement, and includes a sub-contractor;

(*f*) "United States Forces" means the land, sea and air armed services of the United States, including the Coast Guard.

(11) The United States Government and the United Kingdom Government contemplate that the islands shall remain available to meet the possible defense needs of the two Governments for an indefinitely long period. Accordingly, after an initial period of 50 years this Agreement shall continue in force for a further period of twenty years unless, not more than two years before the end of the initial period, either Government shall have given notice of termination to the other, in which case this Agreement shall terminate two years from the date of such notice.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honor to propose that this Note and its Annexes, together with your reply to that effect, shall constitute an Agreement between the two Governments which shall enter into force on the date of your reply.

Accept, Sir, the renewed assurances of my highest consideration.

David BRUCE

ANNEX I

CUSTOMS DUTIES AND TAXATION

1. *Customs Duties and other Taxes on Goods*

(1) No import, excise, consumption or other tax, duty or impost shall be charged on:

(*a*) material, equipment, supplies, or goods for use in the establishment, maintenance, or operation of the facilities which are consigned to or destined for the United States authorities or a United States contractor;

(*b*) goods for use or consumption aboard United States public vessels or aircraft;

(*c*) goods consigned to the United States authorities or to a United States contractor for the use of or for sale to military members of the United States Forces, or to other members of the United States Forces, or to those contractor personnel and their dependents who are not engaged in any business or occupation in the Territory;

(*d*) the personal belongings or household effects for the personal use of persons referred to in sub-paragraph (*c*) above, including motor vehicles, provided that these accompany the owner or are imported either—

(i) within a period beginning sixty days before and ending 120 days after the owner's arrival; or

(ii) within a period of six months immediately following his arrival;

(*e*) goods for consumption and goods (other than personal belongings and household effects) acquired after first arrival, including gifts, consigned to military members of the United States Forces, or to those other members of the United States Forces who are nationals of the United States and are not engaged in any business or occupation in the Territory, provided that such goods are:

(i) of United States origin if the Commissioner so requires, and

(ii) imported for the personal use of the recipient.

(2) No export tax shall be charged on the material, equipment, supplies or goods mentioned in paragraph (1) in the event of reshipment from the Territory.

(3) Article 1 of this Annex shall apply notwithstanding that the material, equipment, supplies or goods pass through other parts of the Territory en route to or from a site.

(4) The United States authorities shall do all in their power to prevent any abuse of customs privileges and shall take administrative measures, which shall be mutually agreed upon between the appropriate authorities of the United States and the Territory, to prevent the disposal, whether by resale or otherwise, of goods which are used or sold under paragraph (1) (*c*), or imported under paragraph (1) (*d*) or (1) (*e*), of Article 1 of this Annex, to persons not entitled to buy goods pursuant to paragraph (1) (*c*), or not entitled to free importation under paragraph (1) (*d*) or (1) (*e*). There shall be cooperation between the United States authorities and the Commissioner to this end, both in prevention and in investigation of cases of abuse.

2. *Motor Vehicle Taxes*

No tax or fee shall be payable in respect of registration or licensing for use for the purposes of this Agreement in the Territory of motor vehicles belonging to the United States Government or United States contractors.

3. *Taxation*

(1) No members of the United States Forces, or those contractor personnel and their dependents who are nationals of the United States, serving or employed in the Territory in connection with the facilities shall be liable to pay income tax in the Territory except in respect of income derived from activities within the Territory other than such service or employment.

(2) No such person shall be liable to pay in the Territory any poll tax or similar tax on his person, or any tax on ownership or use of property which is situated outside the Territory or situated within the Territory solely by reason of such person's presence there in connection with activities under this Agreement.

(3) No United States contractor shall be liable to pay income tax in the Territory in respect of any income derived under a contract made in the United States in connection with the purposes of this Agreement, or any tax in the nature of license in respect of any service or work for the United States Government in connection with the purposes of this Agreement.

ANNEX II

JURISDICTION AND CLAIMS

1. (*a*) Subject to the provisions of sub-paragraphs (*b*) to (*l*) of this paragraph,

(i) the military authorities of the United States shall have the right to exercise within the Territory all criminal and disciplinary jurisdiction conferred on them by United States law over all persons subject to the military law of the United States; and

(ii) the authorities of the Territory shall have jurisdiction over the members of the United States Forces with respect to offenses committed within the Territory and punishable by the law in force there.

(*b*) (i) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to security, punishable by the law of the United States but not by the law in force in the Territory.

(ii) The authorities of the Territory shall have the right to exercise exclusive jurisdiction over members of the United States Forces with respect to offenses, including offenses relating to security, punishable by the law in force in the Territory but not by the law of the United States.

(iii) For the purposes of sub-paragraphs (*b*) and (*c*), an offense relating to security shall include:

(*aa*) treason; and

(*bb*) sabotage, espionage or violation of any law relating to official secrets or secrets relating to national defense.

(*c*) In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(i) The military authorities of the United States shall have the primary right to exercise jurisdiction over a member of the United States Forces in relation to

(*aa*) offenses solely against the property or security of the United States or offenses solely against the person or property of another member of the United States Forces; and

(*bb*) offenses arising out of any act or omission done in the performance of official duty.

(ii) In the case of any other offense the authorities of the Territory shall have the primary right to exercise jurisdiction.

(iii) If the authorities having the primary right decide not to exercise jurisdiction, they shall notify the other authorities as soon as practicable. The United States authorities shall give sympathetic consideration to a request from the authorities of the Territory for a waiver of their primary right in cases where the authorities of the Territory consider such waiver to be of particular importance. The authorities of the Territory will waive, upon request, their primary right to exercise jurisdiction under this paragraph, except where they in their discretion determine and notify the United States authorities that it is of particular importance that such jurisdiction be not waived.

(*d*) The foregoing provisions of this paragraph shall not imply any right for the military authorities of the United States to exercise jurisdiction over persons who belong to, or are ordinarily resident in, the Territory, or who are British subjects or Commonwealth citizens or British protected persons, unless they are military members of the United States Forces.

(*e*) (i) To the extent authorized by law, the authorities of the Territory and the military authorities of the United States shall assist each other in the service of process and in the arrest of members of the United States Forces in the Territory and in handing them over to the authorities which are to exercise jurisdiction in accordance with the provisions of this paragraph.

(ii) The authorities of the Territory shall notify promptly the military authorities of the United States of the arrest of any member of the United States Forces.

(iii) Unless otherwise agreed, the custody of an accused member of the United States Forces over whom the authorities of the Territory are to exercise jurisdiction shall, if he is

in the hands of the United States authorities, remain with the United States authorities until he is charged. In cases where the United States authorities may have the responsibility for custody pending the completion of judicial proceedings, the United States authorities shall, upon request, make such a person immediately available to the authorities of the Territory for purposes of investigation and trial and shall give full consideration to any special views of such authorities as to the way in which custody should be maintained.

(*f*) (i) To the extent authorized by law, the authorities of the Territory and of the United States shall assist each other in the carrying out of all necessary investigations into offenses, in providing for the attendance of witnesses and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authorities delivering them.

(ii) The authorities of the Territory and of the United States shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

(*g*) A death sentence shall not be carried out in the Territory by the military authorities of the United States.

(*h*) Where an accused has been tried in accordance with the provisions of this paragraph and has been acquitted or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offense within the Territory. Nothing in this paragraph shall, however, prevent the military authorities of the United States from trying a military member of the United States Forces for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of the Territory.

(*i*) Whenever a member of the United States Forces is prosecuted by the authorities of the Territory he shall be entitled

(i) to a prompt and speedy trial;
(ii) to be informed in advance of trial of the specific charge or charges made against him;
(iii) to be confronted with the witnesses against him;
(iv) to have compulsory process for obtaining witnesses in his favor if they are within the jurisdiction of the Territory;
(v) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the Territory;
(vi) if he considers it necessary, to have the services of a competent interpreter; and
(vii) to communicate with a representative of the United States and, when the rules of the court permit, to have such a representative present at his trial which shall be public except when the court decrees otherwise in accordance with the law in force in the Territory.

(*j*) Where a member of the United States Forces is tried by the military authorities of the United States for an offense committed outside the areas used by the United States or involving a person, or the property of a person, other than a member of the United States Forces, the aggrieved party and representatives of the Territory and of the aggrieved party may attend the trial proceedings except where this would be inconsistent with the rules of the court.

(*k*) A certificate of the appropriate United States commanding officer that an offense arose out of an act or omission done in the performance of official duty shall be conclusive, but

the commanding officer shall give consideration to any representation made by the authorities of the Territory.

(*l*) Regularly constituted military units or formations of the United States Forces shall have the right to police the areas used by the United States. The military police of the United States Forces may take all appropriate measures to ensure the maintenance of order and security within these areas.

2. (*a*) The Government of the United States of America and the Government of the United Kingdom respectively waive all claims against the other of them:

(i) For damage to any property owned by it and used by its land, sea or air armed services if such damage

(*aa*) was caused by a member of the armed services or by an employee of a Department with responsibility for the armed services of either Government in the execution of his duties or

(*bb*) arose from the use of any vehicle, vessel or aircraft owned by either Government and used by its armed services provided either that the vehicle, vessel or aircraft causing the damage was being used in connection with official duties, or the damage was caused to property being so used.

(ii) For injury or death suffered by any member of its armed services while such member was engaged in the performance of his official duties.

(iii) For the purpose of this paragraph "owned" in the case of a vessel includes a vessel on bare boat charter, a vessel requisitioned on bare boat terms and a vessel seized in prize (except to the extent that the risk of loss or liability is borne by some person other than either Government).

(*b*) (i) The United States Government shall, in consultation with the Government of the Territory, take all reasonable precautions against possible danger and damage resulting from operations under this Agreement.

(ii) The United States Government agrees to pay just and reasonable compensation, which shall be determined in accordance with the measure of damage prescribed by the law of the Territory, in settlement of civil claims (other than contractual claims) arising out of acts or omissions of members of the United States Forces done in the performance of official duty or out of any other act or omission or occurrence for which the United States Forces are legally responsible.

(iii) Any such claim presented to the United States Government shall be processed and settled in accordance with the applicable provision of United States law.

II

The Secretary of State for Foreign Affairs to the Ambassador of the United States of America

FOREIGN OFFICE

London, 30 December, 1966

Your Excellency,

I have the honour to acknowledge receipt of your Note No. 25 of the 30th of December, 1966, which reads as follows:

[*See note I*]

I have the honour to inform Your Excellency that the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that Your Excellency's Note, together with the Annexes thereto and this reply, shall constitute an Agreement between the two Governments which shall enter into force on this day's date.

I have the honour to be, with the highest consideration, Your Excellency's obedient Servant,

For the Secretary of State:
CHALFONT

ANNEX 50

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius concerning the Ilois, Port Louis, 7 July 1982, with amending Exchange of Notes, Port Louis, 26 October 1982, Cmnd. 8785, 1316 UNTS 128.

No. 21924

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
and
MAURITIUS

Agreement concerning the Ilois from the Chagos Archipelago (with exchange of notes of 26 October 1982). Signed at Port Louis on 7 July 1982

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 31 May 1983.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD
et
MAURICE

Accord relatif aux Ilois de l'archipel des Chagos (avec échange de notes du 26 octobre 1982). Signé à Port-Louis le 7 juillet 1982

Texte authentique : anglais.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 31 mai 1983.

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MAURITIUS

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Government of the United Kingdom) and the Government of Mauritius,

Desiring to settle certain problems which have arisen concerning the Ilois who went to Mauritius on their departure or removal from the Chagos Archipelago after November 1965 (hereinafter referred to as "the Ilois");

Wishing to assist with the resettlement of the Ilois in Mauritius as viable members of the community;

Noting that the Government of Mauritius has undertaken to the Ilois to vest absolutely in the Board of Trustees established under Article 7 of this Agreement, and within one year from the date of the entry into force of this Agreement, land to the value of £1 million as at 31 March 1982, for the benefit of the Ilois and the Ilois community in Mauritius;

Have agreed as follows:

Article 1. The Government of the United Kingdom shall *ex gratia* with no admission of liability pay to the Government of Mauritius for and on behalf of the Ilois and the Ilois community in Mauritius in accordance with Article 7 of this Agreement the sum of £4 million which, taken together with the payment of £650,000 already made to the Government of Mauritius, shall be in full and final settlement of all claims whatsoever of the kind referred to in Article 2 of this Agreement against the Government of the United Kingdom by or on behalf of the Ilois.

Article 2. The claims referred to in Article 1 of this Agreement are solely claims by or on behalf of the Ilois arising out of:

(*a*) All acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their preclusion from returning to the Chagos Archipelago (hereinafter referred to as "the events"); and

(*b*) Any incidents, facts or situations, whether past, present or future, occurring in the course of the events or arising out of the consequences of the events.

Article 3. The reference in Article 1 of this Agreement to claims against the Government of the United Kingdom includes claims against the Crown in right of the United Kingdom and the Crown in right of any British possession, together with claims against the servants, agents and contractors of the Government of the United Kingdom.

[1] Came into force on 28 October 1982, the date on which the Governments had informed each other of the completion of the required constitutional procedures, in accordance with the provisions of the exchange of notes of 26 October 1982.

Article 4. The Government of Mauritius shall use its best endeavours to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims referred to in Article 2 of this Agreement, and shall hold such renunciations of claims at the disposal of the Government of the United Kingdom.

Article 5. (1) Should any claim against the Government of the United Kingdom (or other defendant referred to in Article 3 of this Agreement) be advanced or maintained by or on behalf of any of the Ilois, notwithstanding the provisions of Article 1 of this Agreement, the Government of the United Kingdom (or other defendant as aforesaid) shall be indemnified out of the Trust Fund established pursuant to Article 6 of this Agreement against all loss, costs, damages or expenses which the Government of the United Kingdom (or other defendant as aforesaid) may reasonably incur or be called upon to pay as a result of any such claim. For this purpose the Board of Trustees shall retain the sum of £250,000 in the Trust Fund until 31 December 1985 or until any claim presented before that date is concluded, whichever is the later. If any claim of the kind referred to in this Article is advanced, whether before or after 31 December 1985, and the Trust Fund does not have adequate funds to meet the indemnity provided in this Article, the Government of Mauritius shall, if the claim is successful, indemnify the Government of the United Kingdom as aforesaid.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the Government of the United Kingdom may authorise the Board of Trustees to release all or part of the retained sum of £250,000 before the date specified if the Government of the United Kingdom is satisfied with the adequacy of the renunciations of claims procured pursuant to Article 4 of this Agreement.

Article 6. The sum to be paid to the Government of Mauritius in accordance with the provisions of Article 1 of this Agreement shall immediately upon payment be paid by the Government of Mauritius into a Trust Fund to be established by Act of Parliament as soon as possible by the Government of Mauritius.

Article 7. (1) The Trust Fund referred to in Article 6 of this Agreement shall have the object of ensuring that the payments of capital (namely £4 million), and any income arising from the investment thereof, shall be disbursed expeditiously and solely in promoting the social and economic welfare of the Ilois and the Ilois community in Mauritius, and the Government of Mauritius shall ensure that such capital and income are devoted solely to that purpose.

(2) Full powers of administration and management of the Trust Fund shall be vested in a Board of Trustees, which shall be composed of representatives of the Government of Mauritius and of the Ilois in equal numbers and an independent chairman, the first members of the Board of Trustees to be named in the Act of Parliament. The Board of Trustees shall as soon as possible after the end of each year prepare and submit to the Government of Mauritius an annual report on the operation of the Fund, a copy of which shall immediately be passed by that Government to the Government of the United Kingdom.

Article 8[1]. This Agreement shall enter into force on the twenty-eighth day after the date on which the two Governments have informed each other that the necessary internal procedures, including the enactment of the Act of Parliament and the establishment of the Board of Trustees pursuant to Articles 6 and 7 of this Agreement, have been completed.

[1] This article was amended by the exchange of notes dated 26 October 1982.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate in Port Louis this 7th day of July 1982.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

J. ALLAN

For the Government of Mauritius:

JEAN CLAUDE DE L'ESTRAC

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MAURITIUS AMENDING ARTICLE 8 OF THE AGREEMENT CONCERNING THE ILOIS

I

THE UNITED KINGDOM HIGH COMMISSIONER AT PORT LOUIS TO THE MINISTER OF EXTERNAL AFFAIRS, TOURISM AND EMIGRATION OF MAURITIUS

British High Commission
Port Louis

26 October 1982

Your Excellency,

I have the honour to refer to the discussions which have taken place between us about the date of entry into force of the Agreement signed at Port Louis on 7 July 1982 concerning the Ilois. In the light of these discussions, I now have the honour to propose, on instructions from my Government, that Article 8 of the Agreement of 7 July 1982 be amended by deleting the words "the twenty-eighth day after", so that Article 8 would then read as follows:

> "This Agreement shall enter into force on the date on which the two Governments have informed each other that the necessary internal procedures, including the enactment of the Act of Parliament and the establishment of the Board of Trustees pursuant to Articles 6 and 7 of this Agreement, have been completed."

If this proposal is acceptable to the Government of Mauritius, I have the honour to propose that this Note and Your Excellency's reply in that sense should constitute an Agreement between the Governments of Mauritius and the United Kingdom amending with effect from the date of Your Excellency's reply the Agreement of 7 July 1982.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

J. ALLAN

II

THE MINISTER OF EXTERNAL AFFAIRS, TOURISM, AND EMIGRATION OF MAURITIUS TO THE UNITED KINGDOM HIGH COMMISSIONER AT PORT LOUIS

Ministry of External Affairs, Tourism and Emigration

26 October 1982

No. 1197/9/1

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note dated 26th October 1982 which reads as follows:

[*See note I*]

In reply, I have the honour to inform Your Excellency that the proposed amendment as set out in Your Excellency's Note is acceptable to the Government of Mauritius, who therefore agree that your Note, together with the present reply, constitutes an Agreement between our two Governments amending with effect from today's date the Agreement of 7 July 1982.

Please accept, Excellency, the assurance of my highest consideration.

JEAN CLAUDE DE L'ESTRAC

ANNEX 51

The Ilois Trust Fund Act 1982, 30 July 1982

LEGAL SUPPLEMENT

to the Government Gazette of Mauritius No. 76 of 31st July 1982

THE ILOIS TRUST FUND ACT 1982

Act No. 6 of 1982

I assent,

D. BURRENCHOBAY
Governor-General

30th July 1982

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Establishment of the Fund.
4. Objects of the Fund.
5. The Board.
6. Powers of the Board.
7. Annual Report and Accounts.
8. Donations and Legacies.
9. Exemptions.
10. Dissolution.
11. Regulations.
12. Saving.

An Act

To provide for the incorporation and management of the Ilois Trust Fund

ENACTED by the Parliament of Mauritius, as follows—

1. This Act may be cited as the Ilois Trust Fund Act 1982. Short title.

Interpretation.

2. In this Act—

"Agreement" means the Agreement signed by the Governments of Mauritius and the United Kingdom of Great Britain and Northern Ireland on 7 July 1982.

"Board" means the Board of Trustees established under section 5;

"Fund" means the Ilois Trust Fund established under section 3;

"Minister" means the Minister to whom responsibility for the subject of Social Security and National Solidarity is assigned.

Establishment of the Fund.

3. There is established for the purpose of this Act an Ilois Trust Fund which shall be a body corporate.

Objects of the Fund.

4. The objects of the Fund shall be—

(a) to receive the sum of £ 4 million, or its equivalent in Mauritian rupees, payable to the Government of Mauritius under the Agreement;

(b) to appropriate the capital sum received under paragraph *(a)* and any income arising from the investment of that sum for the promotion of the social and economic welfare of the Ilois and the Ilois community in Mauritius;

(c) to acquire such land as may be vested by the Government of Mauritius in the Fund and devote such land towards the promotion of the social and economic welfare of the Ilois and the Ilois community in Mauritius;

(d) to indemnify the Government of the United Kingdom and Northern Ireland in accordance with the Agreement.

The Board.

5. (1) The Fund shall be managed by a Board of Trustees which shall consist of—

(a) an independent Chairman appointed by the Prime Minister;

(b) a representative of the Prime Minister's Office;

(c) a representative of the Ministry of Finance;

(d) a representative of the Ministry of Agriculture, Fisheries and Natural Resources;

(e) a representative of the Ministry for Employment and of Social Security and National Solidarity;

(f) a representative of the Ministry of Housing, Lands and the Environment;

(g) 5 representatives of the Ilois, appointed by the Prime Minister in such manner as may be prescribed.

(2) The members of the Board shall hold office for a period of one year but shall be eligible for re-appointment.

(3) The Board shall appoint, from amongst its members, a Secretary who shall also act as Treasurer of the Fund.

(4) No member of the Board shall receive any fee or remuneration for his services.

(5) Six members of the Board shall constitute a quorum.

(6) Subject to subsection (5), the Board shall regulate its proceedings and meetings in such manner as it thinks fit.

(7) Notwithstanding the other provisions of this section, the members of the Board for the period ending 31 December 1982 shall be the persons specified in the Schedule.

Powers of the Board.

6. (1) The Board may do all such things as appear requisite and advantageous in furtherance of the objects of the Fund.

(2) Without prejudice to the generality of subsection (1) the Board may—

(a) make cash grants; and

(b) allot portions of land either absolutely or on such conditions as it thinks fit to impose.

Annual Report and Accounts.

7. (1) The Board shall on or before 1 April in every year submit to the Minister a report together with an audited statement of accounts on the operations of the Fund in respect of the 12 months ending on 31 December in the preceding year.

(2) The report of the Board shall be laid on the Table of the Assembly.

Donations and Legacies.

8. Article 910 of the Civil Code shall not apply to the Fund.

Exemptions.

9. Notwithstanding any other enactment—

(a) the Fund shall be exempt from payment of any duty, rate, charge, fee or tax;

(b) no stamp duty or registration fee shall be payable in respect of any document under which—

(i) the Fund is the sole beneficiary; or

(ii) an allotment of immovable property under section 6(2) *(b)* is made.

Dissolution.

10. (1) The Fund may be dissolved by the unanimous decision of the Board.

(2) Where the Fund is dissolved, all assets remaining after winding up shall be transferred to an association designated by the Board and having among its objects the social and economic welfare of the Ilois and the Ilois community in Mauritius.

Regulations.

11. (1) The Board may make such regulations as it thinks fit for the purposes of this Act.

(2) Notwithstanding the Interpretation and General Clauses Act, regulations made under subsection (1) shall not be required to be approved by the Minister.

Saving.

12. Nothing in this Act shall affect the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia.

Passed in the Legislative Assembly on the twenty-seventh day of July, one thousand nine hundred and eighty-two.

G. MAURICE BRÛ
Clerk of the Legislative Assembly

SCHEDULE
(Section 5)

Chairman: Reverend Father Jocelyn Patient

Members: Mr Bhinod Bacha
Mr Mohammad Haniff Ramdin
Mr Mooneeshwar Ramtohul
Mr Muhammad Yusuf Abdullatif
Mr Nandraj Candasamy Patten
Mr Kishore Mundil
Mr Elie Michel
Mrs Charlesia Alexis
Mrs Lilette Naick
Mr Christian Ramdass

ANNEX 52

Example Ilois renunciation form, 1983-84

GOVERNMENT OF MAURITIUS

Form A1

Ministry for Employment
and of Social Security
and National Solidarity,
Port Louis

I, ..., an Ilois, residing at ....., in consideration of the compensation paid to me by the Ilois Trust Fund and of my resettlement in Mauritius, do by these presents declare that I renounce to all claims, present or future, that I may have against the Government of Mauritius in respect of anyone or more of the following -

(a) all acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, my departure or removal from there, loss of employment by reason of the termination of contract or otherwise my transfer and settlement in Mauritius and my preclusion from returning to the Chagos Archipelago;

(b) any incidents, facts or situation, whether past, present or future, occurring in the course of anyone or more of the events hereinbefore referred to or arising out of the consequences of such events.

Made and subscribed on the ..... 1983.

Signature/Right thumbprint of Ilois .....

We certify that the above is the right thumbprint of .....

Signature of Witnesses (1) .....

(Name and address of witnesses) .....

.....

(2) .....

.....

Note: Where the subscriber is unable to sign, he/she should affix his/her right thumbprint in the presence of two witnesses who can sign.

ANNEX 53

United Kingdom Foreign Secretary statement, 20 December 2012

GOV.UK

1. Home (https://www.gov.uk/)

News story

European Court of Human Rights' decision on Chagossian Case

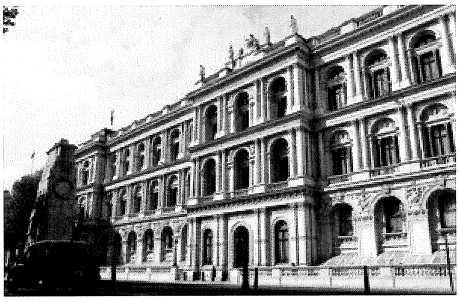
This was published under the 2010 to 2015 Conservative and Liberal Democrat coalition government

The Foreign Secretary has commented on the European Court of Human Rights' decision on the Chagos Islanders v. the United Kingdom case.

Published 20 December 2012

From:

Foreign & Commonwealth Office (https://www.gov.uk/government/organisations/foreign-commonwealth-office) and The Rt Hon William Hague (https://www.gov.uk/government/people/william-hague)



The case concerns complaints made by the Chagos Islanders arising from the evacuation of the British Indian Ocean Territory between 1967 and 1973.

The Foreign Secretary, William Hague, said:

> We welcome the end of this legal process, which has taken many years. We have made clear our regret for the wrongs done to the Chagossian people over forty years ago. Nevertheless, it was right for the Government to defend itself against this action.
>
> Now that this litigation is concluded, the Government will take stock of our policy towards the resettlement of the British Indian Ocean Territory (BIOT), as we have always said we would. There are fundamental difficulties with resettlement in BIOT, but we will be as positive as possible in our engagement with Chagossian groups and all interested parties.

Further Information

The European Court of Human Rights decision on application 35622/04: Chagos Islanders v. the United Kingdom can be found here (http://www.echr.coe.int/ECHR/Homepage_EN)

Find the Foreign Office on Twitter (https://twitter.com/foreignoffice), Facebook (http://www.facebook.com/foreignoffice) & Google+ (https://plus.google.com/s/foreign%20office)

Published 20 December 2012

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ANNEX 54

Feasibility Study for the Resettlement of the Chagos Archipelago: Phase 2B. Volume 1: Executive Summary, June 2002

FEASIBILITY STUDY FOR THE RESETTLEMENT OF THE CHAGOS ARCHIPELAGO

❖

Phase 2B

Volume I : Executive Summary

Agrisystems

ROYAL HASKONING
POSFORD HASKONING

MacAlister Elliott

CONTENTS

		Page
1	**EXECUTIVE SUMMARY**	**2**
1.1	Introduction	2
1.2	Groundwater resource assessments	7
1.2.1	Water quality	7
1.2.2	Rainfall and recharge to groundwater	8
1.2.3	Sustainable yield estimates	8
1.2.4	Recommendations	8
1.3	Soil and land resources	9
1.3.1	Recommendations	10
1.4	Fisheries resources assessments	11
1.4.1	Subsistence fishing	11
1.4.2	Outer reef and banks commercial fin-fish fishery	11
1.4.3	Inshore invertebrate fisheries	11
1.4.4	Small-scale inshore fisheries aggregating devices	12
1.4.5	Mariculture	12
1.4.6	Conclusions and recommendations	13
1.5	Natural environment	13
1.5.1	Lagoon reef systems	14
1.5.2	Terrestrial environment	15
1.6	Coastal and oceanic processes	15
1.6.1	Meteorological and oceanic information	15
1.6.2	Physical development of the coastline	16
1.6.3	Overtopping events	16
1.6.4	Currents	17
1.7	Water quality and environmental variables	17
1.8	Climate change	18
1.9	Environmental appraisal of resettlement	19
1.9.1	Appraisal of environmental impacts	19
1.9.2	Environmental management considerations	21
1.10	Infrastructure considerations	21
1.11	Overall conclusions	23

1 EXECUTIVE SUMMARY

1.1 INTRODUCTION

This report, which is set out in four volumes, documents the findings of Phase 2B of a study investigating the feasibility of resettlement on the outer atolls of Peros Banhos and Salomon Atolls, Chagos Archipelago. The study was commissioned by the British Indian Ocean Territory Administration of the Foreign and Commonwealth Office in response to a request made by the Ilois (the former inhabitants of the Archipelago) to be permitted to return and live within the Archipelago.

The Chagos Archipelago, known as the British Indian Ocean Territory (BIOT), lies in the central part of the Indian Ocean (Figure 1.1). The Archipelago covers an area of some 60,000 km^2 and comprises a number of atolls, islands, and several submerged banks (Figure 1.2). It is noted for its high species biodiversity and rich marine and terrestrial habitats. For over 30 years, the islands of the Archipelago, except for Diego Garcia, have been devoid of human inhabitants.

The Ilois inhabited the islands of the Archipelago from the early nineteenth century up until 1973, having been brought to the islands to provide labour for the copra plantations, which were the principal economy of the islands throughout this time. In the early 1970s, the economic foundation of the islands collapsed with the falling price of copra and the plantations no longer remained viable. At this time, the British and US Governments entered into an agreement to reserve the use of the islands for defence purposes, which led to the subsequent establishment of a military base on Diego Garcia. This resulted in the depopulation of the territory and the relocation of the Ilois in Mauritius and the Seychelles.

The presence of the military base and the strict conservation policy imposed by the BIOT Administration has, until recently, permitted only brief compassionate visits by the Ilois. The only regular visitors to the islands are yacht crews, who often spend several months each year within the outer atolls. There are also periodic military and fishery patrols. Commercial activity within BIOT is limited to the seasonal fisheries operating within the Archipelago, namely an offshore tuna fishery, largely exploited by European purse seine and long-line vessels, and an inshore demersal fishery, mainly exploited by visiting Mauritian vessels (often crewed by Ilois).

In early 2000, the Ilois sought, through the courts, the right to return and live within the Archipelago. In response to this, the BIOT Administration commissioned a study to explore the feasibility of resettlement on the outer atolls of Peros Banhos and Salomon. These atolls lie to the north of the Archipelago, some 300 km from Diego Garcia, and comprise 35 small islands which have a total land area of 1200 hectares, the biggest island being just 140 hectares in size (Figure 1.3). The islands are low-lying and covered with dense vegetation.

The first phase of this study was tasked with briefly investigating possible development opportunities based upon the natural resources within these two atolls. Phase I was very much a theoretical exercise in that it did not involve meeting the potential settlers, and therefore did not take into account their aspirations or social capital, nor did it entail any detailed resource assessments. It concluded that whilst a number of livelihood opportunities might be available to a resettled population, there remained a large gap in our understanding of the quantity and quality of resources available to them. Further studies were recommended to investigate these resources more fully and to engage the Ilois in this process.

In November 2000, the courts granted the Ilois the right to return and live on the outer atolls. Since this time, however, none of the Ilois have returned and are instead seeking support from the UK and US Governments to financially assist their return or alternatively to provide compensation. Concurrently, the BIOT Administration has further proceeded with the feasibility study. Phase 2A of the study, which took place in 2001, involved establishing equipment to generate long-term information on local climatic conditions and tides, and their influence on the freshwater lenses on two of the islands within the atolls.

Over the period November 2001 to March 2002, the BIOT Administration commissioned Posford Haskoning, together with MacAlister Elliott and Partners Ltd and Agrisystems Ltd, to

undertake Phase 2B. This has entailed assessments of groundwater, soils, fisheries resources, and the marine and terrestrial environment, and a further consideration of the livelihood opportunities put forward in Phase I. The core of this phase was a four-week field visit to Peros Banhos and Salomon Atolls, which mostly focused on the islands of Ile du Coin in Peros Banhos Atoll and Ile Boddam in Salomon Atoll, the former nuclei of settlement. Based on the findings of the field studies, Phase 2B has also assessed the future vulnerability of a resettled population to possible climate change, and has outlined infrastructure needs and the environmental implications that would accompany resettlement.

This report has not been tasked with investigating the financial costs and benefits of resettlement, nor has it engaged the Ilois in a discussion on their ambitions and proposed livelihood strategies. It remains, therefore, a somewhat theoretical study. These are essential elements of the resettlement debate, and should become a priority for any further stages of the study.

Phase 2B is summarised in Volume I (this volume). Volume II details the findings of the resources assessments and the consideration of possible livelihood opportunities. Volume III explores resettlement issues, namely the future implications of climate change; an environmental appraisal of resettlement; and infrastructure needs. Recommendations for further investigations are also suggested where appropriate. Volume IV contains the appendices to Volumes II and III. A Geographical Information System (GIS) mapping selected elements of the fieldwork is provided on CD. In this volume, sections 1.2-1.7 are set out fully in Volume II, and sections 1.8-1.11 in Volume III.

Figure 1.1 Location of the Chagos Archipelago within the Indian Ocean

Figure 1.2 Chagos Archipelago

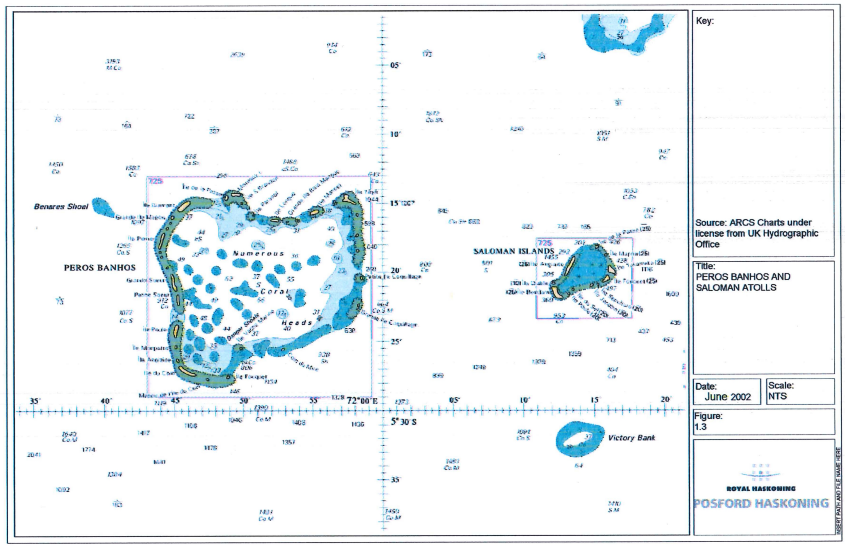


Figure 1.3 Peros Banhos and Salomon Atolls

1.2 GROUNDWATER RESOURCE ASSESSMENTS

Groundwater investigations were completed on the islands of Ile du Coin and Ile Boddam, and identified that groundwater in the form of 'freshwater lenses' occurs on both islands. Each island has a single lens and not a series of separate lenses, as is found on some atoll islands. The lens on Ile du Coin is significantly larger in terms of area, thickness, and volume than that on Ile Boddam. At the time of the investigations, the freshwater lenses extended over approximately 66 hectares or 55% of the total area of Ile du Coin and 25.5 hectares or 24% of the total area of Ile Boddam.

The freshwater lenses on both islands are of moderate thickness in comparison with other atolls. The maximum thickness of the potable water component of the freshwater lenses was approximately 7.5m on Ile du Coin and 5.5m on Ile Boddam. The maximum thickness of the freshwater lenses to the specified non-potable salinity limit for freshwater was approximately 9.2m on Ile du Coin and 6.5m on Ile Boddam.

Photo 1: Drilling activities

On both islands, the freshwater lens is displaced towards the lagoon side, particularly on Ile Boddam. This is due primarily to differences in the permeability of the sediments across the island from lagoon to ocean side. On Ile Boddam, the across-island change in permeability appears to be related to the presence of a former and higher reef platform in the central, western and southern parts of the island.

The volumes of freshwater within the lenses were estimated to be 700 and 260 million litres (megalitres), respectively, for Ile du Coin and Ile Boddam. It is estimated that the potable water component of the freshwater lenses accounts for approximately 80% of the total volume. The freshwater lens characteristics and corresponding volumes will inevitably change with seasonal and inter-annual climatic conditions.

There is some evidence of a geological unconformity between the coral sediments and underlying limestone. This observation is consistent with findings on other atolls. Radio carbon dating of core samples taken from selected boreholes would assist in confirming the age of the sediments and underlying limestone rock.

1.2.1 Water quality

Atoll groundwater systems are highly susceptible to contamination due to their shallow water tables and permeable sands. Overall, the water chemistry of the wells was good but many wells showed elevated levels of phosphate, which indicates faecal contamination from animal sources. Bacteriological tests carried out on both islands confirmed that faecal contamination is present in all but one of 17 wells. Pits and rainwater tanks also showed faecal contamination. The sources are likely to be rats and possibly crabs. Remedial action could be taken to ensure that all open wells and rainwater tanks are sealed, which is currently not the case. Should resettlement take place, effective land use planning and the implementation of suitable sanitation systems will be essential to prevent the contamination of groundwater. Suggested measures for the protection of groundwater have been provided.

1.2.2 Rainfall and recharge to groundwater

Mean annual and monthly rainfall for the two atolls based on summary data from the 1950s and early 1960s indicate that the rainfall for Peros Banhos and Salomon Atolls is quite high (approximately 4,000 and 3,750mm per year on average, respectively). However, long-term rainfall records at Diego Garcia indicate a lower mean annual rainfall of 2,700mm. Due to some uncertainty about the long-term rainfall for Peros Banhos and Salomon Atolls, upper and lower bound estimates were made from the summary data for these islands and the mean annual rainfall for Diego Garcia.

Recharge estimates were based on a relationship between average rainfall and average recharge. From this relationship, it was estimated that average recharge is approximately 40% of average rainfall. The upper and lower bound estimates of mean annual recharge were 1,080mm and 1,600mm for Ile du Coin and 1,080mm and 1,500mm for Ile Boddam. The lower bound estimate is similar to an independent recharge estimate for Diego Garcia.

From studies on other atolls, recharge to groundwater can increase by 20-25% if vegetation is selectively cleared in areas where the freshwater lens is known to occur. Water balance studies using daily rainfall data would need to be undertaken to confirm these estimates.

Estimated residence times of the freshwater are quite short, being, on average, 0.9 and 1.0 year for Ile du Coin and Ile Boddam, respectively. It is unlikely that a single drought year would impact significantly on the freshwater lenses. If there was a series of low rainfall years, the freshwater lenses could be depleted to a level where the salinity of water pumped from the thinnest parts of the lens may temporarily rise above the potable limit.

1.2.3 Sustainable yield estimates

The sustainable (safe) yield for the freshwater lenses on both islands has been estimated based on the freshwater lens boundaries and the estimated recharge from rainfall. These boundaries have been mapped into the GIS. Adopting a conservative approach, the sustainable yield was assumed to be equal to 30% of average recharge and to be applicable only to that part of the freshwater lens where the thickness was equal to or more than 3m.

The upper and lower bound estimates of sustainable yield of the freshwater lenses are:

- 290 and 430 kilolitres per day for Ile du Coin;
- 140 and 190 kilolitres per day for Ile Boddam.

Using the more conservative (lower bound) estimates, the 'population capacity' of each island would be approximately 3,000 for Ile du Coin and 1,500 for Ile Boddam for an average water demand of 100 litres per person per day. This water demand is sufficient for reasonable domestic water needs. The 'population capacity' does not take account of any non-residential water demands. If per capita water demands were higher, or if significant other groundwater demands were introduced (e.g. tourism, irrigation, fish processing), then the availability of water for human consumption would be proportionately reduced.

1.2.4 Recommendations

A number of recommendations concerning the short- and long-term use of water resources on the islands are put forward. These include monitoring activities and a longer-term investigation of recharge to the aquifer based on more robust rainfall data derived from the weather station on Ile du Coin. Further work is required to analyse the impacts of recharge variations on the freshwater lenses. In the event that resettlement of the islands proceeds, a number of recommendations are provided concerning infiltration galleries and land use planning to prevent contamination of the groundwater, and improved water management. The development of a groundwater model based on several years of climatic data is also recommended.

1.3 SOIL AND LAND RESOURCES

The soils of Peros Banhos and Salomon atolls are divided into 12 classes. The most extensive are the group of deep sandy soils developed in non-rubbly wash deposits in the centres and lagoon side of the islands. The other extensive soils are developed in rubbly wash on the ocean sides of the islands. There are also some shallow soils on the coral outcrops on Ile Boddam, which have dark humic topsoils over hard rock. The pockets of soil in the limestone grikes are humic or mucky and are among the few soils to have discernible contents of silt and clay. There are small areas of permanently or intermittently wet and patchily saline soils in lakes, ponds and former inter-reef channels that contain some silt and clay, although these are still predominantly sandy. Some soils appear to have been enriched, especially in phosphates, by guano beneath roosting sites. This effect seems to be patchy and is not as intense as reported on atolls elsewhere. Soil maps of Ile Boddam and Ile du Coin are provided.

Ex-plantation coconuts are the dominant vegetation on the majority of islands and occur on most soils. The persistence of the high coconut canopy appears to be positively related to the fertility of the soil. Stands of semi-mature probable native tree species (including *Barringtonia asiatica, Calophyllum inophyllum* (Takamaka), *Pisonia grandis* and *Intsia bijuga*) demonstrate that these soils can support broadleaf forest where land management allows. A band of *Scaevola taccada* on the ocean and lagoon shores of most islands is important in erosion control. Open areas, colonised by *Gramineae* and *Cyperaceae* spp., occur in patches on most islands and are associated with the fine sand phases of soils in which topsoil moisture availability is low. In these areas, rain splash erosion of the (fine) sand of the surface horizon occurs.

Photo 2: Takamaka (rear) and *Scaevola* (fore)

Coral atoll soils are generally regarded as marginal, with low fertility and limited and specialised agricultural potential. Although the soils of the Peros Banhos and Salomon atolls are typical of coral atolls in many ways, they have unusually high soil organic matter contents in the surface horizons and lack cemented compact subsoil pans. These differences mean that most Peros Banhos and Salomon soils have somewhat higher, if ephemeral, soil fertility and soil water availability in comparison with other similar atolls. The fertility resides almost entirely in the organic matter and the predominantly sandy mineral fraction is virtually inert. The most important factor determining this fertility is the past 30 years of coconut growth without habitation or plantation management.

The soil fertility will be rapidly and easily lost unless the soils are sustainably managed. Any settlement activities that take place on the islands, such as infrastructure development and ground compaction will need to acknowledge the fragility of the soils and its low chemical buffering capacity, which could lead to contamination of the freshwater aquifer.

The maintenance of soil fertility is fundamental to the feasibility of the agroforestal aspects of resettlement. Any resettlement on these soils will require an agroforestal[1] system that combines 'atoll agriculture' with agroforestal to achieve sustainable fertility management. Although coconut production will continue to be an important component it will not become a viable export enterprise and no alternative export crops are identified. Production will concentrate on local consumption.

[1] Agroforestal is a blanket term for all agricultural, horticultural, livestock and forestry enterprises.

Agricultural practices for the production of food crops have been developed and adapted to the physical and social environments on atolls and provide a basis for sustainable agricultural production. There appear to be few agronomic obstacles in Peros Banhos and Salomon to food crop production for local consumption using traditional atoll-adapted crops and technologies, however the islands and their remoteness are unlikely to support the development of commercial export crops. There is an adequate information base on atoll agriculture, which can be adapted to provide agroforestal research and extension support to settlers in Peros Banhos and Salomon.

Atoll agricultural systems are knowledge- and labour-intensive. Thus the settlers' agricultural knowledge and, in particular, willingness and/or ability to commit the labour required are identified as major potential obstacles to food crop production in any resettlement programme. These constraints need to be assessed, in conjunction with the settlers' general aspirations, capabilities, and resources, through participatory assessments and decision-making.

Should resettlement take place, it would be recommended that agroforestry be a major element of sustainable soil management and agroforestal production on the islands. Its positive features include:

- The canopy shade is favourable to the protection of the soil surface and soil organic matter;
- The atolls contain a range of multipurpose tree species suitable for agroforestry with little need for the introduction of exotic species. There will be a need for strict quarantine and assessment of potential exotic species;
- The high biodiversity provides some buffering against severe disease outbreaks or pest infestations, which is particularly important as the use of agrochemicals or fertilisers should be prevented to protect both the groundwater resources and the environment;
- There is a good information and support base for agroforestry development on atolls, much of it based on diversification of former coconut plantations.

However, the agroforestry tree canopy will result in some increase in the use of groundwater for evapotranspiration, in comparison to the existing coconut dominated vegetation. On Peros Banhos and Salomon Atolls, it is estimated that this new level will not exceed half of the annual rainfall. This level of groundwater consumption is justified by the benefits of agroforestry systems in sustainable soil organic matter management and needs to be included in the estimates of sustainable groundwater extraction rates. The siting of agroforestal activities away from settlement areas where demand for groundwater will be high will reduce any potential conflicts over water resource use.

A suitable agroforestal system will combine species and technologies for agroforestal agriculture, horticulture, livestock and forest production. A range of available candidate species and technologies are identified. Combining these in a locally adapted and effective system will require institutional support for adaptive research and extension. As the system will take time to become effective, settlers may require subsistence or other forms of support during establishment.

1.3.1 Recommendations

Sufficient data have been provided to identify the main agroforestal aspects of land use planning on the main islands, but these will need to be adjusted to accommodate the aspirations and capabilities of the settlers and the locations for infrastructure and other development. Sustainable resettlement will probably involve agroforestal activities on several islands in each atoll, and the soils of all these islands will need to be surveyed at a semi-detailed level. Attention will need to be given to the economics of sustainable soil fertility management, especially towards establishing secure land tenure systems and stakeholder participation in the design of the resettlement.

1.4 FISHERIES RESOURCES ASSESSMENTS

The fisheries resources of the Chagos Archipelago are some of the least exploited and best managed in the Indian Ocean. Previous studies indicate that the inshore finfish fishery (i.e. that in less than 150 metres water depth) is producing around only one-third of the precautionary maximum sustainable yield of 1,102 tonnes set for the Archipelago.

From these figures, it is suggested that exploitation of the finfish fisheries resource could be at least doubled yet remain within safe biological limits. Based upon experience in other parts of the Indian Ocean region, a fisheries development strategy for adoption by a resettled population has been suggested, which provides a realistic yet conservative scenario for providing both subsistence and income. The main elements of this strategy are outline in the following sub-sections.

1.4.1 Subsistence fishing

Inhabitants would be permitted to conduct subsistence fishing in the atolls within a single day reach (i.e. 12 nm) from the outer atolls. This includes Blenheim Reef and Victory Bank but essentially rules out Speakers Bank to the north as well as most of the Great Chagos Bank. This activity would be restricted to hand-line only and all the catch would be either eaten directly or marketed fresh within the atoll population centres. Based on regional consumption statistics, this activity could support the fish protein nutritional needs for between approximately 500 and 1,000 persons.

1.4.2 Outer reef and banks commercial fin-fish fishery

Relocation of the dory fishermen to the atolls - the current licensing of Mauritius-based freezer ships could continue based on its present form, with the atoll residents returning to their homes during the closed season (November – March) to rejoin the subsistence fishery. As in the past, this would produce around 300 metric tonnes (mt) of frozen fish worth around US$600,000.

Development of an atoll-based fresh fish fleet - an alternative scenario, which would provide a similar level of employment (approximately 60 person years per annum) would be the use of up to ten multi-purpose fishing vessels that would produce high quality fresh fish for the international market. The fishery could be operated year round and a conservative estimation of potential yield suggests production rates of up 880 mt would be possible, with a market value of approximately US$ 4.75 million. This scenario would only be viable if an airlink was developed, providing both a distribution route to the main markets as well as an outlet through local tourist operations. Whilst this may appear to be a promising option for the long-term sustainable development of the Chagos fisheries resources, there are a number of significant logistical constraints. Apart from the substantial infrastructure and skills development required, the communication and management needed to develop a fresh fish export business should not be underestimated, along with the problems associated with isolation from potential markets. It could in the right circumstances, however, present a controllable high value, low biomass yield that, if coupled with the simultaneous development of carefully planned tourism, has potential to become an economic mainstay for a small population.

1.4.3 Inshore invertebrate fisheries

Holothurians (sea cucumber), *Trochus* (top shell) and *Tridacna* (giant clams) are important elements of atoll fisheries throughout the world. Both women and men are typically engaged in invertebrate fisheries, and their exploitation can be an important component of household income. Holothurians and *Trochus* exploitation are suited to remote atoll environments as the product can be processed with low technology and stored without refrigeration for several weeks, even months, prior to marketing. Conversely, the commercial and financially viable exploitation of *Tridacna* would require rapid access to markets, either as frozen or live commodities for the food and/or aquarium industries. The resource might also provide an important subsistence food.

From a precautionary fisheries development perspective, it is important to note that these invertebrates are highly susceptible to exploitation pressure. Based on field observations, with

extremely strict management it would be possible to establish a sustainable holothurian fishery. Average densities of holothurians within the shallow water areas of the two atolls indicate that holothurian resources could yield a value of between approximately US$4-2,720 per hectare, with the variability in value depending on the species targeted. Due to the patchy distribution of holothurians, it is not desirable to place an overall potential value on this fishery based on an estimate of suitable habitat area over the two atolls. The economic viability of exploiting these resources in a highly controlled manner would need to be investigated.

It is not recommended that a *Trochus* fishery be developed unless accompanied by a controlled and appropriate re-seeding programme. This would rely on the establishment of hatchery facilities within the atolls, which would require significant investment, skilled human resources, and a research and environmental monitoring programme.

The commercial exploitation of *Tridacna* would probably be uneconomical unless a reliable and rapid link to markets was developed for the export of live product (i.e. an air link). Otherwise, exploitation would be limited to dried or frozen products, which have a much lower market value. Based on *Tridacna* densities observed in the field, the potential value for dried product is only US$45 per hectare, whereas similar calculations for the export of live clams (for the aquarium industry) reveals a potential fisheries value in the range of approximately US$3,470-17,580 per hectare. This is of course a crude calculation but it serves to demonstrate the difference in value between dried and live product.

In addition to the question of economic viability is the issue of sustainability. As *Tridacna* species are protected by international law (CITES) any exploitation of this resource would have to demonstrate that it was sustainable before export would be permitted. An assessment of sustainable limits of exploitation would need to be the subject of long-term research. As with *Trochus*, *Tridacna* are frequently exploited through reef re-seeding programmes, and this would be the recommended approach in any fisheries development strategy. Whilst this might generate a sustainable fishery, the same development constraints would apply, particularly in the long time required to establish such an industry, and would probably only be economically viable for the export of live product.

1.4.4 Small-scale inshore fisheries aggregating devices

The promotion of Fisheries Aggregating Devices (FADs) to target epi-pelagic or large pelagic fish has been ruled out on a number of technical and environmental grounds over the medium term. Essentially, FADs do not increase productivity but simply aggregate fish that may lead to over-fishing (juvenile fish are particularly vulnerable). In addition, inshore FADs are mostly employed to gather baitfish for 'pole and line' tuna fishing, an activity that is not considered appropriate for the Chagos Archipelago within the near future.

1.4.5 Mariculture

Intensive mariculture, such as for shrimp and finfish, has been immediately ruled out on technical, economic and environmental grounds. More extensive forms of aquaculture, especially those that produce products with minimal processing, storage or specialised distribution needs have been considered, especially if their technologies have been demonstrated to be easily transferable to skilled but non-specialist personnel.

Seaweed culture may be appropriate for the outer atolls but an initial examination of the hydrological and environmental characteristics indicate that growth may be marginal and crops vulnerable to high seawater temperatures. On the basis of some fairly coarse estimates derived from the GIS and field measurements, it may be possible to produce up to 3,000 mt of seaweed from around 300 hectares of seabed, mainly on the western islands of Peros Banhos. However, it must be emphasised that the marginal growing conditions require that more detailed site selection and pilot-scale trials be conducted before serious investment is considered. The economic viability will be particularly dependent upon cost-effective transport of the dried product from the Archipelago.

Pearl oyster culture for 'mother of pearl' shells may be possible since the most commonly cultivated species *Pinctada margaritifera,* and the increasingly more popular *Pteria penguin,*

are both present in the outer atolls. However, like seaweed, site selection in the nutrient-poor waters of the atolls will be essential and the level of natural spat fall will need to be determined. Depending on the results of these further studies, it cannot be definitely stated that pearl oyster culture is a viable livelihood option for potential settlers.

1.4.6 Conclusions and recommendations

The findings have concluded that there are a number of opportunities that would provide both subsistence and an economic return from fisheries and mariculture activities around the atolls and the outer banks. They are considered realistic on the basis of the existing resource information and from fisheries development experience in the region. However, the two main elements missing from both this phase and Phase 1 are (i) an economic justification of the proposed activities and (ii) consultation with the Ilois.

The next stage is therefore the preparation of an integrated fisheries sector development strategy, based upon the options provided in this study and linking these with other suggested livelihood opportunities. In some areas these are straightforward, such as the development of the subsistence fishery. However others, especially when they involve the associated development of infrastructure and skills, will require considerable further study and detailed assessment.

The need for further investigations will be defined in response to any specific proposals made by the Ilois for the development of fisheries or mariculture enterprises. These would cover social and cultural issues such as the interests and skills of Ilois relevant to fishing and their perceptions of the constraints on the development of such enterprises in the atolls. The availability of marketing channels, both traditional and new, and any changes that would be needed to the current management system to ensure adequate enforcement of the fishery and the possibility of self-regulation by the fishing community should also be assessed.

1.5 NATURAL ENVIRONMENT

Information on the biological, ecological, geological and physical processes of the environment are an essential component for planning for its conservation and sustainable use. It is also valuable for determining the range of future development opportunities such as fisheries, tourism, and agroforestal development.

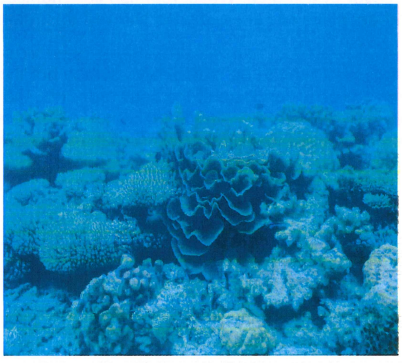


Photo 3: Typical coral reef assemblage

The Chagos Archipelago has a rich diversity of marine and terrestrial habitats, which have been well documented by numerous scientific expeditions that have taken place over the past 30 years. The Archipelago has the greatest diversity of corals in the central Indian Ocean. Coral reefs support a large number of fish species, many of which have economic as well as recreational importance. It is likely that many more species are yet to be found. The terrestrial environment offers rich habitats for a large number of bird species, and some of the beaches are used as turtle nesting sites. The islands are also home to the protected coconut crab.

This section describes the current status of the lagoon reefs together with a brief description of the coastal terrestrial environment, to provide an environmental baseline for the evaluation of anticipated environmental threats associated with resettlement. Environmental impacts resulting from resettlement activities are likely to have a greater impact on the lagoon environment, and this information is therefore essential to inform sustainable planning and management decisions.

1.5.1 Lagoon reef systems

Corals diversity and abundance

Coral cover varied little within island reef tracts but showed higher variability between islands and also between atolls. Mean coral cover was significantly higher in Salomon Atoll (45%), especially around Ile Boddam, than in Peros Banhos Atoll (26%). The diversity of scleractinian (stony) corals was also greater within Salomon atoll; a total of 16 genera were recorded from Peros Banhos, whereas 27 genera were recorded from Salomon. The most abundant genera within Peros Banhos were branching growth forms, of which *Acropora* was the most abundant followed by *Stylophora* and *Pocillopora*. In Salomon, the most abundant genera were *Acropora, Favites, Favia,* and *Cyphastrea*. Massive growth forms were not as well represented in Peros Banhos as in Salomon.

Coral topographical complexity

The measurement of topographical complexity is an indication of habitat (i.e. shelter and refuge) provided by the reef structure. Complexity was highest at sites in Peros Banhos atoll, particularly close to the jetty at Ile du Coin. Sites that had high complexity were dominated by large stands of the branching coral *Acropora* and had high levels of coral cover (30-40%). Although coral cover was higher in Salomon atoll, the reefs were dominated by large massive corals, which do not provide the same level of structural complexity as the branching corals. Preliminary findings indicate that the topographical complexity of lagoon reef habitats in both atolls offers a wide variety of shelter and refuge to a range of reef fauna and flora.

Reef fish abundance and diversity

A total of 171 reef fish species were observed within the lagoons of the two atolls: 91 in Peros Banhos and 135 in Salomon, indicating that fish diversity is higher in the latter. There were no significant differences in the mean counts of fish abundance or species richness between the two atolls (based on fish census results); however, greater fish numbers were observed in Peros Banhos. There was considerable variability in abundance and species richness of fish between sites within both atolls but this was not correlated with coral cover. Fish communities in Peros Banhos atoll were dominated by herbivores followed by invertebrate feeders, and in Salomon the dominant groups were plankton feeders followed by herbivores. Although the percentage of coral-feeding fish was low overall it was twice as high in Salomon Atoll, and possibly correlated with the higher coral cover in this atoll. Whilst reef fish communities within the two atolls have similar diversities and densities of fish, analyses showed their community structure to be different.

The lagoon reefs within the atolls were not only found to be biologically diverse but they were also in a relatively pristine condition. Given the poor condition of the seaward reefs, the lagoon reefs may have an important role in re-seeding the degraded outer reefs, and the maintenance of their health will be an important consideration for future planning and management.

1.5.2 Terrestrial environment

Broadscale terrestrial surveys were undertaken around the perimeters of several islands, during which features such as beach gradient and composition, dominant vegetation, key fauna, levels of flotsam, and critical species habitats, such as turtle nesting sites, were noted. These findings are presented in the GIS and within the appendices. The islands surveyed lie on the outer perimeters of the atolls, and therefore have different characteristics on their lagoon and outer coasts. Beaches on the lagoon sides of the islands are generally gently sloping and comprised mainly of sand, whilst those on the outer side are often characterised by rocks and boulders, and in places exposed reef conglomerate and fossilised reefs.

Photo 4: Exposed reef conglomerate

The vegetation on the islands was typical of coral atolls elsewhere. Coconut palms were dominant, and along many areas of the coastal fringe the beach scrub *Scaevola taccada* was common, which is important in preventing beach erosion. The coastal scrub *Pemphis acidula* was only noted on Ile Anglaise, associated with the saline / brackish lakes on the island. On some islands, broadleaf trees were often seen at the coastal edge, which included *Pisonia grandis* (Lettuce tree); *Hibiscus tiliaceus* (Sea hibiscus); *Calophyllum inophyllum* (Takamaka); *Barringtonia asiatica* (Sea putat); *Guettarda speciosa* (Nit pitcha) and *Argusia (Tournefortia) argentea*.

The pine *Casuarina equisetifolia* occurred in places, and is an important roost for the white tern, greater frigatebird and white-tailed tropicbird. Other species of birds that were observed in high numbers were the common noddy and lesser noddy, which were seen mostly on the outer exposed sides of the islands, and the roseate tern and black-naped tern, which were seen nesting on the spits. Old nesting sites of green and hawksbill turtles were noted on Ile du Coin.

Levels of flotsam were higher on the outer seaward beaches of the islands, and were more densely concentrated in areas of high wave energy. Typical components of flotsam included plastic and glass bottles, flip-flops, fishing nets, buoys, and crates. The incidence of oil and other pollutants was very low.

1.6 COASTAL AND OCEANIC PROCESSES

The outer atolls are situated within a large expanse of ocean and the islands are low-lying and narrow; their maximum elevation being on average less than two metres and widths generally no greater than 500m. These characteristics, together with the steep slopes at their outer edges, render the islands highly vulnerable to oceanic and climatic processes. Investigations of these coastal processes, particularly around the islands of Ile du Coin and Ile Boddam, were undertaken to inform an appraisal of the current and future vulnerability of a resettled population and its infrastructure to climatic conditions. These investigations will also serve to guide the most suitable and reduced-risk siting of any infrastructure on the islands, and determine the need for coastal defence. The investigations were divided into four main topics: 1) meteorological and oceanic information from the Indian Ocean region; 2) the physical development of the coastline; 3) overtopping events; and 4) current patterns within the atolls.

1.6.1 Meteorological and oceanic information

A search of literature and meteorological records was undertaken to assess the risks of cyclones, earthquakes and associated tsunamis, and other events that pose a severe threat to

the coastlines and islands as a whole. The investigations revealed that a number of events, such as cyclones, earthquakes, and tsunami, have occurred within the region, and future events would have the potential to cause severe flooding on the islands with the possible loss of life. The Chagos Archipelago is on the northern edge of the cyclone belt and hence is not subject to frequent cyclones. However, there is the potential for cyclones to reach the islands even though (and partly because of their infrequency) there is little historic evidence.

1.6.2 Physical development of the coastline

The physical development of the coastline was investigated using a combination of field measurements, visual observations and numerical modelling. The investigations conclude that the oceanic sides of the islands are eroding, but that the lagoon sides of the islands are generally stable. The oceanic beaches and reef edges are sources of sediment for the spits that have developed at the ends of most islands, and may also nourish the beaches of the lagoon. The removal of this sediment source or the interruption of its long-shore drift, through the construction of coastal structures for example, would intensify erosion in downdrift areas. Should there be a need to site infrastructure on the oceanic coastlines (e.g. outfalls) then the impact on erosion would need to be quantified, together with other physical effects (e.g. accretion on the updrift side), so that suitable mitigation measures could be established.

From the evidence gathered to date over this short study period, it has not been possible to quantify the rates of erosion, but it will be important to establish these rates prior to advancing any plans for future development on the islands. Failure to do so could result in development in inappropriate areas, and the subsequent need for coastal defence which may prove costly and possibly impractical to sustain.

The background rates of erosion will need to be determined through comparison of aerial photographs (which were not available at the time of this study), long-term monitoring and possibly supported by anecdotal evidence. This kind of historic information will provide an essential input for the calibration of numerical models, which can be used to evaluate the impacts of specific coastal structures. The establishment of monitoring programmes would guide future evaluations.

1.6.3 Overtopping events

As part of an assessment of the vulnerability of a future population to climatic conditions, the likelihood of overtopping of the natural defences of the islands by waves was investigated using numerical modelling, and supported by visual observations made during the site visit.

The results indicate that the islands are likely to experience overtopping on a regular basis, e.g. annually. However, the extent to which this overtopping leads to inundation depends, of course, on the severity of waves and the sea level. The studies and historic data (e.g. Maldives 1987) suggest that during a severe storm, "wave set-up" is a principal element of the sea level, and hence a major contributor to potential flooding. Wave set-up is the rise in water level caused by the "piling-up" of breaking waves on the reef flat. Simple modelling showed that this could be of the order of 2m in extreme cases, thus resulting in serious overtopping as waves at this level then simply weir over the beach crest and onto the island. However, this analysis is likely to be pessimistic, as it does not take into account the alleviation of wave set-up resulting from flow along the coast and around each island. In this respect, the studies have been invaluable in identifying the dominant processes responsible for potential flooding, but do not facilitate any precise estimates of the return periods of flooding events. For the present study, therefore, we must also draw on visual evidence and the limited historic data.

The fact that the Ilois survived this environment for some eight generations, and that copra was cultivated on a commercial basis during this time, suggests that the islands have not, historically, been subject to frequent inundation by seawater. Alongside this, there is a record of severe cyclonic damage in 1891, together with more recent events such as the flooding event that occurred in the Maldives in April 1987. In the future we can expect flooding to be more frequent as sea level rises, thus lowering the threshold event that can result in overtopping of the ocean coastal edge.

Summing up, it is likely that overtopping caused by wave action on the ocean side occurs regularly (e.g. more frequently than annually), but this does not necessarily lead to inland flooding. From time to time, when the sea is elevated, principally through wave set-up, severe flooding over a significant proportion of the island area can be expected to occur. The return period for such an event is not known, however, from available (very limited) evidence this might be expected to be in the order of tens of years.

Ground levels taken from transects across both Ile du Coin and Ile Boddam show that the land levels vary by typically 1.5 metres (excluding the beach ridge). Thus, in the event of severe inundation, we could expect flood depths of the same magnitude. Raised areas, such as identified towards the lagoon side of Ile du Coin, would therefore provide greater security for infrastructure. In areas that are more vulnerable to deep flooding, where it might be necessary to site infrastructure, any construction would have to be designed accordingly, using suitable fabrics in foundations and the ground floor, and appropriate ground floor usage.

The issue of potential inundation of the islands due to overtopping is a very important one. Further work would be needed to quantify and map the risk areas. This further work must include, as a minimum: consultation with the Ilois to determine whether historically they had experienced flooding on the islands; 2-d modelling of wave set-up and overtopping; and topographic mapping of the islands.

1.6.4 Currents

Currents within and around the atolls were investigated using a combination of field measurements, previous data from the atolls, and analytical techniques. The investigations concluded that the currents existing within the atolls are generally very weak particularly within the lagoons, and are formed from a combination of tidal, oceanic, and wave and wind influences. There may be some seasonal influence of waves and wind speeds on current characteristics. Current patterns have been used in models of possible effluent disposal and have facilitated the appraisal of certain mariculture development opportunities.

1.7 WATER QUALITY AND ENVIRONMENTAL VARIABLES

The structural and functional characteristics of coral reef communities are affected by a number of physical and chemical factors that can be modified by coastal development activities, climate change and natural disturbances. Thus, the majority of problems encountered in the management of coral reefs require a broad understanding of the physical and environmental characteristics of reef systems. This component provides baseline information on several environmental variables within the outer atolls, namely critical nutrients in marine waters, beach sediment characterisation, sediment deposition, water clarity, salinity, and sea surface temperature.

Critical nutrients in seawater: Phosphate levels were found to be above the critical threshold reported to cause a decline in coral reefs. Nitrate values were below this threshold. Assuming that the results are accurate, this has important implications for resettlement. High concentrations of critical nutrients in nearshore coastal waters necessitate special management precautions for the discharge of wastewater and land based run-off in order to preserve coral reef communities.

Beach sediment: Generally, ocean (seaward) beach samples were composed of coarser sand than lagoon beach samples, and samples taken at the spits confirm a high energy environment. The data from the particle size distribution informed the sediment transport modelling. Generally, beach samples contained skeletal remains from a variety of reef organisms, with coral fragments, mollusc shells and foraminifera dominating the coarser sediment. There were no whole segments of the distinctive coralline algae *Halimeda*, but large quantities of the dust are likely to be present. All samples had relatively large average grain sizes and poor sorting.

Sediment deposition: Concentrations of suspended particulate matter were much lower than sediment deposition rates. Deposition rates were significantly higher at Ile du Coin. These

findings corroborate with other studies that have shown that particulate material in the water column is not related to sediment deposition. The high sedimentation rates at Ile du Coin could be considered damaging to reefs. However, spot sampling must be interpreted with caution. Corals can withstand short bursts of sedimentation and it is likely that the high sedimentation rates were associated with poor weather conditions and rough seas.

Water clarity, temperature and conductivity: Water clarity was slightly lower in Peros Banhos atoll compared to Salomon atoll, possibly a result of turbidity associated with bad weather conditions. Daily temperature recordings indicated that there was considerable fluctuation in surface seawater temperature. At Ile du Coin the temperatures ranged between 28.4 –31.4°C, whilst at Ile Boddam the temperature range was slightly lower, between 30.3 – 31.6°C. Generally, lower temperatures in Ile du Coin correlated with periods of higher wind and cloud cover at the start of the fieldtrip. Conductivity measurements were homogenous across all stations in both atolls.

With all of these parameters, regular monitoring over a period of at least one-year is necessary to understand the long-term variability in the marine system.

1.8 CLIMATE CHANGE

According to the International Panel on Climate Change global sea levels are expected to rise by about 38cm between 1990 and the 2080s. Indian and Pacific Ocean islands face the largest relative increase in flood risk. Although there will be regional variation, it is projected that sea level will rise by an average of 5mm per year over the next 100 years. The implications of these predictions for resettlement of the Chagos Archipelago are considerable, given that mean elevation of the islands is only two metres.

The most significant and immediate consequences of climate change for the Chagos Archipelago are likely to be related to changes in sea-level, rainfall regimes, soil moisture budgets, prevailing winds, and short term variation in regional and local patterns of wave action. As a consequence, most islands will experience increased levels of flooding, accelerated erosion, and seawater intrusion into freshwater sources. The extent and severity of storm impacts, including storm surge floods and shore erosion are predicted to increase. Although the risks associated with climate change are not easily established the implications of these issues to resettlement in the outer atolls of the Chagos Archipelago are outlined briefly below.

Implications for water resources: Rising sea level would not have a significant effect on island freshwater lenses in the Chagos archipelago unless land is lost by inundation. If rising mean sea level causes land to be permanently inundated, then there will be a consequent loss in fresh groundwater.

Increased storminess: The Chagos islands have a small storm surge envelope thus even small changes in sea level and storm surge height implies an increase in the area threatened with inundation. It has been predicted that the flooding severity for a 1 in 50-year storm event with 0.5m of sea level rise is almost as high as the present day 1 in 1000-year event. Inundation can cause seawater intrusion into freshwater lenses. This not only reduces the availability of water for human consumption, but if salinity concentrations are high enough it can lead to decreased agricultural production.

Biological systems and biodiversity: Climate change is predicted to have a significant impact on the marine and terrestrial environments of the Archipelago. Coral reefs are one of the most important ecosystems likely to be affected, and their ability to cope will depend upon the rate of sea-level rise relative to their growth rate. The Chagos coral reefs were severely affected by the 1998 El Niño event, therefore any future sea surface warming would increase pressure on already stressed coral reefs. The added pressure of human interference within the marine environment would further weaken the ability of these systems to cope with climate change.

Fisheries and aquaculture: It is predicted that climate change may have a severe impact on the abundance and distribution of reef fish populations. In addition, there is strong evidence of

a correlation between the annual incidence of ciguatera (fish poisoning) and local warming of the sea surface, which will have an impact on fisheries potential, for subsistence and commercial purposes. Climate change is expected to have both positive and negative impacts on aquaculture; but the implications for seaweed farming (as investigated during this study) is not positive, with increased temperatures leading to reductions in productivity.

Human health, settlement and infrastructure: Populations, infrastructure and livelihoods are likely to be highly vulnerable to the impacts of climate change. Sustainability in food and water availability will be among the most pressing issues, together with the vulnerability of infrastructure to flooding and storm surges.

Vulnerability and adaptation: There is a wide range of adaptation strategies that could be employed by a resettled population in response to climate change. Integrated coastal management has been strongly advocated as the key planning framework for adaptation.

Adapting to island instability: There are two issues that need to be taken into account in adapting to island instability: shoreline erosion and sediment inundation of the island surface. Adaptation can fall within three broad categories depending on the level of infrastructure and population density on islands: no response; accommodation (infrastructure and dwellings are replaced at a rate commensurate with island migration); or protection (maintenance of infrastructure through coastal protection measures). The latter is likely to be the most costly strategy, and should be avoided through wise land use planning.

Adaptation to inundation: Response to inundation will vary depending on the level of development on islands. On islands that will have little infrastructure, as is likely to be the case in Chagos, the costs to protect against inundation are likely to be prohibitive. Adaptation measures will include siting of infrastructure in low risk areas and the application of appropriate infrastructure designs, such as raised floor levels and open structures. More robust measures to prevent inundation, such as seawalls, are not recommended as they necessitate costly maintenance and future vertical extension as sea level rises, and they can lead to adverse impacts on coastal habitats.

Adaptation to reef response: Discussion of the possible response of coral reefs to sea-level rise indicates that at worst reef food and sediment resources diminish and at best they are maintained at similar levels or may even increase. The importance of reefs as both natural coastal protection structures and providers of food means that any adaptation measures against climate change, and any human livelihood activities, should not compromise the health of the reef system. Minimising adverse effects on reefs will require robust pollution control measures and effective waste management.

From an examination of projected climate change scenarios, it is likely that the Chagos Archipelago, and any population settled on the outer atolls, will be vulnerable to its effects. The main issue facing a resettled population on the low-lying islands will be flooding events, which are likely to increase in periodicity and intensity, and will not only threaten infrastructure but also the freshwater aquifers and agricultural production. Severe events may even threaten life. Increases in sea surface temperatures are likely to have adverse effects on coral reefs and consequently their ability to act as a coastal defence to the islands, and to support fisheries. This will place more pressure on resettled populations to not only counteract the pressures of climate change but also to ensure that their subsistence and income needs are met.

1.9 ENVIRONMENTAL APPRAISAL OF RESETTLEMENT

1.9.1 Appraisal of environmental impacts

The characterisation of the nature of potential environmental impacts associated with resettlement has been carried out. This will be expanded when resettlement demography, livelihood strategies, and socio-cultural characteristics are available. The appraisal is necessarily generic and the scale and intensity of potential environmental impacts are not discussed in detail. Environmental impacts can be broadly divided into two categories: those

associated with the construction and operational development of physical infrastructure; and those related to livelihood strategies.

Development of physical infrastructure

One of the major environmental concerns relating to resettlement is the potential loss of marine and terrestrial biodiversity and habitats. Impacts are likely to occur as a result of the construction of jetties, harbours, coastal defence works, effluent discharge, waste disposal, and if relevant, the establishment of an airport. The major threats to the environment from these activities would include:

- Sedimentation arising from dredging activities, landfill and sewage disposal may have an adverse impact on the marine environment, particularly coral reefs, if activities are not conducted in an environmentally responsible manner. Minimising the loss of corals is pertinent to the maintenance of biodiversity, the future stability of the coastline and beaches, the productivity of fisheries, and tourism interests. It is interesting to note, however, that an evaluation of the impacts of dredging in Diego Garcia found no evidence for any significant change to reef communities after the completion of works;
- Coastal erosion might arise through the disruption of shoreline processes, due to the construction of shoreline infrastructure. This may have a subsequent adverse impact on turtle and bird nesting sites, and might lead to the loss of beaches and protective coastal vegetation;
- Loss of soil fertility and some soil erosion as a result of vegetation clearance for the establishment of infrastructure. These resources are very fragile and ephemeral, and their loss will have an impact on agricultural productivity and possible recharge to the groundwater.

It is possible to minimise these potential impacts through sound land use planning and good environmental management practices.

Livelihood strategies

The environmental issues relating to livelihood strategies concern a number of factors, which include economic activities and waste disposal. The scale of the impacts will depend largely on the nature and magnitude of the activities.

Income generating activities

- Fisheries: the major environmental concerns associated with fishing include the potential for over-exploitation; habitat disturbance; and changes in reef community structures. The implementation of an integrated fisheries sector strategy and management plan would be essential to reduce any adverse impacts of human intervention.
- Mariculture of seaweed and pearl culture in open coastal systems may incur significant environmental problems if poorly managed. These concerns relate to land-based infrastructure; processing; effluent and waste control; and the introduction of exotic species. Potential negative impacts include the degradation of natural habitats and alterations in the ecosystem balance. An important consideration for the atoll environment is the potential conflict over the use of limited groundwater resources. With careful siting and management, a number of these issues can be avoided.
- Agriculture: Without careful management, agricultural practices could lead to a rapid reduction in soil fertility and some erosion of soils. In line with the recommendations of the main report, it is suggested that the adoption of suitable agroforestal techniques will be the most appropriate and sustainable form of agricultural development.
- Tourism has not been a key subject for this phase, but as an obvious choice for income generation it has been considered as part of the environmental appraisal. Environmental damage from tourism could arise through poor design and siting of tourism residences; inadequate waste disposal; over-use of the groundwater aquifer;

excessive pressure on coastal resources; and reef damage through ill-managed diving and boat anchorage. As with other development activities, tourism can be a highly sustainable industry if appropriate management measures are adopted.

Waste disposal

- Effluent disposal: The safe disposal of effluents should be a major consideration in resettlement planning. Sewage is very rich in biodegradable organic matter and unless appropriately treated and discharged can cause nutrient enrichment, algal blooms, a decrease in marine biodiversity, contamination of groundwater, and human health problems. These in turn can adversely affect income-generating activities such as fisheries, mariculture and tourism. The treating of effluent, and the appropriate siting and length of effluent outfalls will be an important component of an environmental management programme.
- Solid waste management will be a significant problem to settlers owing to the limited availability of land and the need to avoid contamination of the groundwater aquifer. Wastes that will require disposal will include non-biodegradable products such as plastics; and hazardous substances such as paint, waste oil, batteries and medical waste. Options for waste disposal include landfill, disposal at sea, incineration and export. Landfill and dumping at sea would have severe environmental effects and are not recommended. Incineration and export may be possible but have costs and environmental implications elsewhere.

1.9.2 Environmental management considerations

In order to ensure the sustainable development of the outer atolls, it will be important to ensure that development activities take place within an integrated planning and management framework, which is adapted to the Archipelago's unique political, cultural and institutional condition. The core elements of an integrated framework for environmental management should encompass:

- *Participation*: The involvement of those involved in resettlement in the development and implementation of land use plans and resource development strategies;
- *Land use planning*: Wise land use planning and zoning of development activities will be required, possibly including the establishment of protected areas. This should take into account the vulnerability of populations and infrastructure to climatic and coastal processes;
- *Coherent resource use*: Integrated resource development strategies, taking into account optimal exploitation limits and island carrying capacities, will be required to ensure that resources are used in a sustainable manner;
- *Legislation and regulation*: A robust and effective regulatory framework will be required, which will need to incorporate, and expand if necessary, existing legislation governing resource use and the environment in the Archipelago;
- *Environmental monitoring*: An environmental monitoring programme based on accurate information on local biophysical, ecological, oceanographic and meteorological characteristics is recommended. The monitoring programme will need to be carried out by appropriate specialists on a regular basis, and should seek to involve the island community wherever possible. Monitoring should incorporate international best practice employed within the region, such as the Intergovernmental Oceanographic Commission's Global Coral Reef Monitoring Network.

1.10 INFRASTRUCTURE CONSIDERATIONS

Information has been provided on a number of generic infrastructure items that would be required by a resettled population, namely sea defence structures; jetties; effluent and solid waste disposal; and dispersal of sediments arising from dredging.

Sea defences: Development should be planned to avoid coastal areas subject to erosion, particularly along the ocean coast. With appropriate planning and enforcement procedures the need for sea defences can be minimised. The widespread flooding caused by overtopping of the ocean side defences is probably best dealt with by managing the flow of water on the islands. Defences to prevent overtopping would probably be impractical.

Jetties: Considerations are provided on the design structure and location for jetties, but these are kept generic considering the lack of information on the usage of such a structure.

Effluent Disposal: The establishment of an outfall is considered the most appropriate and safe means for effluent disposal. Consideration has been given to its appropriate location on the outer side of the islands. A model was employed to determine the fate of untreated effluent plumes from the outfall and demonstrated that concentrations around the outfall would exceed recommended limits for a coral reef environment, and would only dissipate to acceptable limits within 1.5km from the outfall. Primary and secondary treatment is therefore recommended. Once more information has been provided on the numbers of people likely to return, the preparation of a detailed effluent management plan is recommended.

Sediment dispersal: Activities such as dredging and marine construction will give rise to suspended sediments. Particle size analysis and current measurements have been used to calculate the likely fate of these sediments. It is concluded that sediments originating from construction activities within the lagoons will be re-deposited on the seabed at between 63m for Salomon Atoll and 315m for Peros Banhos Atoll from the source. The zone of settlement will be increased if there is significant wave energy within the atolls. This will have implications for the health of the marine environment.

Disposal of dredged material: Dredging will generate quantities of material that will need to be disposed of in an environmentally responsible manner. Options for this disposal will need to be considered, and will include disposal in deep waters or on-land (e.g. for the provision of foundations for housing). The fate of disposed sediments will need to be assessed, together with a consideration of any environmental impact they may incur.

1.11 OVERALL CONCLUSIONS

Through a combination of field- and desk-based studies, laboratory analysis, and modelling, this phase has generated important information on the availability of natural resources within the outer atolls, and has further developed a number of livelihood strategies and income-generating opportunities that might be available to a resettled population. It has also developed our understanding of the implications of resettlement in terms of the vulnerability of people and infrastructure to current and future climatic conditions, and has outlined the possible environmental issues that would accompany permanent resettlement of the islands.

Water

The groundwater investigations revealed that there is a substantial body of water available on both Ile Boddam and Ile du Coin to support populations of between 1,500 and 3,000 people, respectively, assuming water utilisation requirements of 100 litres per person per day. This utilisation rate accounts only for modest domestic uses and would not be sufficient to enable additional development activities such as ice making requirements for the fisheries industry; irrigation support for agricultural production; or tourism needs. The apportionment of groundwater water to these other activities would result in the proportional reduction of water available for other uses, including human consumption, and may limit the numbers of people that the groundwater would be able to support. This assumes that the population would be dependent upon groundwater alone, and not on other forms of water supply, such as rainwater collection or freshwater-generating systems such as de-ionisation and desalination. The water resources themselves are largely contaminated with faecal bacteria and would need to be treated prior to consumption.

Soils and Agroforestry

The soils investigations concluded that the soils within the atolls were atypically fertile, due to the lack of habitation or plantation management for 30 years. This fertility is described as ephemeral and would be readily lost without the use of a sustainable agroforestal production system. It would be possible to develop such a system that would combine species and technologies for agroforestry, agriculture, horticulture, livestock and forest production to provide for the subsistence needs of the population. The limitations in soil fertility, land area, and potentially labour, however, would mean that agroforestal production would be unsuitable for commercial ventures, except perhaps limited retail to the seasonal yacht trade. Whilst production from the agroforestal system should be able to meet some of the nutritional requirements of a resettled population, it would not be able to support all their carbohydrate needs, which would need to be met through imported goods such as rice and cereals.

Fisheries and Mariculture

Conversely, the fisheries resources of the Archipelago are substantial and under-exploited. A number of fisheries and mariculture development opportunities have been explored, and based on principles of sustainable development some have been recommended as suitable options for income-generation and subsistence. The investment required to support these options vary from modest to considerable, and some will not be possible unless an air link is established. Bearing in mind that the Ilois already fish within BIOT waters, and that fish would probably be a resettled population's main source of animal protein, it is likely that fisheries and possibly mariculture would become an important provider of livelihoods and income.

Vulnerability

There appear to be sufficient groundwater, soils, fisheries, and environmental (e.g. limited tourism) resources to support a small population on a subsistence basis with some commercial opportunity, but there are some more fundamental issues surrounding the feasibility of resettlement. These relate to the vulnerability of a resettled population to current and predicted climatic conditions, and the fragility of the environment to human-induced disturbance.

Under the present climate, it is assumed, based on historic meteorological patterns and observations, that the islands are already subject to regular overtopping events, flooding, and

erosion of the outer beaches. As global warming develops, these events are likely to increase in severity and regularity. In addition, the area is seismically active, and the possibility of a tsunami is a concern. These events would threaten both the lives and infrastructure of any people living on the islands. Whilst it might be possible to protect the islands to some extent in the short-term through coastal defence measures, it is likely to be cost-prohibitive and non-pragmatic to consider this form of defence in the long-term.

The environment of the Chagos Archipelago is highly diverse and yet very susceptible to human disturbance. Coral reefs, which are one of the most important ecosystems within the Archipelago, are already exhibiting signs of stress from increased sea surface temperatures and other climatic phenomenon. Predictions from climate change experts indicate that mass mortality of reef building corals in the Indian Ocean is likely to occur as global warming increases, may be as soon as within the next 20 years. This will not only have huge implications for the long-term coastal defence of the islands, and hence their very existence, but will also adversely affect livelihoods, particularly fisheries and tourism, which are likely to be the mainstay of any resettled population. Human interference within the atolls, however well managed, is likely to exacerbate stress on the marine and terrestrial environment and will accelerate the effects of global warming. Thus resettlement is likely to become less feasible over time.

General conclusions

To conclude, whilst it may be feasible to resettle the islands in the short-term, the costs of maintaining long-term inhabitation are likely to be prohibitive. Even in the short-term, natural events such as periodic flooding from storms and seismic activity are likely to make life difficult for a resettled population.

Recommendations

As a next stage in the feasibility study, an economic analysis of the development options put forward is required to determine their financial viability, together with an assessment of the costs of more generic resettlement needs. Careful consideration will also need to be given to determining the optimal carrying capacity of the islands, appropriate land use planning and resource development. Most importantly, consultation with those wishing to resettle the islands is essential in order to incorporate their needs and aspirations into the resettlement debate.

Given that this study represented a snapshot in time, it is also recommended that a long-term monitoring programme be established to assess the seasonal and yearly trends of groundwater characteristics; examine rates of coastal erosion; monitor marine and coastal biodiversity; and examine the effects of climate change on the islands.

ANNEX 55

KPMG Feasibility Study for the Resettlement of the British Indian Ocean Territory, Volume I, 31 January 2015

KPMG

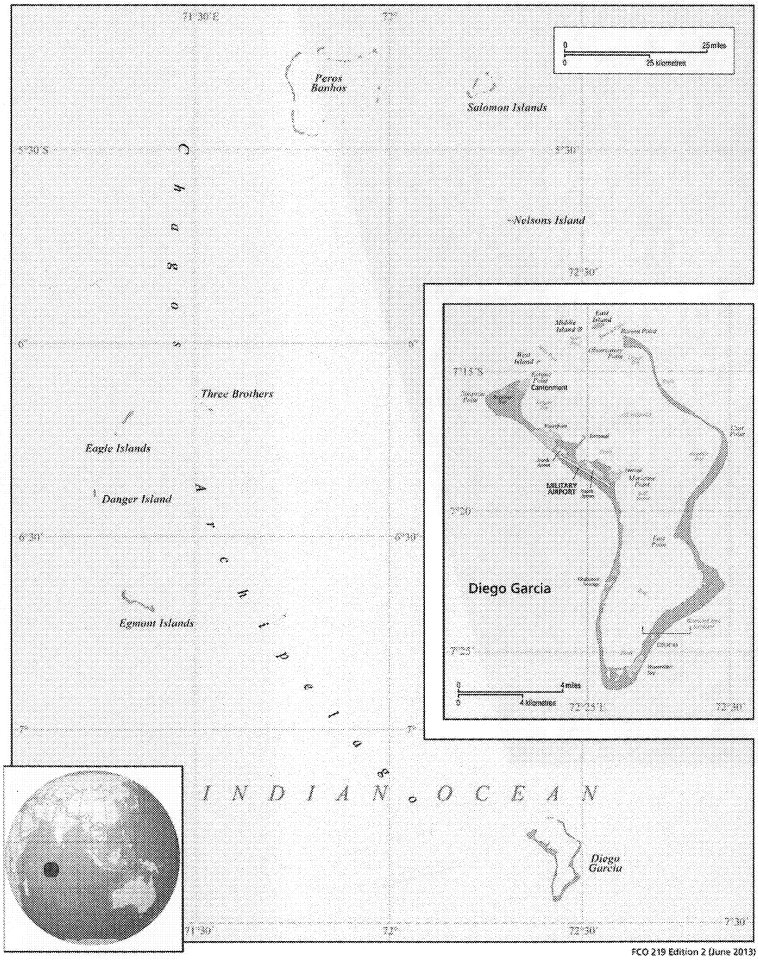
cutting through complexity

Feasibility study for the resettlement of the British Indian Ocean Territory

Volume I

31st January 2015

British Indian Ocean Territory



FCO 219 Edition 2 (June 2013)

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KPMG

Currency Equivalents

Currency Unit = Sterling Pound (£)

Exchange Rates (1 October 2014)

£ 1 = US$ 1.6203

£ 1 = € 1.2866

Source: Bank of England

Fiscal Year

1st April – 31st March

Abbreviations and Acronyms

APCC	Asian and Pacific Coconut Community
BIOT	British Indian Ocean Territory
BIOTA	BIOT Administration
BMFC	British/Mauritius Fisheries Commission
BSFC	British/Seychelles Fisheries Commission
CB	Capacity Building
CCT	Chagos Conservation Trust
CDA	Coconut Development Authority (Sri Lanka)
CPI	Consumer Price Index
DFID	Department for International Development
EC	European Commission
ECCB	East Caribbean Central Bank
EDF	European Development Fund
EEZ	Economic Exclusion Zone
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EPPZ	Environment Protection and Preservation Zone
EU	European Union
FAO	Food and Agriculture Organisation
FCMZ	Fisheries Conservation and Management Zone
FCNO	Filtered Coconut Oil
FCO	Foreign and Commonwealth Office
FIRR	Financial Internal Rate of Return
FPO	Fisheries Protection Officer
FPV	Fisheries Protection Vessel
GDP	Gross Domestic Product

GRT	Gross Register Tonnage
GST	Goods and Services Tax
HR	Human Resources
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICCPR	International Covenant on Civil and Political Rights
IOTC	Indian Ocean Tuna Commission
IPCC	International Panel on Climate Change
IUU	Illegal, Unreported and Unregulated
KPI	Key Performance Indicator
MCS	Monitoring, Control and Surveillance
MDG	Millennium Development Goal
M&E	Monitoring & Evaluation
MIS	Management Information System
MPA	Marine Protected Area
MRAG	Marine Resources Assessment Group Limited
MSC	Marine Stewardship Certificate
MWR	Morale, Welfare and Recreation
NGO	Non-Governmental Organisation
NM	Nautical Mile
NSFDG	US Naval Support Facility Diego Garcia
NTA/NTZ	No Take Area/No Take Zone
O&M	Operations and Maintenance
OT	Overseas Territory
OTD	Overseas Territories Department
OTEP	Overseas Territories Environment Programme
PIDG	Private Infrastructure Development Group
PIO	Pitcairn Island Office
PM	Pacific Marlin

RIB	Rigid-hulled Inflatable Boat
RICS	Royal Institution of Chartered Surveyors
RM	Royal Marines
ROPO	Royal Overseas Police Officer
SFPO	Senior Fisheries Protection Officer
SIDS	Small Island Developing States
SWOT	Strengths, Weaknesses, Opportunities and Threats
TCI	Turks and Caicos Islands
TdC	Tristan da Cunha
TEFU	Treaty on the Functioning of the European Union
TOR	Terms of Reference
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
USAF	United States Air Force
VAT	Value Added Tax
WHO	World Health Organisation
WTO	World Tourism Organisation
WTTC	World Travel and Tourism Council

Contents

Executive Summary **1**

1 Introduction and Background 9

2 Study Approach and Methodology 12

3 Key Activities and Resettlement Options 14

4 Legal and Political Analysis 20

5 Environmental Analysis 36

6 Infrastructure Analysis 59

7 Economic and Financial Analysis 70

8 Comparison of Resettlement Options 84

Terms of Reference **98**

Bibliography **101**

Executive Summary

Introduction

In March 2014, the British Indian Ocean Territory (BIOT) Administration commissioned KPMG to carry out a feasibility study for the resettlement of BIOT. The feasibility study was undertaken over a ten-month period between April 2014 and January 2015. It was conducted by a multi-disciplinary team, tasked with preparing a 'neutral' analysis of different options for the resettlement of BIOT.

For each option, the feasibility study considers the following:

- The likely cost to the UK Government of establishing and maintaining a settlement over periods of five, ten and twenty years;
- Whether such a settlement could be self-sustaining and, if so, within what time period and under what conditions; and
- The associated risks, environmental implications and full costs of mitigation, in the event that resettlement takes place.

This report collates the work of the study, and provides a detailed description of the overall approach and methodology followed, as well as the findings. The findings depend on many assumptions, as outlined in the report.

Study approach and methodology

The study analyses the different resettlement options using a range of different variables including: legal, political, environmental, social and economic factors, and estimations of the total cost of the resettlement options. The views from a range of stakeholders were sought, including the Chagossian community, through a series of open consultations.

The work was carried out through three main phases:

- **Consultation** and data gathering, consulting with the Chagossians and gathering relevant data on the numerous factors affecting resettlement;
- **Analysis** to determine the prospects for an economically self-sustaining community on BIOT, weighing the likely economic opportunities against the expected financial costs and environmental risks; and
- **Reporting**, setting out an analysis of the resettlement options, with consideration of the environmental risks and costing of each option. This phase included a draft report made available on 27 November 2014 and this report made available on 31 January 2015.

Key activities and resettlement options

The study team undertook field research in BIOT, visiting Diego Garcia and 13 of the outer islands, including two which are considered in detail as part of the resettlement option analysis, Ile du Coin and Boddam. The purpose of the visit was to gather relevant data on selected islands within BIOT, to develop a framework for assessing the viability of each island for resettlement. We quickly narrowed down the resettlement locations to Diego Garcia, which is included in all three resettlement options, and the two outer islands, which were the only outer islands to have been inhabited on a significant scale in recent history. Environmental analysis confirmed the greater suitability of Diego Garcia than the two outer islands from a resettlement perspective. Existing infrastructure on Diego Garcia is a major practical and economic advantage provided that access can be agreed.

Consultations with the Chagossian community took place in Mauritius, the Seychelles, Manchester, Crawley, and London. The aim of these activities was to inform the Chagossian community of the study and consultation process, and to gather their views on this process and resettlement in general.

An environmental questionnaire was developed to seek views from stakeholders on the various environmental issues linked to resettlement. These included members of the Chagos Conservation Trust (CCT) and other individuals with technical/environmental knowledge, particularly on BIOT or resettlement. The questionnaire focused broadly on: the carrying capacity of individual islands; the potential impact of resettlement on the environment; the impact of the environment on resettlement; and environmental monitoring requirements.

In light of these activities, and the team's wider background research, the team have focused their analysis on three resettlement options:

- Option 1: **Large-scale resettlement** (population 1,500) with economic activities such as public sector employment, employment on the US Naval Support Facility, tourism and fisheries. This sort of development would require infrastructure on Diego Garcia and the outer islands.
- Option 2: **Medium-scale resettlement** (population 500) with livelihood options that could be supported in a number of ways such as public sector employment, engagement on the US Naval Support Facility, artisanal fishing and monitoring the MPA.
- Option 3: **Pilot, small-scale resettlement**, (population 150, serving as a middle ground between permanent resettlement and the status quo) with incremental growth over time, and limited infrastructure on Diego Garcia.

These options are neither exhaustive (other options are possible), nor mutually exclusive, in that a resettlement process which started off at a pilot scale could move on to medium or larger scale resettlement depending on the level of success and the demand from the community to move in larger numbers. The costs might be reduced below Option 3 by adopting lower standards of infrastructure and service provision than assumed in this study, or by having an even smaller initial population.

The provisional candidate island options considered in the feasibility assessment of island options are Diego Garcia and, as examples of outer islands, Ile du Coin (Peros Banhos atoll) and Boddam (Salomon atoll), a view supported by responses to the environmental questionnaire. In the event of resettlement, these 3 islands are selected as ones that would be most practical. However, subsequent resettlement on some other BIOT islands is not precluded.

Legal and political analysis (Section 4)

The review has found that there are no fundamental legal obstacles that would prevent a resettlement of BIOT to go ahead. The legal and constitutional framework will, however, require significant amendment in order to facilitate a resettlement and this will require a comprehensive consultation process with the Chagossians and other interested parties. The following areas would be considered a priority in advance of and during the initial stages of any resettlement:

Constitutional

- A decision as to whether any new constitution, interim or permanent, for BIOT would be based solely upon Her Majesty's prerogative powers or on a United Kingdom statute based primarily on the level of oversight the UK Parliament may require.
- The possibility of putting an interim constitutional framework in place until the first phases of resettlement have been successful. The consultative process for this would ideally be as inclusive and fair as possible.
- Amendment of the existing constitutional framework and immigration ordinances and the British Indian Ocean Territory (Immigration) Order 2004 to allow Chagossians to resettle and live on

designated areas of BIOT. In the longer term, issues relating to nationality would also be important.

- The European Convention of Human Rights including the right to individual petition in addition to the International Convention on Civil and Political Rights might be extended to BIOT.

Governance

- Whether to establish the position of Governor or maintain the existing position of Commissioner as well as what direct powers the position will have and where the post will be based.
- A temporary consultative body for Chagossians and other interested parties, perhaps based on a conference of representatives, until a more permanent consultative structure can be agreed and established by constitution or local Ordinance.

Administration

- A resident civil service system to assist in facilitating the resettlement including provision of basic medical, police and other vital services. Courts may also be required to function on occasions. Possibly a resident Law Officer given the amount of legal amendments required during the initial phases of any resettlement.
- The Commissioner's/Governor's authority to raise revenues through a local Ordinance in addition to a consolidated fund in order to finance resettlement activities.

Environmental analysis (Section 5)

The continued physical existence of the islands of the Chagos Archipelago, which constitute BIOT, depends on the health of its underlying coral reefs, upon which the islands have formed. Diminished reef health, coupled with unfavourable shoreline changes, whatever the causes, has a direct bearing on any human populations inhabiting BIOT.

Whether or not future reef growth will keep pace with sea level rise is very important for resettlement decisions and prospects. Estimates of coral reef growth are in the range of 0.6 to 7.9 mm/yr, averaging 3.5 mm/yr. Sea level rise measurements for different atolls in Chagos indicate an increase of 3.2 mm/yr – 6 mm/yr, (from differing techniques). For projecting future rates global estimates are most relevant. Projected global average changes are 6.5 mm/yr (2013-2050) rising to 7.4 mm/yr (2013-2100), according to the Intergovernmental Panel on Climate Change (IPCC). Whether growth will be sufficient to combat sea level rise, coastal erosion and flooding of BIOT islands over the coming decades is a cause for concern. Many factors influence reef health, and therefore growth, making reef growth projections uncertain. The available reef growth estimates are not recent, and growth may reduce as ocean acidification and other reef disturbances increase.

While eastern Diego Garcia is a possible resettlement area, it was designated an internationally important wetland area by the BIOT Government in 2001, and contains an Important Bird Area (IBA) in the north. Nevertheless, environmental factors imply that Diego Garcia would be the most suitable/least risky location for resettlement. This island/atoll is relatively large, and already has critical infrastructures currently for use by the US Naval Support Facility. The following considerations will also be relevant to decisions on resettlement:

- Diego Garcia lies outside the Chagos No-Take MPA. The MPA, and outer islands within it, are of greater global significance than Diego Garcia.
- Diego Garcia already has an airport and port (though any use of such facilities is subject to agreement with and approval of the US government).
- Outer islands are remote, demanding environments, where all infrastructure and facilities would need to be established in the event of resettlement or tourism. Construction of a port and/or airport would be invasive and cause major environmental damage to the coral reefs, fish and other marine life.

- Development impacts on one or more outer atolls would also extend to the Chagos No-Take MPA, potentially threatening its ecological integrity and diminishing its utility as a global reference site for environmental monitoring and in other ways. Zoning of the MPA (to demarcate which islands may and may not be inhabited, or fished) may help alleviate the impacts somewhat.
- Any form of development in Chagos has the potential to impact the MPA. A key differential between Ile du Coin and Boddam (or the other islands) compared to Diego Garcia is simply that the former two islands bear less of the impact of recent human habitation and start off from a less degraded state.

Carrying capacity estimates for different island and resettlement options are complex and carry many assumptions and uncertainties. For example, self-sufficiency and heavy reliance on local fish increases the environmental burden ('ecological footprint') on Chagos' resource and reefs, lowering carrying capacities. In contrast, importing fish/resources reduces the environmental burden on Chagos – increasing carrying capacities.

Potential environmental impacts from the different resettlement options are summarised below, although some of these could be ameliorated through mitigation measures.

Option 1 (likely to involve both Diego Garcia and outer islands, such as Ile du Coin or Boddam)	Option 2 and 3 (involving Diego Garcia)
■ Very substantial construction impacts from a port or airport, if built on the outer islands; ■ Massive environmental impacts from construction (e.g. roads), infrastructures (e.g. power generation) and facilities; ■ Moderate impacts from houses, other buildings (e.g. tourist resorts) and facilities; ■ High/moderate impacts from sewage, solid waste and sedimentation; ■ Potentially heavy impact from fishing, diving and snorkelling; ■ Non-sustainable use of coral and sand as building materials; ■ Serious potential threat to the integrity of Chagos No-Take MPA, as noted, including reduced fish production, reef health and utility as a global reference site	■ Some impacts from construction (e.g. roads), infrastructures (e.g. power generation) and facilities (e.g. housing, other buildings) on Diego Garcia; ■ Threats to the Ramsar (wetland) site on eastern Diego Garcia and an important bird area at Barton Point; ■ Some disturbance from sewage, solid waste and sedimentation; ■ Potential additional impact on fish community if 'resettlement' and 'recreational' fishing both allowed. Improvement if existing 'recreational' fishing reduced or discontinued and catch limits imposed on 'resettlement' fishing; ■ Non-sustainable use of coral or sand as building materials.

The only way to fully understand the impact of resettlement on the reefs and resources of BIOT is to monitor environmental parameters. An Environmental Impact Assessment (EIA) should begin before the construction of any proposed infrastructure and/or human activities. EIA enables comparison of how well predicted impacts from resettlement match actual impacts determined from monitoring, and identifies the need for action to mitigate emerging problems.

Prior to any resettlement all stakeholders would be advised to consider and agree:

- Limits of acceptable change for the various parameters;
- Penalties, and
- Who will bear the costs of dealing with the problem, if thresholds are crossed?

Infrastructure analysis (Section 6)

In considering the infrastructure requirements of any future resettled population, the study has taken into account what is practical to determine indicative cost estimates. The provision of housing and public services available in other British Overseas Territories was examined, and a range of norms in the region and in other Small Island Developing States. Consideration of the need for infrastructure has taken into account the following core principles:

- Do minimum additional harm to the environment;
- Focus on environmental protection and sustainability;
- Take into account economic and financial affordability, value for money, and sustainability; and
- Respond to reasonable needs with feasible options.

Several key infrastructure needs have been considered. The study has explored: design, cost and contracting issues; transport and island access; shelter, governance, and law and order facilities; as well as energy, fuel, and the need for infrastructure to support the provision of other basic services.

Finding suitable cost comparators for the Feasibility Study has been particularly challenging. Contractors providing extremely robust and high standard engineering services to the US Navy incur high costs. These are the upper limit for estimation, but whether savings can be made is a key issue. Small family businesses on, for instance, Mauritius, build houses for a fraction of these costs. The issue for this study has been to find a suitable methodology and set of benchmarks, taking into account the expectations of potential re-settlers and reasonable comparators. Comparisons can be identified from other Overseas Territories, but the figures provided also reflect the paucity of existing supply chains which could push up costs considerably in the context of BIOT.

Expansion from 150-500 to a larger population (up to 1,500) would involve a more complex and varied set of infrastructure provisions, probably with more private sector participation. Expansion to other islands for various economic activities (e.g. fishing, nature tourism) could be considered after specific and realistic project proposals were developed on a case-by-case basis based on lessons learned from the initial expansion phase.

Economic and financial analysis (Sections 7 and 8)

The economic and financial analysis in Section 7 includes an assessment of potential livelihood and employment prospects (assuming 50% of the population would be economically active) in key sectors for each option. It quantifies the associated training costs (assuming 50% of the employed work force would require training). Incomes are estimated in aggregate. The study has looked at livelihood options for any resettled community. The main employment opportunities would be in the public sector (operation and maintenance of community infrastructure) and in the US naval facility. There are income opportunities in artisanal fishing and environmental activities related to fishing. There is potential for the development of high-end tourism and eco-tourism, with scope for employment in hotels, water sports, and as tourist guides on the islands. There is also scope for the development of small coconut plots for subsistence consumption and use, plus potential supply of by-products to the Naval Support Facility, tourism developments and the construction sector. The following table presents illustrative estimates of employment and associated training costs for the 3 main resettlement options based on assumptions outlined in Section 7.

Component	Unit	Option 1	Option 2	Option 3
Population				
Population	nos.	1,500	500	150
Labour Force	nos.	750	250	75
Indicative Employment and Training Requirements				
Public Sector				
Employment	nos.	263	175	53
Training Costs	£ million	1.97	1.31	0.39
US Naval Facility				
Employment	nos.	263	63	15
Training Costs	£ million	1.97	0.47	0.11
Artisanal Fishing				
Training Costs	£ million	0.42	0.35	0.28
Tourism				
Employment	nos.	76		
Training Costs	£ million	0.57		
Other Employment				
Employment	nos.	30	10	3
Training Costs	£ million	0.23	0.08	0.02
Total				
Employment	**nos.**	**631**	**248**	**71**
Training Costs	**£ million**	**5.15**	**2.21**	**0.81**

The issue of financial sustainability was considered for each option over a 20 year period after the completion of construction. The indicative annual deficit for each option remains substantial throughout the period with only limited progress towards self-sufficiency. The indicative annual subsidy per head in year 10 would range from: (i) Option 1: £17,300 per head (with the costs associated with the airport and breakwater/harbour) and £8,600 per head (without the costs associated with the airport and breakwater/harbour); to (ii) Option 2: £18,600 per head; and (iii) Option 3: £44,100 per head. These are all in 2014 constant prices.

Component	Financial Flows in £Million per year (Years 3 – 20)						
	3	4	5	6	7	10	20
Option 1							
Total – Revenue	0.09	0.21	0.33	0.44	0.93	1.86	4.00
Total – Expenditure	0.00	7.14	11.66	16.17	22.97	27.87	27.86
Exp. Without Airport and Harbour	0.00	4.52	6.41	8.30	12.47	14.75	14.74
Deficit	0.09	(6.93)	(11.33)	(15.73)	(22.04)	(26.01)	(23.86)
Without Airport and Harbour	0.09	(4.30)	(6.08)	(7.86)	(11.54)	(12.89)	(10.74)
Option 2							
Total – Revenue	0.15	0.23	0.29	0.32	0.76	0.81	1.22
Total – Expenditure	3.69	5.28	8.84	9.99	10.51	10.51	10.50
Deficit	(3.54)	(5.05)	(8.53)	(9.61)	(9.24)	(9.18)	(8.46)
Option 3							
Total – Revenue	0.15	0.23	0.29	0.32	0.76	0.81	1.22
Total – Expenditure	3.16	6.36	7.29	7.43	7.43	7.43	7.42
Deficit	(3.01)	(6.14)	(7.00)	(7.10)	(6.67)	(6.61)	(6.20)

The main next steps for consideration of resettlement would involve the following:

- Establish how many Chagossians want to resettle and on what basis.
- Conduct further studies and investigations:
  - **Human Resources Study** of Chagossians proposing to resettle.
  - **Training Programme** based on the results of the Human Resources Study and commitments by Chagossians wishing to resettle.
  - **Site investigations, engineering studies, final designs and costs** – based on selected island(s). These investigations should also focus on cost minimisation and value for money.
  - **Implementation and Action Plan** – including procedures for appropriate consultation with Chagossians and other stakeholders.
  - **Risk Management Study and Plan** to address all relevant risks and uncertainties; and propose mitigation measures to reduce their impact.
  - **Funding Study** to identify sources of funding to support potential resettlement.
- Prepare appropriate Constitution and management structure for potential resettlement.
- Investigate potential opportunities for access to facilities of US Naval Facility.
- Investigate potential opportunities to provide services to US Naval Facility.
- Investigate and promote interest of private sector in opportunities to support resettlement.
- Investigate and address other related issues e.g. (i) land ownership; (ii) accommodation ownership, mortgages and repayment; (iii) remittances; (iv) entitlement to pensions; (v) access to loans; etc.

Indicative cost estimates for each resettlement option are assessed (in Section 8) in terms of the capital investment and the annual operations and maintenance costs, plus periodic capital replacement and/or refurbishment. The economic and financial analysis also considers the potential economic development opportunities that resettlement might bring. A summary of the indicative cost estimates for each of the resettlement options is shown below. These indicative estimates are subject to extremely large uncertainties. They represent a judgment taking into account many factors that could affect the final costs. These include very significant uncertainties inherent in the physical terrain, the environmental protection design implication costs, the contracting scenarios, and the risk

appetite for any contractor newcomers on BIOT. Whilst the table below and the other related tables in this report have not given indicative ranges of possible outcomes because of those uncertainties, in the report and annexes we give examples of the wide range of possible costs that have been identified during the period of data research and review.

	Option 1 (Over 6 years)	Option 2 (Over 4 Years)	Option 3 (Over 3 Years)
Indicative total capital cost estimates	£423.3 million	£111.6 million	£65.4 million
Indicative capital costs, without airport and breakwater/harbour (Option 1 only)	£190.2 million	£111.6 million	£65.4 million
Capital costs per head of population			
Total capital costs	£282,000/head	£223,000/head	£436,000/head
Capital costs without airport and breakwater/harbour (Option 1 only)	£127,000/head		
Indicative annual O&M costs			
Total per year	£21.5 million/year	£6.3 million/year	£4.7 million/year
Total, without airport and breakwater/harbour (Option 1 only)	£9 million/year		
Indicative capital replacement and refurbishment costs (after 10 years)			
Total	£37 million	£9.4 million	£5.5 million
Total, without airport and breakwater/harbour (Option 1 only)	£16 million		

In Section 8, we also identify a potential variant of Option 3 which involves lower overall costs through reducing the initial numbers of resettlers and the associated infrastructure. This involves capital costs of £32.4 million and operating subsidies of £5.0 million per year, based on a resettlement population of 50 people. A population of 50 is however arguably below reasonable and dynamically sustainable levels and will likely require significantly more support from BIOT than a larger more diverse cohort.

1 Introduction and Background

1.1 The British Indian Ocean Territory

1.1.1 History and geography

The British Indian Ocean Territory (BIOT) lies approximately 1,770 km east of Mahé (the main island of the Seychelles)[1]. The territory, an archipelago of 58 islands, covers some 640,000 square km of ocean. The islands have a land area of only 60 square km and 698 km of coastline. Diego Garcia, the largest and most southerly atoll and island, is 44 square km. The terrain is flat and low and most areas do not exceed two metres in elevation.

The uninhabited Chagos islands were first discovered by the Portuguese in the 16th century. The French assumed sovereignty in the late 18th century and began to exploit them for copra, originally employing slave labour. By then, the Indian Ocean and its African, Arabian and Indian coasts had become a centre of rivalry between the Dutch, French and British East India companies for dominance over the spice trade and over the routes to India and the Far East. France, which had already colonised Réunion in the middle of the seventeenth century, claimed Mauritius in 1775, having sent its first settlers there in 1772; it subsequently took possession of the Seychelles group and the islands of the Chagos Archipelago[2].

During the Napoleonic wars Britain captured Mauritius and Réunion from the French. Under the treaty of Paris in 1814, Britain restored Réunion to France, and France ceded to Britain Mauritius and its dependencies, which comprised Seychelles and various other islands, including the Chagos Archipelago. All these dependencies continued to be administered from Mauritius until 1903, when the Seychelles group was detached to form a separate Crown Colony. The Chagos islands continued to be administered as a dependency of Mauritius until they were detached to become the British Indian Ocean Territory in November 1965. In return Britain paid a grant of £3 million to Mauritius.

A US Naval Support Facility was constructed from 1971 – 1973. The agreement for use of the Islands for this purpose was granted from 1966 – 2016 with the option of a further 20 year extension.

1.1.2 The Chagossians

The former workers/inhabitants were removed from the islands between 1967 and 1973 to make way for the building of the Naval Support Facility. After the British Indian Ocean Territory had been created, the UK government gave Mauritius an undertaking to cede the Territory to Mauritius when it was no longer required for defence purposes. However, since the 1980s, successive Mauritian governments have asserted a sovereignty claim to the islands, arguing that they were detached illegally. The UK government rejects this claim. Mauritius is currently pursuing arbitration through the UN Convention on the Law of the Sea (UNCLOS) over the UK's right to establish a 'no take' Marine Protected Area (MPA) around BIOT in 2010. Following the removal of the former inhabitants, the Territory has no permanent inhabitants and members of the UK and US armed forces, officials and contractors in the Territory are temporary occupants without any right of permanent abode.

Since 1978 there have been several legal cases brought against the UK government for the right of abode and compensation to the former inhabitants. In 1982 the UK government paid £4 million to the Chagossians. In October 2008 the Law Lords upheld the 2004 British Indian Ocean Territory (Constitution) Order, made by prerogative Order in Council, as valid. This means that no person has the right of abode in BIOT or the right to enter the territory unless authorised.

1.1.3 Previous resettlement research

In 2000 the UK government commissioned an independent feasibility study[3] to look at resettlement on the outer islands. That feasibility study comprised the following phases:

- **Phase 1** was tasked with making an initial assessment of the feasibility of resettlement based upon the natural resources on the two outer atolls of Peros Banhos and Salomon.
- **Phase 2A** of the study, which took place in 2001, involved establishing equipment to generate long term information on local climatic conditions and tides, and their influence on the freshwater lenses on two of the islands within these two atolls.
- **Phase 2B**, which started in November 2001, was completed in July 2002. It involved assessments of groundwater resources, soils, fisheries resources, and the marine and terrestrial environment.

This study concluded that resettlement was not feasible. While the report expressed the view that that short-term habitation for limited numbers on a subsistence basis would in theory be possible, it also emphasised that any long-term resettlement would be precarious and costly. The outer islands, which have been uninhabited for forty years, are isolated, low-lying and lack all basic facilities and infrastructure. The study noted that the cost of providing infrastructure and public services could become very costly for the UK taxpayer. However, the study has been questioned by some on grounds of professional standards and independence.

A subsequent, separate and different, feasibility study was undertaken[4]. This report was also queried as it did not adequately consider the impacts of resettlement on the environment, or of flooding or freshwater depletion. Also, the locations and costs for the airport and tourist facility have been challenged[5].

Aims and overview of this study

In March 2014, the British Indian Ocean Territory (BIOT) Administration commissioned KPMG to carry out a new feasibility study for the resettlement of BIOT. The Terms of Reference are attached in Appendix 1. In preparing this study we have drawn on the professional expertise and writings of a wide range of external specialists, as reflected in the annexes and bibliography. The views of such external specialists, based on their professional expertise and the information which was made available to them, are accordingly reflected in this report. The feasibility study was undertaken over a ten-month period between April 2014 and January 2015. A 'neutral' analysis of different options for the resettlement of BIOT was commissioned. The study presents the most feasible options but these are not exhaustive, nor does it recommend preferred options. This will be for the UK government to consider based on a wide range of factors.

The main options were identified during the course of the study in consultation with stakeholders. For each option, the feasibility study considers the following:

- The likely cost to the UK Government of establishing and maintaining a settlement over periods of five, ten and twenty years;
- Whether such a settlement could be economically self-sustaining and, if so, within what time period and under what conditions; and
- The associated environmental risks and implications and estimated costs of environmental mitigation, in the event that resettlement takes place.

1.2 Structure of this report

This final report presents the work completed, and is divided into the following Sections:

- Section two provides an overview of the overall **approach and methodology** followed;
- Section three summarises the **key activities** and sets out the final list of resettlement options which the study considers;
- Sections four (legal), five (environmental), six (infrastructure) and seven (economic) **analyse the feasibility of resettlement**, looking at the key issues to be addressed against each of the different elements in the study's analytical framework; and
- Section eight provides a **summary comparison** of the different resettlement options.

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[1] Sheppard & BIOT Administration FCO, 2011.

[2] Although the latter were not commercially important, they had strategic value because of their position astride the trade routes.

[3] Posford Haskonig, 2002.

[4] Howell & Chagos Refugees Group, 2008 Returning Home: A Proposal for the resettlement of the Chagos Islands. UK Chagos Support Association.

[5] Turner et al. 2008.

2 Study Approach and Methodology

2.1 Guiding principles

2.1.1 A 'neutral' analysis

The study has sought to obtain as much information as possible about the background to the potential resettlement of the BIOT. This includes the earlier feasibility studies, related peer reviews, independent studies on resettlement of BIOT and the documentation gathered as part of the initial stakeholder consultations that took place in 2013. This has enabled us to establish a clear picture of the context in which the study has taken place. We have, however, adopted a "neutral" approach, starting afresh when analysing the expected costs and opportunities of each resettlement option without being steered by the conclusions of others.

2.1.2 Open consultation

The process of consultation by KPMG which began in 2014 has continued throughout the study, consisting of structured consultation events, both in the UK, Mauritius and the Seychelles with multiple meetings. These have been important as a means to supplement the findings of the team's desk research and interviews, and help develop the resettlement options.

2.1.3 Presenting findings in a clear and accessible way

This report is the final output of this feasibility study and sets out an economic and financial analysis of each resettlement option, along with environmental and social analysis, to reflect the likely implications for BIOT over the short, medium and long term. This report addresses the range of issues and is supported by clearly defined estimates of capital costs, operating and maintenance costs, and potential revenue streams for the BIOT.

2.2 Key phases of activity

Inception Phase: Scoping. A detailed review of the background information and formulation of the study plan was concluded.

Phase I: Consultation and data gathering. Once the inception phase was completed, the team began the main phase of the study, the aim of which was to consult with the Chagossians and to gather relevant data on the population, as well as on the carrying capacity and resources of the islands themselves through a visit to the Territory. Consultations with scientists and other specialists familiar with BIOT and other UK Overseas Territories have also been important. This has involved meetings, discussions and, in the case of environmental consultations, the administering of a questionnaire.

Steps had already been taken to survey the Chagossians, and to establish a clearer picture of the numbers who wish to return. The Howell Report of 2008 is one such source, and we undertook a desk-based review of relevant materials and consultation papers before the fieldwork which involved consultation events and the use of structured questionnaires to survey the Chagossians resident in the UK, Seychelles and Mauritius.

The aim of this Phase was to understand, in more in-depth terms:

- How many people want to return and under what circumstances;
- The specific nature and likely timing of this return (either permanent or temporary);
- The age and economic profile of those who would consider resettling; and

- Lifestyle expectations, based on current living standards in the Chagossians' respective locations.

Phase II: analysis. Having gathered relevant data through desk research and consultations, the team reconfirmed, cross-checked information and undertook a detailed analysis of the prospects for an economically self-sustaining community on BIOT, weighing the likely socio-economic opportunities against the expected financial costs and environmental risks. We carried out an assessment of opportunities for:

- Gainful employment (e.g., in agriculture, fishing, handicrafts, etc.);
- Tourism (possibly requiring private sector involvement) in fields such as eco-tourism, the development of a small exclusive resort (cf. Maldives), cruise-ship visits, research and scientific visits;
- BIOT government employment;
- Other income generation opportunities; and
- The possibility of remittances and/or contributions from other sources (both public and private).

Alongside this we calculated the likely financial costs of resettlement and environmental implications, covering:

- Access facilities;
- Island transport;
- Housing;
- Schools and clinics;
- Administration buildings;
- Power generation;
- Telecommunications; and
- Water, sanitation and waste facilities.

Besides the capital costs of the above items, the team has also considered the question of operating costs, payment for services, as well as administration (e.g. any need for an expatriate doctor, teacher, etc.).

Phase III: production of the study report. The result of this work is presented in this report, and sets out an analysis of the resettlement options, as well as consideration of environmental risks. This reflects the likely financial implications over the short, medium and long term, and is supported by indicative estimates of:

- Capital costs, including likely contingent liabilities;
- Annual operating and maintenance costs, including Chagossians employed in the public sector;
- Revenue and income from the following: payments for utility services; levies on tourists and visitors; import duties and taxes; land sales and fees; rents; other income (e.g. stamps, coins, internet registration, etc.);
- Environmental and financial implications of the resettlement options and transport needs, including the costs of upholding BIOT ordinances and international legislation, environmental monitoring and also measures needed to combat sea level rise and coastal erosion plus estimated costs; and
- Analysis of results over 20 years for each option

3 Key Activities and Resettlement Options

3.1 Field visit to the British Indian Ocean Territory

The study was undertaken by a multidisciplinary group of experts with infrastructure, economics, legal, environmental, resettlement, and project management skills. Several team members visited BIOT, including Diego Garcia and outer islands considered for potential initial resettlement, Ile du Coin and Ile Boddam (amongst a total of 13 outer islands). The purpose of the visit was to gather relevant data on selected islands within BIOT, and to seek input from UK and US representatives on Diego Garcia on the factors to be considered during any resettlement process.

A framework was developed for assessing the viability of each island for resettlement. This framework takes into account a range of environmental and physical parameters such as, for example, ease of access, proneness to flooding, agricultural potential and the likely challenges to infrastructure development. It has subsequently been refined and supplemented by other data sources, including the earlier feasibility studies, in order to triangulate findings and to identify any significant changes that have taken place on the islands over recent years.

The field visit observations and key data for 14 Chagos Archipelago Islands visited (13 outer islands and Diego Garcia) are summarised in Annex 3.1. The information includes important physical and environmental factors that will influence resettlement prospects. Key points are highlighted below. More comprehensive assessments of resettlement on Diego Garcia and two of the outer islands, based on these and other environmental factors, are shown in Sections 5 and 8. Whilst preferred island selection has been primarily driven by environmental & sustainability considerations, Annex 3.1 summarises a wide array of data and site observations that were taken into consideration when finalising choices. These factors included reef structure, ease of access, patterns of prevailing and seasonal winds, evidence that inundation occurred (e.g. accumulation of plastic debris), pattern of inland mangroves/vegetation, past occupation and overall island size and shoreline height and profile variability

All the islands are low-lying and most are classic coral cays (keys). Islands are situated on the rim of atolls, and there are no protected lagoonal islands. Consequently, most land is no more than a few hundred metres from a seaward-facing shore. Maximum elevations are generally around 2-3 m above high tide[1]. Key criteria for resettlement include:

- **Distances between islands**. Distance, whether from Diego Garcia or an outside point of 'origin', will influence transport times, costs and logistics in the event of resettlement[2].
- **Surface area, height and protection**. Island area influences the extent and type of resettlement options that can be accommodated. The previously inhabited island of Ile du Coin is approximately 130 hectares, while Boddam is slightly smaller, at 108 hectares, but they are not the largest outer islands[3].
- **Maximum island length and orientation**. These features influence an island's potential suitability for a commercial and passenger airstrip. BIOT islands visited with a length of approximately $\geq$ 2 nautical miles, include three outer islands[4] and Diego Garcia. This minimum length is a commonly accepted threshold for commercial passenger aircraft (See Section 6.2.2).
- **Former habitation of BIOT islands**. Only Diego Garcia is currently inhabited. Islands previously populated by Chagossians included Ile du Coin and Boddam; some other islands were also inhabited, temporarily[5], Past inhabitation of an island provides some indication of its potential for sustaining human population, although changes, for example in climate and technology, need to be considered.

- **Access to islands by sea and level of protection**. In the event of re-settlement, all such islands would need jetties/wharfs. Approach and ease of access for a small craft ranged from relatively easy (including Boddam[8]) to difficult or extremely difficult (including Ile du Coin[7]). Also important is the extent to which atoll rims are enclosed by islands and reef flats with good protection being found on Diego Garcia and Boddam[8].
- **Vegetation cover and inland access**. Islands visited are typically fringed with *Scaevola*, coconut trees, shrubs and various hardwoods, extending variable distances inland. Some islands have relatively dense vegetation, impeding access inland (including Boddam[9]) while others have less dense vegetation (including Ile du Coin[10]), sometimes as a result of past clearing.
- **Rainwater and groundwater**. In Diego Garcia, rainfall and aquifers meet freshwater needs of the current population. This groundwater, coupled with appropriate treatment and with additional rainwater harvesting from building roof run-off is a significant resource. Groundwater supplies and/or freshwater were evident on the islands visited. Depths varied according to distance inland, rock porosity and tidal cycles: values often ranged from 0.5 metres to 1.5-2 metres.
- **Soil and agriculture potential**. The level of organic matter and extent/depth of top soil provides an indication of agriculture potential. This ranged from 5 – 10 cm on some islands[11] (limited soil quality) to >30 cm on others (e.g. Ile du Coin[12]: richer soils). In some cases (e.g. Ile du Coin[13]) a clear link was evident between soil quality and potential for agriculture.
- **Inundation risk and overtopping by seawater**. This actual or potential hazard is highly relevant to agriculture as well as habitation and construction in general. Our analysis suggests that for some islands[14], the risk appears relatively low, while for others the risk is substantial (e.g. Ile du Coin, Diego Garcia – in certain areas[15]).
- **Ecology, wildlife and conservation significance**. On the islands visited, rats were observed on most[16]. Seabird life was nevertheless prolific on these islands[17]. The mangroves found on BIOT[18] are the most southerly in the Indian Ocean, and as such have significance.
- **Disturbances and impacts**. Only a few of the islands visited had evidence of historic construction, including Diego Garcia. Accumulation of solid waste and beach debris, in very high concentrations, was common however.

Hence, the provisional candidate island options considered in the evaluation of island options (See Sections 5.3 & 8.1) are Diego Garcia and, as exemplars of outer islands, Ile du Coin (Peros Banhos atoll) and Boddam (Salomon atoll), a view supported by the environmental questionnaire. For example, respondents noted the suitability of Diego Garcia over Ile du Coin and Boddam. In the main, respondents did not consider other islands suitable for re-settlement, especially as historically they had not supported permanent communities.

Several Chagossians have expressed views that all BIOT islands should be potentially open for resettlement. However, for logistical and financial reasons, this would be unrealistic. In the event of resettlement, the 3 islands noted are seen as ones that might initially be most suitable, mainly for practical reasons. However, resettlement on some other BIOT islands in the future is not necessarily precluded. Ile Pierre and Eagle, both of significant area (> 150 ha), and possibly other islands, might also be options in the event of any subsequent phase of resettlement, although relatively little is known about Ile Pierre. As noted in other parts of this report, many other factors also influence island suitability and prospects for any initial and subsequent resettlement.

3.2 Consultations and survey results

3.2.1 Consultations

Consultations were completed with the Chagossian community in Mauritius, Seychelles, Manchester, Crawley, and London. The purpose of this was to inform the Chagossian community of the study and consultation process, and to gather their views on this process and resettlement in general. Chagossians were also invited to submit formal papers or provide comments via email to the study team.

A community focus group guide was developed to facilitate conversation between the study team and the Chagossian community. It was designed to capture information on the Chagossians' expectations of what resettlement would involve, issues that matter the most to the community, and what life was like for the older generation when they lived in BIOT. The community focus group guide was successful in facilitation of the process of collecting information during the consultations.

Table 3.1: Key messages from consultation with the Chagossian community

Theme	Key messages
General	▪ Attendees at all consultations expressed a preference for returning to BIOT permanently. It was clear that temporary visits to BIOT is not an acceptable option for the Chagossians. ▪ A modern standard of living, (with differing views about the basis on which this would be determined). ▪ Strong preference towards Diego Garcia being a part of the resettlement options. Chagossians would want the right to access all islands in BIOT.
Political/Legal	▪ Village councils established as a means of Governance. ▪ Rules and regulations around fishing would be acceptable.
Environmental	▪ Environmental consciousness was apparently high. ▪ Members of the group would be willing to play an active part in maintaining the environment of BIOT, including employment as environmental monitors. ▪ Green technology, especially regarding energy generation, is of interest.
Social	▪ Access to infrastructure currently on Diego Garcia or equivalent. ▪ Access to school education, with access to universities in the UK. It was suggested that there should be university scholarships for Chagossians. ▪ Basic public health services with a clinic, hospital, and pharmacy. ▪ The community would be willing to provide paid labour for maintenance of BIOT.
Economic/Livelihoods	▪ Wide range of employment skills ranging from unskilled and skilled technicians to professional. ▪ Strong desire to be trained to develop skills that may be useful on BIOT if resettlement were to occur. ▪ Strong interest in fishing for subsistence and as an income generating activity. Fish processing would provide opportunities for employment ▪ Coconut use for both subsistence and for generating income. ▪ Access to a state pension scheme. Concerns about access to an equivalent to the UK State Pension Credit. ▪ Agreement that BIOT should be open to high-end tourism and eco-tourism.

Chagossians consistently brought up two issues in all meetings, but which are outside the scope of the study, namely:

- Clarity on who has the right to British citizenship – this is a priority concern of the Chagossians;
- The right to permanent residence in BIOT if resettlement were to go ahead. There was a concern that a narrow definition of who is eligible to resettle would prevent some family members from resettling.

Preliminary conclusions.

The consultations with the Chagossian community were successful in providing insights into what the Chagossians would expect of resettlement and how the Chagossians themselves can help ensure that any resettlement would be sustainable in the long run. The information gathered from the consultations helped the team to develop illustrative resettlement options for the purpose of analysis, gauge what the environmental effect of resettlement would be and how to mitigate this, and formulate livelihood options for potential settlers.

Those with high levels of expectations expressed that they would like to have facilities comparable to that on Diego Garcia currently, with additional, UK standard education and health facilities. Information on what infrastructure and facilities they expected helped inform the resettlement options. Some Chagossians expressed strong views that they would not accept anything but a 'modern' standard of living comparable to that of the average UK citizen. However, this was subsequently challenged in discussions held in Mauritius. The standards of living and infrastructure expected are worth further exploration, since affordability will ultimately influence any decision on whether to proceed with resettlement.

Many Chagossians are environmentally conscious and understand the risks resettlement would have to the environment. The community were keen that strict environmental monitoring takes place and expressed a desire to be trained to help carry out this monitoring. They understand the risks of overfishing and proposed that green technology be a part of resettlement, such as in energy generation.

The wide range of employment skills present in the Chagossian community has allowed the team to identify major livelihood options for a resettled community. A combination of vocational skills together with high level administrative and public service skills is important for the sustainability of a resettled community on BIOT. Tourism also has the potential to open up a variety of employment opportunities.

3.2.2 Environmental questionnaire survey

An environmental questionnaire was developed to seek views from identified stakeholders on the various environmental issues linked to resettlement[19]. Stakeholders included all members of CCT[20], and other stakeholders with technical environmental knowledge, particularly on Chagos and/or environmental issues related to resettlement[21]. The questions contained within the tool (Annex 3.2) relate to:

- The carrying capacity of individual islands;
- The potential impact of resettlement on the environment;
- The impact of the environment on resettlement; and
- Environmental monitoring requirements, should a decision to resettle be taken.

Further results of stakeholder views, including results of quantitative analyses, are summarised in Annex 3.3 Summary data on the background of respondents (anonymised), and which stakeholder group they represent, are also given in Annex 3.3.

Table 3.2: Key messages from the environmental questionnaire

Theme	Key messages
Resettlement option by island	Respondents were asked which islands they would consider to be most suitable for resettlement given each of the resettlement options. Diego Garcia is clearly thought to be the most suitable Island for resettlement with respondents believing that a modern lifestyle, a pilot resettlement, or a scientific research station being the most suitable options for the island.
Research station	Respondents were asked to consider whether a research station in BIOT would be an effective means of assessing environmental aspects of resettlement. 29 people said yes while only five said no. Examples were given of research stations in Aldabra, Seychelles, Laccadives, and Galapagos which could be used as models for a research station in BIOT. A large majority of respondents believed that there could be employment opportunities for Chagossians on the research station.
Impact of resettlement on the environment	Respondents were asked to assess the overall resilience/robustness of the islands and their reefs to resettlement impacts. Diego Garcia was thought to be the most resilient island to environmental disturbances likely to result from both subsistence and modern lifestyle resettlement. Most respondents believed that Ile du Coin and Boddam are both fragile and unsuited to resettlement. All other islands were deemed 'fragile'.
Impact of environment on resettlement	Respondents were asked how resilient/robust they thought different islands would be to absorb and recover from natural environment disturbances. Most respondents thought that the islands were fragile and vulnerable to natural events such as sea level rise and coastal erosion. While Diego Garcia was seen as having some capacity to absorb damaging impacts, given its larger land area, it was nonetheless thought to be vulnerable and only protectable through significant investment in shoreline protection.
Carrying capacity	Respondents were asked what they thought were the carrying capacities of the islands. For the modern lifestyle option Diego Garcia was assumed to have the largest carrying capacity, with the mean of the responses being 1,427 with a maximum of 5,000. The mean assumed carrying capacity of Ile du Coin and Ile Boddam were both below 100. For the subsistence option Diego Garcia was also assumed to have the largest carrying capacity, with the mean of the responses being 363 with a maximum of 3,000. The mean assumed subsistence carrying capacity of Ile du Coin and Boddam were again both below 100.
Environmental monitoring	A large majority of respondents thought that all listed types of environmental monitoring were necessary. Whether respondents thought Chagossians could be trained to carry out the environmental monitoring varied with each type of monitoring tool but the general consensus was that Chagossians could be trained to carry out environmental monitoring in some capacity.

3.3 Overview of resettlement options

The feasibility study inception report presented three potential options. These have been revisited in light of the team's field research and consultations. The subsequent research, in particular, has indicated that:

- Consultation has not given a clear indication of the likely level of demand for resettlement, with widely differing indications of the likely demand for resettlement;
- Conflicting views exist concerning the suggestion that expectations for infrastructure standards and access to basic service are high – akin to UK/other mainland standards; and
- Diego Garcia remains a preferred location.

In light of this, the analysis in the remainder of this report will be focused on the following three options:

- **Option 1: Large-scale resettlement (with a population of approximately 1,500 in the first instance)**. This assumes a substantial settlement, with economic opportunities built around activities such as tourism and/or commercial fisheries. This form of resettlement would require infrastructure development on both Diego Garcia and the outer islands of the archipelago, in order to provide adequate support services for the returning population. Any resettlement on the outer islands would probably require zoning of the No-Take MPA, with repopulation of only one or a few islands, to help contain development pressures to a small part of the archipelago.
- **Option 2: Medium-scale resettlement (with a population of 500)**. This scenario envisages a medium-sized population of resettlers, whose livelihoods could be supported in a number of ways: for example, the management of the Marine Protected Area, activities such as artisanal fishing, or employment on the US Naval Support Facility on Diego Garcia.
- **Option 3: Pilot, small-scale resettlement, with incremental growth over time (initial population of 150)**. This scenario serves as a middle ground between permanent substantial resettlement and the status quo. It would require some limited investment in infrastructure and facilities, likely on Diego Garcia, in order to enable interested Chagossians to return to BIOT on a pilot basis, allowing for incremental growth over time if the pilot is shown to be successful.

These options are neither mutually exclusive nor exhaustive. For example they can be seen as representing a progression from a pilot community (option 3), with over time the development of larger communities (options 2 and 1). Option 1 could be developed without any outer island settlement (though in practice there would be limits on the size of the population of Diego Garcia imposed by economic and environmental constraints). In theory an option could be developed which was based only on outer island settlement but this has been discounted on environmental and practical grounds (See Section 5).

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[1] Except for islands having a raised reef and with cliffs about 6 m above high tide. Seismic activity (upthrust) likely contributes to this.

[2] Direct distances are most relevant for air travel, while distances via 'waypoints' relate to sea travel and are longer.

[3] Eagle and Pierre are larger than 150 hectares.

[4] Sudest, Eagle, Pierre.

[5] For example Sudest (abandoned), Eagle (abandoned) and Diamant (former leper colony).

[6] Also Sudest, Takamaka, Fouquet.

[7] Also Eagle, Middle Brother, Nelson.

[8] The least protected islands visited are Eagle and Middle Brother (Great Chagos Bank) and the most protected – besides Diego Garcia – are Takamaka, Fouquet and Boddam (Salomon atoll).

[9] Also Sudest, Diamant, Moresby.

[10] Also Eagle Yeye.

[11] E.g. Sudest, Sipaille.

[12] Also Pierre, Takamata, Fouquet.

[13] Also Sudest.

[14] E.g. Sipaille, Middle Brother, Pierre, Yeye, Nelson.

[15] Also Moresby Sudest, Eagle.

[16] Except on Middle Brother and Nelson.

[17] Especially Nelson.

[18] Eagle and Middle Brother.

[19] 51 responses were received, although respondents did not always answer every question.

[20] The former Special Scientific Group (SSG – no longer an entity).

[21] 145 people were sent the questionnaire, and responses were received from 51, more than one third of the total. (Respondents did not always answer every question).

4 Legal and Political Analysis

4.1 Introduction and overview

4.1.1 Aims and objectives of this analysis

This Section outlines the legal implications of a return of Chagossians to the BIOT. The current legal framework for BIOT is designed for islands uninhabited apart from those working on the US Naval Support Facility on Diego Garcia. The legal framework for BIOT is therefore quite different to that for any of the inhabited British Overseas Territories.

There are no insurmountable legal obstacles that would prevent a resettlement on BIOT. It will, however, be necessary to prioritise the legal provisions which require immediate change and identify those which can be put in place in the longer term. This Section highlights the main legal areas which might require attention should resettlement go ahead. Consultation with the Chagossians as well as other interested stakeholders should take place in respect of specific proposed legal changes.

This Section includes a comparative analysis with the legal frameworks governing other British Overseas Territories, and in particular those territories inhabited by a relatively small number of people[1] which are likely to be most similar to BIOT.

4.1.2 Legal background

BIOT is one of 14 territories under British Sovereignty now known as the British Overseas Territories. All of these territories are part of *'Her Majesty's dominions'* as territories which belong to the Crown and are also British possessions. The territories are constitutionally separate both from each other and from the United Kingdom, which is defined in the Interpretation Act 1978 as Great Britain and Northern Ireland. Nevertheless each of the territories is constitutionally linked with the United Kingdom as the sovereign power. Each inhabited territory has its own government and legislature. Laws can also be made for the Overseas Territories by United Kingdom Act of Parliament or by Order in Council made by Her Majesty on the advice of the United Kingdom Government.

4.1.3 The constitutional and legal framework of BIOT

Each British Overseas Territory has its own written constitution which has been approved by Her Majesty as an Order in Council by and with the advice of the Privy Council, upon the recommendation of United Kingdom Government. These Orders are based either upon the common law prerogative power of Her Majesty or, and sometimes in addition to, a statutory power. In only two cases (BIOT and Gibraltar) are the constitutions contained in Orders in Council made exclusively by virtue of the Royal prerogative. The British Indian Ocean Territory (Constitution) Order 2004 is the current constitutional framework in place for BIOT.

The BIOT constitution set out in the Order referred to above provides the legal framework for the governance of BIOT. It establishes the office of the Commissioner who exercises executive power on behalf of Her Majesty for BIOT. The Commissioner may make laws for the peace, order and good government of the Territory. The constitution makes allowance for the continued functioning of courts on the islands as in existence before the constitution and makes certain directions for their future functioning. Importantly, Article 9 of the constitution is clear that the main purpose of BIOT is for defence and that there is no right of abode for anyone on the territory:

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.

In addition to the constitution there is also statute law in force in BIOT comprising of Ordinances made by the Commissioner, and statutory instruments made under them, in addition to Orders in Council and Acts of the United Kingdom Parliament which have been extended to the Territory. Sections 3 to 5 of the Courts Ordinance 1983 are important to note as they allow for the incorporation of English statutes, common law and rules of equity in BIOT law insofar as they are applicable and appropriate to local circumstances. The present constitutional and governance framework for BIOT is not designed for a territory with a permanent population.

The position of Commissioner of BIOT is filled by a senior official in the Foreign and Commonwealth Office (FCO), who is assisted by an Administrator, both of whom are based in London within the FCO. The Commanding Officer of the Royal Navy/Marine contingent based on Diego Garcia acts as the Commissioner's Representative within the Territory.

In 1966, by Exchange of Notes between the US and United Kingdom governments, a treaty was made defining use of the territory, and Diego Garcia in particular, by the two governments for defence purposes with the presumption being that the islands would have no permanent population. The treaty is for an initial period of 50 years, until 2016 when it renews automatically unless either Government gives notice to terminate between December 2014 and December 2016. Any resettlement will therefore require review of the details contained in the treaty.

BIOT is noted for its exceptional marine environment. In 2010 the United Kingdom government proclaimed a Marine Protected Area from the outer limit of the territorial sea (three nautical miles) to approximately 200 nautical miles surrounding the islands (See Section 4.4.1 for details). In addition, many other domestic legal restrictions are in place to protect the terrestrial environment and the coral reefs and inshore waters of BIOT. These legal protections have again been designed for a territory with no permanent population, although some pre-date the removal of the original islanders (e.g. The Green Turtles Protection Regulations 1968). Any resettlement will therefore require amendment to the environmental protection framework to allow for a settled population whilst also protecting the environment.

4.1.4 Adapting the legal framework to facilitate resettlement

Given the current legal framework for BIOT as outlined above it is clear that considerable amendment will be required to facilitate a sustainable resettlement of Chagossians. This Section will focus on the following areas identified as being a high priority:

- The constitutional and governance framework;
- Treaty arrangements between the US and the UK for the use of BIOT; and
- Environmental protection laws and conventions.

4.2 Constitutional and governance framework

The current constitutional and governance framework for BIOT is designed for a territory used solely for defence purposes. If BIOT is resettled there are several areas of governance that will require immediate attention. The right of Chagossians to return and live on BIOT needs to be set out both in the constitution and related immigration ordinances and the British Indian Ocean Territory (Immigration) Order 2004. The status of Her Majesty's executive representative, either as Commissioner or Governor, as well as his powers and functions need to be dealt with, as does the establishment of a representative body for Chagossians to advise and support the executive. The system for passing local laws and the establishment of a resident judicial system need to be

reviewed. Other areas that require attention include the civil service, police and fundamental human rights protection.

4.2.1 Amending the constitution

Ascension, the British Antarctic Territory, the Falklands Islands, Pitcairn, South Georgia and the South Sandwich Islands, and Tristan da Cunha have their constitutional frameworks based upon the British Settlements Acts 1887 and 1945. BIOT was acquired by Britain by cession from France and therefore the British Settlements Acts cannot be used as the basis for any constitutional change to BIOT under the Acts' own definition. Other Overseas Territories that the British Settlement Acts do not apply to are St. Helena, Cayman Islands, Montserrat, the Turks and Caicos Islands, the Virgin Islands, Anguilla, Bermuda and Cyprus, all of which have the statutory legal basis for their constitutional frameworks based upon separate acts of the United Kingdom Parliament. As previously mentioned, BIOT and Gibraltar have their constitutions contained in Orders in Council made exclusively by virtue of the Royal prerogative. Any change therefore to BIOT's constitutional framework can be made either solely under the Royal prerogative or on the basis of a United Kingdom Parliamentary statute.

The issue of whether any new constitution for BIOT is based solely upon Her Majesty's prerogative powers or on a United Kingdom statute raises a number of issues. The former basis is subject to judicial review on grounds of irrationality and procedural impropriety as has been shown in previous legal cases relating to BIOT. It is also the case that a constitutional order made under statutory powers is likewise subject to judicial review, at least insofar as to determine whether it is within the powers granted by the parent Act. The most important potential difference is the possibility for the UK Parliament to make statutory provision for oversight of Constitutional Orders made under legislation. In the past Parliament has hesitated to do more than require Orders to be laid before Parliament after being made and others, such as the Saint Helena Act 1833, the Anguilla Act 1980 and the Cyprus Act 1960, do not even have this requirement. Orders made only on the basis of the Royal Prerogative are not required to be laid before Parliament. However it has been noted:

Since 2002 political arrangements have operated whereby most constitution Orders have been sent in draft by the Foreign and Commonwealth Office to the House of Commons Foreign Affairs Committee where possible at least 28 sitting days before they were submitted to Her Majesty in Council. This procedure was not followed in the case of the British Indian Ocean Territory Constitution Order 2004.[2]

Given the need for flexibility in the event of any resettlement it may be considered prudent to allow for less direct Parliamentary oversight over new constitutional arrangements, at least until a permanent constitution has been agreed with the caveat that all interested parties are properly consulted. Under the present arrangements for passing a constitution by Order in Council the actual procedure is relatively straightforward. The new constitution is recommended to Her Majesty by the United Kingdom Government with the Order formally made by Her Majesty based on the advice of the Privy Council.

4.2.2 Amending the constitution: the consultative process

It should be highlighted that the practice in recent years has been to reach political consensus with the representatives of the territory concerned as to any constitutional changes. Almost all recent constitutional review negotiations have taken place on the basis of proposals emanating from the territories themselves. The importance of such consultation with Chagossians on the constitutional reform process is clearly established. Given the environmental significance of BIOT it would seem prudent to also consult with environmental stakeholders.

In other British Overseas Territories recent constitutional change has taken place either after referenda, by resolution of the locally-elected body or by more informal local consultation. Given the challenges in carrying out effective consultation where the Chagossian population is so spread out, it may be appropriate to consider a temporary constitutional framework to replace the existing one during the initial stages of any resettlement and at a later stage, when Chagossians living on BIOT have had the opportunity to gauge the needs of life on the islands, to adopt a more permanent constitution. Such an interim constitution could contain the basic provisions necessary to legally allow resettlement on BIOT and also to facilitate a temporary governance framework which would support the development of a permanent constitution. If the decision is taken to develop a temporary constitutional framework it will require consideration as to whether an open consultative process is required, perhaps through a representative conference, or whether in the interests of expediency only the bare minimal changes to the current framework are made with the understanding that a comprehensive consultative process will take place subsequently. It is suggested that a roadmap for this process could be set out in a policy paper to be discussed with Chagossian representatives rather than the details specifically being included in any interim constitutional framework.

4.2.3 Towards a new constitution and legal framework

Nationality and right of abode

On 10 June 2004, Her Majesty by Order in Council enacted the Constitution Order and a separate Immigration Order. As mentioned previously, these Orders specifically exclude any person from having a right of abode in the territory or from entering the territory without a permit issued by the Commissioner's representative.

The issue of Chagossian nationality and subsequent right of abode is complicated as since the 1970s Chagossians have been excluded from the territory and have been dispersed, mainly in Mauritius, Seychelles and the UK. Under the British Overseas Territories Act 2002 all British Overseas Territories citizens as of 21 May 2002 were granted British citizenship. By the same Act a person born after that date becomes a British citizen if, at the time of birth, his or her father or mother is either a British citizen or settled in the territory. Section 6 of the 2002 Act made special provision for Chagossians by conferring British citizenship and/or British Overseas Territories citizenship on persons connected by descent with the British Indian Ocean Territory with the conditions being that the person was:

- Born on or after 26 April 1969 and before 1 January 1983;
- Born to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory; and
- Immediately before 21 May 2002 was neither a British citizen nor a British Overseas Territories citizen.

Under Part II of the British Nationality Act 1981 Overseas Territories citizenship may be acquired by birth or adoption in a territory, by registration or naturalisation in a territory, or by descent from a British Overseas Territories citizen. Under Section 43 of the same Act the functions of the Secretary of State are delegated to territory Governors.

If resettlement goes ahead some Chagossians would not be eligible for British Overseas Territory citizenship based on the above legal framework. One example would be a child born to a Chagossian who themselves was not born on BIOT, which is quite common.

While it would be possible to allow for resettlement of Chagossians by granting of a temporary permit to reside in BIOT by the Commissioner's Representative, and this may be a viable short term option, the issue of Chagossians having Overseas Territory citizenship and right of abode is one that will require immediate attention should resettlement go ahead. The issue of citizenship is an emotive one for all Chagossians.

In some territories a status commonly known as 'belonger status' has been established whereby, under the constitution or local legislation, persons are given the right of abode in a territory. This status and its definition vary from territory to territory but it can be said to apply to two groups of people, those considered indigenous to the territories and those who have been granted the status, usually longer term residents, through means established under local legislation. It is common that 'belongers' have preferential rights with regards to employment, property rights and participation in local government such as the right to vote and right to hold public office. In any future constitution for BIOT this status could be used as a potential option to resolve issues surrounding the right of abode.

In some territories the right to protection against arbitrary deprivation of the right of abode in the territory and/or ' belonger' status in the territory is included in the constitution. Given BIOT's unique circumstances this would also have to be considered an option in any changed constitution.

It should be stressed that Chagossians may have rights by virtue of their citizenship or residence in the United Kingdom or elsewhere. How these rights would be affected, if at all, by resettlement is not within the scope of this study.

Land rights

The Acquisition of Land for Public Purposes (Repeal) Ordinance 1983 repealed earlier Ordinances and declared that all the land in BIOT is Crown Land. One issue with resettlement will be dealing with perceptions of land rights over land formerly used by Chagossian families even though the land previously was owned by the various plantation owners. One of the powers a Governor has under a territory constitution is power to dispose of Crown Land. Under Article 14 of the BIOT Constitution the Commissioner is delegated authority to dispose of land on behalf of Her Majesty. In the short-term, any resettlement will require development of a process to allocate use of land by the BIOT government to returning Chagossians.

Governor or commissioner

Under the existing Constitutional framework Her Majesty is represented in BIOT by a Commissioner who in practice is based in the FCO in the UK. In all British Overseas Territories which are inhabited by permanent populations, rather than by scientific or military outposts, Her Majesty is represented by a Governor. It should be noted that the office of Governor of Pitcairn is in practice held by the British High Commissioner to New Zealand and is therefore resident in New Zealand. The Governor of Ascension and Tristan da Cunha is resident in and also Governor of Saint Helena. It would seem likely that in the event of resettlement a Governor would, at least in the longer term, be appointed but not necessarily resident in BIOT. One option would be to follow the Pitcairn example and give the role to the British High Commissioner in neighbouring Maldives or Mauritius, depending upon agreement from all relevant parties.

In terms of definition of the role of Governor, Schedule 1 to the Interpretation Act 1978 is most concise:

'Governor', in relation to any British possession, includes the officer for the time being administering the government of that possession.

This definition is broad enough to include the role of Commissioner as it currently exists for BIOT and in this Section references to the powers of a Governor should be read as the same as those of a Commissioner . In essence, the Governor is the head of government of a territory. The Governor of any overseas territory is appointed by Her Majesty, and in almost all cases the appointment is made by Royal Commission on advice of Her Majesty's United Kingdom Ministers. Regardless of whether a Governor is appointed or whether the current position of Commissioner continues it is likely that senior civil servants will be required to take responsibility for managing the resettlement process based both in the UK and also in BIOT.

Box 4.1 Other Overseas Territory Case Studies

In **Pitcairn** an island Council is constituted by the constitution with members of the Island Council elected to office in free and fair elections held at regular intervals. In practice the Council has twelve members, seven of whom are elected including the Mayor, Deputy Mayor and five Councillors, all with voting rights. The other five members are the Governor, Deputy Governor, a Commissioner who liaises between the Council and the Governor and a Governor's Representative all of whom are non-voting ex-officio members of the Council. The elected members of the Council and the Deputy Mayor all serve two-year terms. The Mayor is elected for three years and can serve a maximum of two consecutive terms at a time. Subject to the orders and instructions of the Governor the island Council may make, amend or revoke regulations for the good administration of the island, the maintenance of peace, order and public safety and the social and economic betterment of the islanders. The same Ordinance also lists a wide area of governance areas that the Council can issue regulations on, including public health, traffic, public works, etc. It is important to note that the Governor can alter, vary or revoke any regulations made by the Island Council. The Mayor, as President of the Council, acts as Chief Executive Officer for the islands on behalf of the Governor. The position of Island Secretary and Government Treasurer are also established by this Ordinance.

Ascension Island's Council consists of the Governor, seven elected members, three ex-officio members including the Administrator, Attorney-General and Director of Resources with none of the three having a vote. Under the same Ordinance, the Governor shall consult the Council in the formulation of policy in relation to the exercise of all functions conferred upon him in relation to or in respect of Ascension and acts in accordance with the advice given to him by the Council. However the Governor is not obliged to consult the Council in a variety of situations including where acting within his express discretion and upon instruction from the Secretary of State, and importantly the Governor is not subject to judicial review in relation to a decision not to consult with the Island Council. In Ascension, a Finance Committee is established and the Governor has the authority to establish other committees under the same ordinance.

Local council

While the role and authority of the Governor is explained below, in the less populated Overseas Territories some form of local council, cabinet or executive body – elected or appointed – is established by constitution to, at the very least, advice the Governor and in some cases to exercise limited executive and legislative functions. Limits on the powers of these local bodies may be set out in implementing legislation rather than in the Constitution itself, presumably to allow for greater flexibility.

The issue of what kind of representative body is to be established for Chagossians needs to be discussed with any resettling population. It may be more realistic for a temporary consultative body to be put in place until a more permanent structure can be agreed and established by constitution or local Ordinance. The process for selecting the members of such a consultative body, temporary or permanent, will not be simple given the unique context of BIOT. It is suggested that such a body will, initially, have to include representatives of the Chagossian community from as many areas where they are settled as is feasible. In the future, once it is considered realistic to establish a permanent council, the question as to how to include the views of Chagossians living outside of BIOT, but with an expressed interest in resettling, will also have to be considered.

Role and authority of the Governor

The Governor's authority is limited to that conferred on him or her by the Crown, with whom executive authority rests, and by Acts of Parliament or other laws. The constitution of a territory is where the specific powers and duties of a Governor are set out. The Governor, in the exercise of those functions, is subject to judicial review in the Overseas Territory and in the UK.

In most territories the Governor exercises the role of executive authority in the territory on behalf of Her Majesty. In smaller territories where there is no elected legislative body, the Governor also fulfils the role of the legislature in the territory. Regardless of what powers may be delegated to any local council or other executive body, in all Overseas Territories the Governor retains specific special responsibilities. These responsibilities invariably include emergency powers, external affairs, internal security, defence and the public service.

Executive functions. The constitution should specify which functions the Governor must exercise on instructions from Her Majesty or the Secretary of State, or after consultation, recommendation or approval from any local elected Cabinet or Executive Council as well as functions which can be exercised without reference to any local person or body.

Currently the BIOT Commissioner has authority to dispose of Crown land, to constitute public offices and the power of pardon. These are also common amongst other British Overseas Territories. Even in Overseas Territories with elected governments, certain areas are reserved for the Governor including external affairs, defence, internal security and the appointment and removal of public officers. In other territories areas such as finance, administration of justice and shipping are also reserved for the Governor. In some of the larger territories a Ministerial system of government exists with the constitutions setting out what powers can be delegated by the Governor to Ministers. Similarly, in territories with elected legislative bodies the Governors have a constitutional power to dissolve that body, usually on the advice of the Premier or Chief Minister. Given the size of any potential resettlement it is not likely, at least in the short and medium term, for a ministerial system or an elected legislature to be appropriate in the case of BIOT.

Legislative functions

In Overseas Territories with no elected legislative body, as BIOT is currently, the Governor is constituted as the legislature by the Constitution and must act within the scope laid out in the constitution. Under BIOT's current constitution the Commissioner is given power to make laws for the peace, order and good government of the territory. For Ascension and Tristan da Cunha, the Governor has this legislative power but must first consult the Island Council in each case. The situation is similar in Pitcairn, however the Governor there also has the power to make laws without consulting the Island Council when instructed to do so by a Secretary of State. In some other territories with an elected legislature, the Governor has a limited right of passing legislation based on prescribed procedures. Aside from this, a Governor's main role in territories with elected legislatures is that of giving assent to legislation passed. Given the scale of the resettlement options for BIOT, it would appear that the models from Pitcairn and Ascension and Tristan da Cunha are most relevant, where the Governor has legislative power but must usually consult with an island council.

Except in Gibraltar, the constitutions of all British Overseas Territories contain a provision for Her Majesty, through a Secretary of State, to disallow any law enacted by legislature in those territories and this power is usually unlimited in scope. While this power is rarely exercised there is no reason to suggest it is not a power which should be included in any new BIOT Constitution.

As noted earlier Sections 3 to 5 of the Courts Ordinance 1983 allow for the incorporation of English statutes, common law and rules of equity in BIOT law in so far as they are applicable and appropriate to local circumstances. The provisions of this Ordinance would allow the legal framework of BIOT to evolve on a gradual basis without leaving any potential major legislative gaps.

Emergency powers

In all Overseas Territories the Governor has considerable special powers in the event of an emergency which includes the power to declare an emergency and issue emergency regulations with the force of law during the period of emergency. These provisions should be included in any new constitutional arrangement for BIOT. In the Cayman Islands, the Virgin Islands and Montserrat, the legal basis for these powers is in the Constitution while in other Overseas Territories it is set out in Orders in Council or local legislation.

Public service. A major role for any Governor is responsibility for the Public Service. The Governor essentially has the authority over the Public Service and is responsible for the good government of the territory. Given that only a limited Public Service exists for BIOT, considerable discussion will have to go into planning to ensure that the Public Service is adequate to provide for the needs of a resettled population as well as cost-effective. Any new Constitution for BIOT will have to set out the Governor's main responsibilities vis-à-vis the Public Service and will likely require further local laws to define the details of the Governor's responsibilities.

All Overseas Territory constitutions give the Governors the power to constitute offices for the territory and also to make appointments to a variety of offices. This would in some cases include the appointment of the Premier or Chief Minister, other Ministers and judicial and public service appointments. The constitutions specify how such decisions and appointments are to be made including the level of consultation required with the local representative body. Article 7 of the BIOT Constitution grants the Commissioner these powers which could be used during any resettlement process without requiring constitutional change.

External affairs

In every Overseas Territory the Governor retains responsibility for external affairs. Ultimately these responsibilities are in the control of the Secretary of State as the territories have no international legal personality separate from the United Kingdom. In the less inhabited territories including Pitcairn and Ascension and Tristan da Cunha no reference is made to external affairs in the territory constitution and it is therefore presumed that responsibility remains with the Governor. In the St Helena constitution the Governor has the discretion to assign limited responsibilities for external affairs to either a member of the Executive Council or Legislative Council, and is obliged to consult, but not obliged to follow the advice of, the Executive Council on matters relating to external affairs.

Defence, customs and policing

Constitutional responsibility for defence, public order, security and emergency powers are always the responsibility of the Governor of an Overseas Territory, and in some special circumstances are the responsibility of the commanding officer of any military post. In the less inhabited territories this is not always described in detail as the presumption is that such responsibilities belong to the Governor.

In the Falkland Islands constitution the Governor must consult the Commander of the British Forces before taking any decision relating to defence or internal security and must act in accordance with the Commander's requests. The Armed Forces Act 2006 extends to the British Overseas Territories and in general UK forces present in an Overseas Territory are subject to that territory's law, however the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965 as amended does withdraw jurisdiction from civil courts in several of the territories for certain offences.

In most Overseas Territories and certainly in the lesser-populated territories the Governor exercises executive responsibility for internal security and policing and may act against the advice of any local executive or council. Currently in BIOT the Commissioner appoints Police Officers (formerly known as 'peace officers'), drawn from members of the UK military contingent stationed on Diego Garcia, under his powers in the Courts Ordinance 1983. Frequently the same individuals are also immigration and customs officers for the Territory, appointed under the BIOT (Immigration) Order 2004 and the Imports and Exports Control Ordinance 2009 respectively. For the present, there is no reason why this arrangement cannot continue in place. In more substantially inhabited territories there is usually a separate and independent police force acting independently from that of the UK military. The Pitcairn model is similar to the present multi-functional BIOT arrangement with one Police Officer appointed by the Governor, who also functions in practice as an immigration and border officer. In Pitcairn the Police Force is not established as a separate entity and the Police Officer is appointed as other local government officers are under the Local Government Ordinance 2014. In St. Helena, Ascension and Tristan da Cunha an independent Police Force is established with Headquarters in St. Helena. The Police Force is responsible for policing, fire and rescue, immigration and prisons. They are also assigned to carry out their duties on Ascension and Tristan da Cunha. This latter model would be costly to replicate in BIOT and it is suggested that the simpler, and current BIOT/Pitcairn type model is the optimum short and medium term solution for BIOT.

Acting Governor and the Office of Deputy Governor

It is common for Overseas Territories' constitutions to provide for the appointment of an acting Governor during a temporary absence or incapacity of the Governor. There is also a possibility to create a permanent office of Deputy Governor which is a distinct office in addition to or as an alternative to an Acting Governor position. In any event, the constitution should include provision for circumstances where the Governor is absent or incapacitated which can include appointing the Deputy Governor or someone else as acting Governor with specific authorities granted under the appointment.

In some territories the office of Deputy Governor exists, appointed by the Governor with approval of a Secretary of State, directly by Her Majesty on approval or by instructions given through a Secretary of State. The Deputy Governor in some cases must be a 'belonger' of the territory. The powers of the Deputy Governor are usually specified in the constitution. Although few of the lesser inhabited territories have this position, it is still a possibility for a resettled BIOT in the longer term.

Judiciary

Under Courts Ordinance 1983 a Magistrates' Court and a Supreme Court, acting as a superior court of first instance, are established for BIOT with Magistrates and Judges appointed by the Commissioner. The Supreme Court is made up of a Chief Justice and may sit in the United Kingdom if, in the opinion of the Chief Justice, it is in the interests of justice to do so. The Officer in charge of the Royal Naval/Marine contingent on Diego Garcia is in practice appointed as a local magistrate and a

non-resident Senior Magistrate is also in place. There is a Court of Appeal and as is the case for all Overseas Territories there is a right of final appeal to the Judicial Committee of the Privy Council. It would seem therefore that a resettled BIOT would not require any immediate changes to the judicial architecture in place, however provision will need to be made to have the courts sit as and when needed. If regulatory change is needed it can be made directly under the Royal prerogative through Orders in Council or, if appropriate through local Ordinance.

One issue which could need attention is the jurisdiction of the various courts, and in particular if a fundamental rights Section is introduced to the constitution it would be normal to specify a right of appeal to the Supreme Court of the Territory and then to the Privy Council in cases seeking enforcement of fundamental rights provisions. In practice, as with other less populated territories such as St Helena, Ascension and Tristan da Cunha and Pitcairn where there are no resident legally qualified magistrates, these courts would rarely sit and would be required to visit the islands as and when needed.

No Governor has any judicial function in the Overseas Territories except in some circumstances to make judicial appointments. The current Commissioner of BIOT is given no powers under the constitution to make such appointments however under the Courts Ordinance 1983 he is responsible for all judicial appointments. In some territories a Judicial Services Commission fulfils this role but it seems unlikely that it would be required in BIOT, at least in the short and medium term, given the likely small caseload.

Law officers

Every British Overseas Territory government has a Law Officer as principal legal advisor usually also filling in the role of Attorney General. In the less populated territories such as Pitcairn, and BIOT, the Law Officer is not resident. Currently in BIOT there is a Principal Legal Adviser and General Counsel, who are resident in the UK, appointed by the Commissioner. The Principal Legal Adviser is also responsible for all prosecutions under the law. It is likely given the amount of legal reform required for BIOT in the event of a resettlement that a resident Law Officer could be considered, at least in the short-term. In territories where the post exists the Attorney General is an ex officio member of the local executive body and legislature and this could be considered an option for any Island Council established for BIOT. If so, the role would need to be outlined in any new constitution or governance Ordinance for BIOT. In Pitcairn and St Helena, Ascension and Tristan da Cunha the constitutions set out that the Governor appoints the Attorney General upon the approval of the Secretary of State. In both constitutions it is specified that the Attorney General, or those acting under his authority, act independently in the exercise of their functions from the Governor or any other authority or person in the territory, and in other territories acts independently in his prosecution functions only.

Civil service and public finance

In most territories the public service is usually defined in the constitution along with areas such as policing and prison services with all such personnel being Officers under the authority of the Governor. In some cases this power is exercisable by the Governor independently, or else upon the instruction from a Secretary of State. It is also open for the Governor to be advised on appointments and dismissals by a local advisory body. In more substantially populated territories the constitution creates a Public Service Commission to advise the Governor, however this may not be appropriate for BIOT in the short and medium term. It would be common for General Orders to be issued by a Governor on the local government regulating the public service and setting out conditions of service. In both Pitcairn and St. Helena, Ascension and Tristan da Cunha the constitutions require the Governor to approve a Code of Management for the public service.

Each overseas territory has its own public funds, rules for raising and spending revenue, and audit arrangements. Territories can benefit from funding assistance from the United Kingdom although they are generally expected to be self-sufficient. Territories can also benefit from access to EU and other development funding and loans. In the less populated territories responsibility for public finance

belongs to the Governor as part of his executive role. However the power to raise revenue requires the authority of a legislative act. It is also common for a consolidated fund to be established under the constitution with local legislation outlining how the fund is to be managed. It is suggested that an immediate priority given any resettlement will be to establish the Governor's authority to raise revenues through a local Ordinance and in addition to establish a consolidated fund in order to finance resettlement activities. It is modern practice that all such funds would be subject to an independent audit. In Pitcairn and Ascension and Tristan da Cunha provision is included in their constitutions for an independent audit to be carried out with the Governor required to make appropriate arrangements for an audit, and it is suggested that the same could be considered for any change to BIOT's constitution.

Human rights

In the United Kingdom government's 1999 white paper entitled, 'Partnership for Progress and Prosperity: Britain and the Overseas Territories' it is stated:

Our objective is that those territories which choose to remain British should abide by the same basic standards of human rights, openness and good government that British people expect of their Government. This means that Overseas Territory legislation should comply with the same international obligations to which Britain is subject, such as the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights.

As BIOT has had no permanent population it has been the position until now that no international human rights treaties which the UK has ratified were considered applicable in BIOT by the UK government.

The Human Rights Act 1998 does not extend to any of the territories and it has therefore been the practice that human rights protection is instead provided for in each Overseas Territory's law either through Orders in Council or local legislation. In cases where new constitutions for the territories have been drafted since the White Paper in 1999, the United Kingdom government has insisted on inclusion of a fundamental rights chapter with both the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights (ICCPR) given effect. In some territories the fundamental rights chapter goes even further than the UK Human Rights Act 1998 and these two conventions. In all territories the rights and the precise wording used have been agreed after extensive consultations with the local population in order to ensure provisions reflect the wishes of the inhabitants and are also appropriate for each territory's unique circumstances. One example is that there is no right to a trial by jury in Pitcairn's constitution due to the small population (approximately sixty-seven) which would make it impracticable. In all territories with a fundamental rights chapter in the constitution there is an automatic right of any person to apply to the territory Supreme Court (or local equivalent) for enforcement of their rights with the court usually having jurisdiction to award damages.

In some territories an independent Human Rights Commission or Ombudsman or Complaints Commissioner is established under the constitution with the jurisdiction to investigate allegations of human rights abuses by public officers. In Pitcairn and St Helena, Ascension and Tristan da Cunha a Complaints Commissioner's office is established with the Commissioner appointed by the Governor 'from time to time', allowing the flexibility to appoint a Commissioner as and when needed.

The European Convention on Human Rights including the right to individual petition to the European Court of Human Rights has been extended to all territories apart from Pitcairn, British Antarctic Territory and BIOT. Protocols No.1 and No. 13 to the Convention have also been extended to most territories but not BIOT. Other conventions which have been extended to some territories include the International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, UN Convention Against Torture, UN Convention on the Elimination of all forms of Racial Discrimination, UN Convention on the Rights of the Child and the UN Convention on the Elimination of Discrimination against Women, as well as others. It is the position of the UK

government only to extend these conventions to territories that are permanently settled and with the capacity to fulfil the obligations which extending them incur.

Should a resettlement go ahead, it is suggested that a priority should be the consideration of what short and longer-term human rights framework for BIOT is desirable and where capacity building support would be required. It is likely the extension of the European Convention of Human Rights, including the right to individual petition, in addition to the International Convention on Civil and Political Rights would have the highest priority. This would ensure that over a period of time a basic human rights framework is in place which meets the basic obligations the UK has accepted. It would, however, require UK government support to ensure that the requisite implementation and reporting mechanisms are in place relatively early. The other international human rights conventions mentioned above should be considered for extension to BIOT as and when the capacity to fulfil their obligations is in place.

European Union

Although BIOT and most Overseas Territories are not part of the European Union they have the status of 'overseas countries and territories' for the purposes of Part Four of the Treaty on the Functioning of the EU and are listed as such in Annex II to that treaty. Under a European Council Decision valid from January 1 2014 until the end of 2020, BIOT forms part of an association of overseas countries and territories with the European Union ('Overseas Association Decision'). Although not third countries, the Overseas Countries and Territories (OCTs) do not form part of the single market and must comply with the obligations imposed on third countries in respect of trade, particularly rules of origin, health and plant health standards and safeguard measures. The Overseas Association Decision moves the relationship between the Union and the OCTs to a reciprocal partnership to support the OCTs' sustainable development. The EU Decision establishes an association of the OCTs with the Union (the 'association'), which constitutes a partnership, based on Article 198 of the Treaty on the Functioning of the European Union, to support the OCTs' sustainable development as well as to promote the values and standards of the Union in the wider world.

Importantly A rticle 43 of the EU Decision removes all customs duties for any products imported from the OCTs into the European Union, and Article 44 ensures that no quantitative restrictions apply on goods imported from OCTs. Under Article 45 the OCTs can impose customs duties and/or quantitative restrictions on products imported from the EU. Under Part 4 of the same Decision OCTs are able to apply for European Development funds and technical assistance for their sustainable development as well as for humanitarian or emergency purposes. A total of €364.5 million is allocated for these purposes[3] until the end of 2020 with a further € 100 million available for loans through the European Investment Bank (EIB), although it would be likely to take several years for a new community to access funds.

4.3 Treaty arrangements between the US and the UK

The British Indian Ocean Territory (Constitution) Order 2004 sets out:

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.

Under the Exchange of Notes between the US government and the United Kingdom, dated 30 December 1966 and subsequently amended by several additional Exchanges of Notes:

- The islands shall be available to meet the needs of both governments for defence purposes;
- Before either government proceeds to construct or install any substantial construction in the Territory they will seek the other's approval;

- Article 4 of the Supplement dated February 1976 restricts access to Diego Garcia to government officials and military personnel, and, subject to immigration rules, civilian contractors. For all other persons 'consultation' between the UK and US governments is required. Article 13 contains a prohibition on commercial fishing, oil or mineral exploitation on Diego Garcia and in the sea and sea-bed over which the UK has sovereignty;
- The Treaty is for an initial period of 50 years, until 2016 when it renews automatically unless either Government gives notice to terminate between December 2014 and December 2016.

The substance of any changes required to the Treaty between the US and UK governments for the use of BIOT, including Diego Garcia, is not within the scope of this study as it necessarily involves agreement between the two governments.

4.4 Environmental protection laws and conventions

The United Kingdom Government White Paper from 2012 on the British Overseas Territories stresses the importance given by the government to the protection of the environment in the Overseas Territories. The White Paper gives BIOT as a Case Study:

The islands, reef systems, biodiversity and waters of BIOT are among the richest on the planet, containing about half of all the reefs of this ocean which remain in good condition. Established on 1 April 2010, the Marine Protected Area – where commercial fishing is prohibited – is the largest such marine reserve in the world.

On 26 September 2001, the BIOT Environment Charter was signed by the UK Government. The Charter sets out the government's vision for protecting the environment of BIOT. Although the BIOT constitution expressly states that the islands are to be used for defence purposes, it is accepted that the islands have a special environment that requires protection. Any resettlement of BIOT will have to take into account the need to balance sustainable resettlement with adequate protection for the environment.

One general comment to make is that in BIOT there is currently no planning and development legislation in place and therefore no legal requirement to undertake Environmental Impact Assessments (EIAs) before permitting major development proposals. A resettled BIOT would also require a strategic development planning process to identify respective areas for building and conservation and prevent uncontrolled development from spreading across the most valuable landscapes, coastlines and habitats.

4.4.1 Marine protection and fisheries

On the 1 April 2010 the Commissioner for BIOT, on behalf of Her Majesty and acting through the Secretary of State, issued a Proclamation establishing a Marine Protected Area (MPA) within the Environment (Protection and Preservation) Zone that had been proclaimed on September 17 2003. In 2010 the United Kingdom Government declared a Marine Protected Area of c.640, 000 sq. km within the Environment (Protection and Preservation) Zone of the Territory[4]. The Proclamation states that legislation and regulations detailing how the MPA will affect fishing and other activities within the MPA will be passed at a later stage. To date, due to ongoing litigation, no MPA ordinance has been made.

The Fisheries (Conservation and Management) Ordinance 2007 and related Statutory Instrument from 2007 regulate all fishing activities for BIOT until such time as implementing legislation for the MPA is passed.

Under Section 7 of the 2007 Ordinance, fishing is prohibited in the mentioned waters without a license from the Director of Fisheries. Licenses used to be issued for both pelagic and inshore fishing until the last one expired on 1 November 2010. Section 7 of the Ordinance allows for

some limited fishing for those legally present on the territory with the main condition being that the fish is for personal consumption within 3 days. These provisions would allow any returning Chagossians to undertake limited fishing for personal consumption but would not allow basic artisanal fishing. In the event of resettlement it would be a priority to engage with the Chagossians to agree on whether to amend this legislation. It should be noted that under Section 11 (2) of the Ordinance the Director of Fisheries can impose different requirements for issuance of licenses to fishing boats. It is possible therefore that some limited permits could be given to Chagossians to carry out artisanal fishing until such time as more substantive changes to the legislation could be agreed. The existing Statutory Instrument from 2007 implementing the Ordinance, which was drafted to cover the then existing commercial fishery, sets out quite stringent criteria for fishing boats to apply for a license including insurance, various certificates and safety equipment. These would be difficult for resettled artisanal fishing to comply with. It is therefore likely that the Statutory Instrument, at the very least, would require amendment to allow the issuance of licenses in these cases.

The United Kingdom has also proclaimed a 200-mile BIOT Fisheries Conservation and Management Zone (FCMZ) on October 1, 1991, and a BIOT Environment Protection and Preservation Zone (EPPZ) on September 17, 2003, with geographical coordinates notified to the UN Secretariat under UNCLOS Article 75(2). The FCMZ has been implemented by the various Fisheries Ordinances, the current of which has been considered above. No domestic legislation has been issued to enforce or regulate the EPPZ, so this would not have any direct impact on a resettled population.

4.4.2 Nature reserve and wildlife protection

In addition to the MPA, there are other legal protections in place to protect and preserve the wildlife on BIOT *(British Indian Ocean Territory, the Protection and Preservation of Wildlife Ordinance, 1970; The Strict Nature Reserve Regulations, 1998; Statutory Instrument No. 4 of 1998)*. Under this legislation the islands (and their territorial waters) specified in the Schedule are declared to be Strict Nature Reserves. Unless permission is granted no person can enter, traverse, camp in or reside, engage in hunting or fishing or conduct any other activity including agriculture in the areas specified.

The islands specified are: In the Great Chagos Bank (a) Three Brothers and Resurgent Island (b) Danger Island (c) Cow Island and (d) Nelson Island; and in the Peros Banhos Atoll, all the islands to the east of a line drawn between the easternmost point of land on Moresby Island and the easternmost point of land on Fouquet Island. Any resettlement to these islands would therefore require either amendment to this legislation or the granting of permits to those returning.

4.4.3 Diego Garcia Lagoon

The Diego Garcia lagoon (including the military port and anchorages), part of the territorial sea and the eastern land of the atoll is designated as a wetland of international importance under the 1971 Ramsar Convention (ratified by the UK with effect from 5 May 1976 and extended to the BIOT on 8 September 1998). The application of the Convention to Diego Garcia excludes 'the area set aside for military uses as a US naval support facility'. Under Article 3 of the Convention the United Kingdom commits to formulating and implementing planning so as to promote the conservation of the wetlands, and as far as possible the wise use of wetlands in their territory. The use of this area for a resettled population is therefore possible but with the commitment to ensure that damage to the environment is limited. Currently, recreational and sport fishing are listed as one of the uses of this designated area.

4.4.4 International treaties

BIOT is also subject to further levels of internationally binding legal protection with regards to the environment. Those Conventions are listed in Annex 4.1 and will need to be taken into account in any new governance framework for BIOT.

4.5 Conclusions and implications for resettlement

There are no fundamental legal obstacles that would prevent a resettlement of BIOT. The legal and constitutional framework will however require significant amendment in order to facilitate a resettlement and this is likely to involve a comprehensive consultation process with the Chagossians and other interested parties.

It is suggested that the following areas would be considered a priority in advance of and during the initial stages of any resettlement:

Constitutional and Rights

- Whether any new constitution, interim or permanent, for BIOT would be based solely upon Her Majesty's prerogative powers or on a United Kingdom statute, taking into account what level of oversight by the UK Parliament is considered appropriate.
- An interim constitutional framework until the first phases of resettlement have been completed and assessed, should be considered. The consultative process for this, which would ideally be as inclusive and fair as possible needs also to be dealt with.
- Immediate amendment of the constitutional framework and immigration ordinances and the British Indian Ocean Territory (Immigration) Order 2004 to allow Chagossians to resettle and live on designated areas of BIOT. In the longer term issues relating to nationality would also be important.
- Enshrining basic rights contained in the European Convention of Human Rights including the right to individual petition in addition to the International Convention on Civil and Political Rights in any revised constitutional framework for BIOT could be considered. The UK government could ensure the requisite support is in place to ensure that implementation and reporting requirements for these mechanisms are in place quickly.

Governance

- The position of Governor or maintenance of the existing position of Commissioner as well as deciding what direct powers the position will have and where the title holder will be based.
- A temporary consultative body for Chagossians and other interested parties, perhaps based on a conference of representatives, until a more permanent consultative structure can be agreed and established by constitution or local Ordinance.

Administrative

- A process to allocate use of land to returning Chagossians.
- A resident Law Officer could be considered given the amount of legal amendments required during the initial phases of any resettlement.
- The Commissioner's/Governor's authority to raise revenues through a local Ordinance in addition to a consolidated fund in order to finance resettlement activities and ongoing public services.
- A resident public service structure to assist in facilitating the resettlement including provision of basic medical, police and other vital services. Courts may be required to function on occasions.
- A procedure for accessing European Development Funds for BIOT as early as possible.

- Amendment of The Fisheries (Conservation and Management) Ordinance 2007 and related Statutory Instrument from 2007 to allow for at least artisanal fishing for a resettling population.

The process of installing a new constitutional and governance framework for BIOT will necessarily take time and will depend on the pace of any resettlement and the needs of the returning populace balanced with consideration for environmental concerns and the importance of BIOT for defence purposes. The following issues could be dealt with in the medium to long term:

- If not agreed initially, a permanent constitution. This could include a system of local governance where the powers of the Governor and local council are set out, as well as the relationship between one and the other.
- A new constitution could include a fundamental rights chapter based on consultations with the local population in order to ensure provisions take account of the wishes of the inhabitants and are also appropriate for the territory's unique circumstances. Other international human rights conventions mentioned previously could be considered for eventual extension to BIOT as and when the capacity to fulfil their obligations are in place.
- An Ombudsman or Complaints Commissioner could be established, albeit with the option to appoint someone only when needed, with the jurisdiction to investigate allegations of human rights abuses by public officers.
- A resident judicial system may eventually be considered although it is more likely that only a local resident Magistrate would be needed along with occasional sittings of other courts. If a fundamental rights Section is introduced to the constitution it would be normal to specify a right of appeal to the Privy Council in cases seeking enforcement of fundamental rights provisions.
- Any provisional arrangements for establishment of a civil service could be made permanent and included in local Ordinances.
- The regulations detailing how the MPA will affect fishing and other activities within the MPA will vary depending on where resettlement goes ahead.

- Amendment of The Fisheries (Conservation and Management) Ordinance 2007 and related Statutory Instrument from 2007 regulating all fishing activities for BIOT to reflect the new situation again balancing the needs of the local population with environmental and defence concerns.

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[1] Such as Pitcairn, St. Helena, Ascension and Tristan da Cunha.

[2] British Overseas Territories Law, Ian Hendry and Susan Dixon, March 2011.

[3] Source: EU Website.

[4] The area covered by the zone is defined in the following way:

'The said environmental zone has as its inner boundary the outer limits of the territorial sea of the Territory and as its seaward boundary a line drawn so that each point on it is two hundred nautical miles from the nearest point on the low-water line on the coast of the Territory or other baseline from which the territorial sea of the Territory is measured or, where this line is less than two hundred nautical miles from the baseline and unless another line is declared by Proclamation, the medial line. The median line is a line every point on which is equidistant from the nearest point on the baseline of the Territory and the nearest point on the baseline from which the territorial sea of the Republic of the Maldives is measured.'

5 Environmental Analysis

5.1 Introduction

The continued physical existence of the islands of the Chagos Archipelago, which constitute BIOT, depends on the health of its underlying coral reefs, upon which the islands have formed. Diminished reef health, coupled with unfavourable shoreline changes has a direct bearing for any human populations inhabiting BIOT. On Diego Garcia, increased coastal vulnerability (both man-made and natural) has led to the need for costly artificial shoreline defence – currently exceeding US$10 million per year[1].

In addition to climatic impacts including sea level rise, BIOT islands are vulnerable to episodic events. While the region seldom experiences cyclonic strength winds, severe storms sometimes occur, especially in Diego Garcia[2]. With respect to tectonic movements, a tremor in the 1800s destroyed an island in Peros Banhos, resulting in loss of productive Copra plantation. There has been suggestion of a tsunami wave in the lagoon at Diego Garcia in 1983, while in Salomon atoll no tectonic activity has been observed. However, data are limited. Impacts of the 2004 tsunami were low on all BIOT islands, but were generally compounded by erosion impacts[3]. Overall, BIOT has been described as one of the most intense locations of oceanic seismicity, albeit at generally low levels[4]. These sorts of disturbances potentially have significant bearing on any future resettlement and infrastructure requirements (see Section 6.3).

This high level of interdependence regarding BIOT's coral islands, and the risks and benefits associated with alternative re-settlement options, calls for multi-disciplinary analysis. Integrated thinking, combining socio-political, economic, legal and environmental perspectives, is therefore an overarching thread in this report.

Environmental risks associated with potential re-settlement of BIOT encapsulate two different concepts:

- **Risks to resettlement from the environment** (e.g. from coral mortality, beach erosion, climate change impacts, overtopping of islands or seawater ingress into soils) – resulting from natural factors and/or human activities; and
- **Risks to the environment from resettlement** (e.g. decline in coral health or biodiversity from construction/dredging, or over-fishing).

5.2 Assessment of key environmental issues

5.2.1 Coral reef health

The Chagos islands are accumulations of sand and gravel originating from eroded coral and rubble (and coralline algae). Active coral reef growth (accretion) provides the raw materials[5]; normally erosion is balanced by accretion. However, if accretion rates fall, due to stress on coral reefs, island robustness can diminish. This increases vulnerability to seawater breaching and has many other undesirable consequences. Maintained reef health is therefore critical for island longevity and the prospects of any resettled population in Chagos. In the very long term, the islands could become inhabitable or even become submerged.

Human-related factors reducing coral cover (directly or indirectly) and undermining reef health, and thus their normal ability to accrete, include the following:

- **Elevated nutrient levels**: for example, from sewage, leading to algal blooms, low oxygen and other undesirable knock-on effects (e.g. fish decline).

- **Inappropriate coastal development**: for example, dredging, infilling and siting of infrastructure in areas that harm key natural processes. These can alter reef dynamics and lead to unwanted erosion and/or sedimentation being particularly harmful to reefs.
- **Coral bleaching:** this is caused by stress, in particular warming. The severe 1998 El Niño Southern Oscillation event leading to seawater warming and reef mortality in Chagos (to 10-15 metres depth on northern atolls, and to above 40-metre depth in Diego Garcia).
- **Coral diseases:** these are currently at the low end of the global spectrum in Chagos, but possibly increasing and new diseases (e.g. 'white syndrome') may be emerging and responsible for some mortality of large table *Acropora* corals observed in 2014.
- **Increased ocean acidification:** following uptake of atmospheric CO2 in the oceans, there has been reduced calcification of calcifying organisms such as reef-building corals – a problem that is increasing globally.

Resettlement should seek to minimise physical, chemical and biological interference to coral reefs and the island/sea interface – for example by jetties, clearance of coastal vegetation or accumulation of contaminants. This will help ensure maintenance of reef health, sediment production and island resilience[6].

5.2.2 Resettlement and environmental sustainability

Overall, the environment in BIOT is well preserved although coral cover and health is declining in some areas (Annex 5.1). Most inhabited coral reef areas of the Indian Ocean are degraded. The choice of resettlement option (Section 3.4), the number of returning Chagossians, and their activities will strongly influence future environmental conditions. Initially resettlement would obviously increase the population but over the long term population is highly uncertain. Population growth would add to environmental pressures and resource use, as well as to infrastructure and operational costs. Voluntary departure, evacuation following breaching by the sea, or even natural population decline would ease environmental pressures. There would also be economic implications of a fall in population, as a result of a reduced requirement for infrastructures and other resettlement facilities. Many of these require a substantial financial outlay.

Population levels and environmental pressures over the 20-year time span addressed in this study may not be indicative of long-term trends. Impacts often build progressively following population growth, as seen across the Indian Ocean. If environmental sustainability[7] and the MPA's integrity are to be assured, a cap may be needed on the total number of BIOT islands (and perhaps atolls) available for resettlement. Otherwise, progressive 'island creep' and unsustainable development following resettlement could happen[8]. This might be achievable by zoning of the MPA, whereby resettlement is permitted on one or a few of the offshore islands. With vigorous coastal management, environmental pressures might be contained within these areas. But in other parts of the MPA, development would not be permitted. Issues surrounding sustainability are addressed further in Sections 5.2.4 and 5.2.5.

The importance of translating aspirational environmental aims into ameliorative management actions will be critical. Understanding environmental risks, as well as anticipated socioeconomic gains, is part of this. Many factors will determine whether BIOT reefs remain in relatively good condition (with or without resettlement), or degrade to the poor or heavily impacted state that now characterises most inhabited coral reef areas of the Indian Ocean. Achieving effective management in BIOT, in contrast to heavily damaged areas, is challenging and is addressed in several parts of the report (e.g. Sections 5.26-5.28). However, collateral environmental damage from major infrastructure is probably unavoidable. For example, a new jetty or airport would involve substantial lagoon disturbance. In most planned airports built on coral islands, attempts are made to raise the ground approximately one metre. The source for the hundreds of thousands of cubic metres of rock infill required would be critical, with environmental consequences for the recipient Island and encircling reefs.

5.2.3 Sea level rise, coastal erosion and overtopping

Sea level is rising and needs to be considered in strategic long term planning of resettlement. Sea-level rise measured globally over the last century (1901-2010) has been on average around 1.7 mm/yr, with some indication of increasing rates of rise[9][10], e.g. satellite altimetry now gives a value of 3.2 mm/yr for 1993-2014. Projected global average changes are 6.5 mm/yr (2013-2050) and rising to 7.4 mm/yr (2013-2100) as reported by the Intergovernmental Panel on Climate Change (IPCC). Thus the rise projected over the next 37 years (24 cm) is approximately equivalent to the observed rise over the last century.

For Diego Garcia, tidal gauge data (2003-2014) indicate a sea level rise of approximately 5-6 mm/yr, while other estimates suggest about 3 mm/yr[11], but with much variability in the data. Sea level rises for different atolls in Chagos (1993-2014) have been measured from radar altimetry, with an increase of 3.8 mm/yr (Diego Garcia) and 3.2 mm/yr (Peros Banhos and Salomon)[12]. These are current rates, and for future years it is probably safest to adopt projections based on the IPCC global estimates above. Sea level rise for Diego Garcia was recently projected[13] to be in the range of 1.2 to 5.3 mm/yr (up to 65 cm 2010-2090, i.e. up to 7.6 mm/yr, if the upper limit is augmented to account for accelerated drawdown of ice sheets). Additional details of sea level rise and related environmental issues are available[14].

Whether coral growth will be sufficient to combat sea level rise, coastal erosion and flooding of BIOT islands over the coming decades is a cause for concern, particularly under conditions of increasing ocean acidity. Available coral reef accretion data from elsewhere indicate a range of 0.60-7.89 mm/yr, averaging 3.54 mm/yr. Although these figures carry uncertainties[15], particularly regarding their applicability to Chagos and implications for resettlement, they do indicate grounds for concern.

Shorelines of BIOT islands are dynamic[16], which is highly relevant to the physical security of islands and resettlement prospects. Where coastal erosion[17] leads to the loss of elevated land rims at island margins, it can lead to increased likelihood of overtopping by seawater; this has occurred in a number of places in Diego Garcia[18]. Whether problems have increased, especially on the outer islands, remains uncertain[19]. Natural processes, human alteration of coastlines (e.g. infilling for development infrastructures on Diego Garcia) and climate/regional scale impact all influence erosion and overtopping[20].

Whatever the causes, erosion and overtopping could become more problematic[21]. The extent to which the islands will remain robust against these and other disturbances is unclear[22]. The extent and the likelihood of flooding events would not only affect living arrangements but also threaten to contaminate the freshwater supplies and damage agriculture. Concerns about the vulnerability of the islands are also evident in the questionnaire responses described in Section 3. In view of the vulnerability and uncertainty about the future of BIOT islands and resettlement prospects (especially on the outer islands), strict building regulations are important (and should include provision for a fixed coastal buffer (setback) and the strict protection of strandline vegetation). The provision for artificial shore defences (coastal armouring)[23] on any islands resettled, plus an evacuation plan, would also be worth considering.

As part of the Maldivian government's evacuation plan in the face of sea level rise, land has been purchased in countries such as Australia for its citizens. In a densely-populated island in the north of the Maldives, 60% of residents have volunteered to evacuate over the next 15 years[24] [25]. Similarly, the President of Kiribati endorsed a plan in 2012 to buy nearly 6,000 acres on Fiji's main island as insurance for Kiribati's entire population of 103,000. Some villages have already moved[26].

As an overarching statement, it is evident that climate and environment are certainly a major constraint, but not necessarily a complete impediment to resettlement. However, having to evacuate BIOT in the event of sea level rise, coastal erosion and related impacts may be necessary, although this is unlikely within the time scales (up to 20 years) addressed in this feasibility study.

5.2.4 Environmental carrying capacity of potential resettlement locations

The population size supportable on the potential island options depends on many issues, including those addressed throughout Section 5, and in particular:

- **The resettlement option(s)** adopted along with human activities; and
- **The degree to which fish and other natural resources** (e.g. sand/coral for building) **are extracted from the islands:** imports reduce the local ecological footprint and increase carrying capacity, while self-sufficiency has the opposite effect.

Carrying capacity on any island is not fixed, but variable and highly complex[27]. The islands have never supported more than about 1,300 non-military people at any time[28]. The full effects of a resettled population and infrastructure can only be determined by monitoring. However, acceptable thresholds for selected environmental monitoring parameters (i.e. to identify if/when a problem has emerged) have yet to be determined and agreed[29]. Related to these issues, many environmental and logistic problems can be overcome with sufficient technical and financial resources (as witnessed by artificial shore defences on Diego Garcia, protecting the Naval Support Facility, and costing many millions of US dollars). Similarly, solid and other waste is a big issue; most in Diego Garcia is incinerated or held for off-island recycling, but toxic waste is removed at a high cost.

Recognising these and other uncertainties, possible carrying capacity estimates for the three islands considered for resettlement in this study are summarised in the table below. Several thousand probably could be supported in Diego Garcia with all food and facilities flown or shipped in, with resupply every few days (the approach adopted in the Naval Support Facility). For the outer islands, the estimated 50 individuals is within the average carrying capacity figures given by respondents to the environmental questionnaire (Section 3.2.2) for basic/subsistence (65-79 individuals) and modern lifestyle (60-63 individuals). These figures are also close to the low level of human presence (40 individuals) known to result in reduced fish size, calcifying substrates, and coral diversity in a predictable manner (but with impact diminishing with distance across an atoll)[30]. The higher figures in carrying capacity estimates reflect the fact that a moderate level of environmental injury would be inevitable. Many respondents thought that islands have a larger capacity to carry a modern lifestyle (where goods are imported on a significant scale) than subsistence (where resources are taken mainly from the land and sea locally), certainly as regards Diego Garcia[31]. This may partly reflect the fact that subsistence lifestyle would likely call for greater self-sufficiency than modern lifestyle. As noted, this increases the local ecological footprint, and hence lower carrying capacity might be expected.

Table 5.1: Estimated carrying capacity (maximum population supportable)[32] and previous population densities for Diego Garcia, Ile du Coin and Boddam

Island	Estimated Carrying Capacity (based mainly on environmental issues)	Estimated previous population sizes (Various reports)	Estimated carrying capacity (numbers of people) from environmental questionnaire[33]			
	Total Population	**Total Population**	**Basic/subsistence lifestyle**		**Modern lifestyle**	
	Range	Range	Max.	Avg.	Max.	Avg.
Diego Garcia	1,000-2,000	200-619	3,000	363	5,000	1,427
Ile du Coin	50-250	60-346	200	65	400	60
Boddam	50-250	89-219	200	79	300	63

*Less than half of the 51 respondents provided data for this question A.11.) (Based on a dataset with 51 responses): Source Study Survey 2014

Estimates of the carrying capacity of the three islands identified for possible resettlement are vital when deciding the size of any possible resettlement and any restrictions that might be placed on any expansion of resettlement. Though the numbers of people that would resettle if given the opportunity are uncertain, environmental factors strongly suggest that the islands have a capacity threshold which needs to be taken into account when deciding on the scale and type of resettlement.

5.2.5 Acceptable levels of fishing

Importance of No-Take Areas (NTAs)

In the event of resettlement, it is unlikely that fishing areas used by Chagossians would be limited to only the island(s) resettled. Fishing across an entire atoll, evenly, would not be expected either. However, without safeguards, unrestricted fishing could easily reduce fish populations around certain BIOT islands or in particular areas. Maximum fishery benefits are likely to arise from well-distributed optimally sized reserves, or No-Take Areas (NTAs), whereby fishing is permitted in some areas, but not in others. Hence, NTAs and zoning (especially if resettlement included the outer atolls, which lie within the Chagos MPA) are an important and integral component of fishery considerations, for all groups of marine resources below. These measures are also considered in other parts of Section 5, as well as in Section 8.

Reef fish and sea cucumbers

Levels of fishing for reef fish (and other groups) that can be supported in Chagos depend primarily on resource abundance (biomass) levels; targeted reef fish biomass is extremely high, especially on the outer atolls. Estimated abundances per unit area[34] are summarized below for the three atolls identified as resettlement options:

- Peros Banhos: more than 7,000 kg/ha;
- Salomon: 3,000 kg/ha; and
- Diego Garcia: 1,250 kg/ha (lower because of higher fishing levels and lower stocks).

Appropriate fishing levels depend on the environmental and socio-economic objective. For example, if the objective is to maintain ecosystem processes sufficiently just in order to generate key seafood species, then moderate fishing might be appropriate. Work in the Indian Ocean suggests a guide is to keep fishing at a level such that biomass remains at ≤300-500 kg/ha[35], although the ecosystem, being less complete may become less resilient. However, if the goal is to maintain higher trophic level and large species in the population, then very little or no fishing is preferable[36] [37].

Hence, sustainable or appropriate fishing can be considered from various perspectives. While fishing zones will have some impact on biomass, one (potentially efficient) approach to sustainable fishing is to reduce natural reef fish biomass levels to a little more half. A related issue then requiring consideration is to determine over how much of the reef extent such fishing would be needed, in order to feed people, and over how much of the reef extent would such alteration be environmentally acceptable.

The recreational fishery around Diego Garcia, whose estimated sustainable yield was considered to be 4-5 t/km^2/yr (i.e. 40-50 kg/ha/yr) declined under relatively light fishing. Some recent assessments consider that the fishing level 0.1 t/km^2/yr[38] (i.e. 1 kg/ha/yr) for the comparable commercial inshore fishery might also be applicable to Diego Garcia's recreational fishery. Given its recent population decline, the sustainable reef fishery potential from Diego Garcia waters will be certainly be much less than the present recreational fish take, which is around 48 t/yr[39]. However, reviews[40] of coral reef fisheries highlight the large regional variability in sustainable limits and the difficulty of estimating this for a particular location.

Estimated potential/sustainable yields for commercial bank-reef fisheries are available for inshore waters of BIOT, by area and depth, for various sectors. These include Peros Banhos and Salomon, but not Diego Garcia. Values range from 0.1 t/km^2/yr to 1.375 t/km^2/yr (i.e. 1-1.4 kg/ha/yr). A conservative estimate of 0.1 t/km^2/yr (i.e. 1 kg/ha/yr) may be considered appropriate for BIOT.

Potential/sustainable fishery yields discussed above are broad metrics for mixed species. Individual species may be more or less vulnerable. A fishing 'vulnerability' score is available for most species[41] and will be valuable in the event of resettlement and for more precise determination of catch quotas. Although desirable, these are seldom straightforward. If they are set, on-going monitoring would be critical, to determine if or when thresholds are crossed, so that fishing effort can be eased. Otherwise, fish population decline would be likely or inevitable.

Sea cucumbers should probably be targeted only very lightly, or preferably not at all[42], in view of their proneness to unsustainable harvesting in Chagos[43] and elsewhere and also because of their major role in maintaining coral reef and ecosystem health[44].

Reef sharks

Shark abundance has also declined in Chagos. Present depletion rates are on account of illegal unregulated unreported (IUU) take. Acceptable take for a 'sustainable' shark fishery is essentially zero, unless numbers increase substantially from present depletion rates, which is likely to take 20+ years, given shark behaviour and fecundity.

Tuna and pelagic fish

Determining safe or sustainable capture levels of tuna for Chagos is problematic, especially given their migratory nature, recent declines in catch per effort and marked variation in BIOT catches (e.g. 685t in 2006-07 and 32,051t in 1993-04)[45]. Until populations are known to be stable in Chagos waters, no tuna fishing may be the only precautionary, long-term or sustainable option for all or most areas. Issues surrounding sustainability, conservation and exploitation partnerships are highly complex.

A recent review highlights the potential regional benefits of the Chagos No-Take MPA on tuna populations, and on by-catch, particularly for sharks[46]. The review notes that the closure of Chagos/BIOT to all commercial fishing will eliminate by-catch and help to reduce elasmobranch by-catch in the western Indian Ocean as a whole by providing a temporal and spatial haven. However, there is no single solution for the tuna fishery. Discussion is still needed as to whether the value of Chagos as the only significant MPA for these species in the Indian Ocean is something that could or should be sacrificed for resettlement. There are powerful arguments on both sides[47].

It will be important to consider many governance aspects and issues in the event of resettlement. For example, the only fishing currently permitted in Chagos without license is for personal consumption within three days[48]. To the Food and Agriculture Organisation and others, this technically does not constitute 'subsistence' fishing, which has a specific meaning[49] – as does artisanal fishing[50]. A balance would clearly need to be struck between perceived appropriateness of a particular fishing activity and risk of over-fishing. This would be particularly important for immediate-needs fishing ('fish for food'), and particularly for any exploitation for economic purposes ('fish for finance').

As noted, Diego Garcia lies outside the MPA, and hence is not subject to the same fishery restrictions and other issues that apply to the outer atolls. From a fisheries perspective, combined with many other environmental, technical and socio-economic factors, this would make Diego Garcia the most realistic island option for resettlement. Given recent fishing history on this island, however, fishery regulations would need to be substantially strengthened, perhaps by including one or more small No-Take Reserves, to facilitate replenishment of fish populations[51].

Fishing has the potential to be a vital food and income source for any resettled population. But the risk involved in any level of fishing activities is that the fish stock will diminish with adverse consequences to both fish populations and reefs in BIOT. Strict monitoring tools will be required to ensure a sustainable level of fishing judged against present stock sizes.

Concluding remarks

The acceptable or appropriate level of fishing (for the various species groups) depends on the objective, and there are many trade-offs. Any resettlement that hopes to be even partly self-sufficient through fish will have an impact on the fish and reef community – which is seldom confined to the particular island(s) inhabited. Arguably, the geographic footprint resulting from fishing levels set, coupled with areas not fished, should not be excessive. However, as noted in 5.2.6, this critically depends on 'levels of acceptable change' set for various environmental parameters, including species groups, prior to monitoring. In the absence of set thresholds, a future decline in abundance of a species group/parameter that is significantly greater than the magnitude of natural fluctuations could be considered 'unacceptable', and should trigger the need for attention or management.

In the event of resettlement, a strong case can be made for zoning, in respect of choice of island options and fishing/no fishing (through No-Take Areas – NTAs) within a particular atoll. It would be deleterious both to the environment and most likely to coral reef fisheries to fish all areas equally. This would be especially important if resettlement locations include the outer islands (under Option 1), which lie within the Chagos MPA. The body of literature on NTAs as a fisheries management tool is well advanced[52] and their benefits for fishing communities have led to a level of proliferation in many small island settings. A detailed fishery zoning plan is outside the scope of this feasibility study. Nevertheless certain principles should be established early, including the need to identify critically important vulnerable areas for each of BIOT's atolls. In particular in spawning areas/aggregations and nursery areas fishing should not be permitted. Scientists and conservation organizations have recommended that networks of no-take areas should generally cover 20-30% of all marine habitats. Because of BIOT's unique setting and status, probably at least 50% of reefs and other habitats should be NTAs. Areas where fishing would be permitted should be similarly identified. As noted, while any resettlement would probably be limited to particular islands, fishing would very likely be more extensive, which could easily lead to unsustainability of fish populations around some islands. Hence, NTAs and permissible fishing areas would need to be determined for atolls[53], not just any resettled islands within an atoll.

There will also be need for separate consideration about what proportion of the BIOT Archipelago as a whole could remain set aside for strict biodiversity conservation as no-take (with only limited fisheries benefits; See also Section 5.2.2).

5.2.6 Monitoring, environmental impact assessment (EIA) and contingent liabilities

Anticipated environmental consequences of alternative resettlement options, from construction, operations and Chagossian activities, are outlined in Sections 5.4 and 8.3. However, full effects cannot be known in advance, especially as details of possible infrastructures, potential future livelihoods of Chagossian and other activities are as yet generic rather than specific.

The only way to fully understand impacts is to monitor environmental parameters over time: before ('baseline' data), during and after resettlement. This forms part of EIA, which should begin before construction of any proposed (significant) infrastructure and/or human activities. EIA and monitoring enables comparison of how well predicted impacts match actual impacts determined from monitoring. This is necessary for determining the extent of compliance with BIOT ordnances and international agreements, following any development of the island(s) needed for returning Chagossians. EIA and monitoring costs are considered in Annex 5.3 and Section 7.

A broad suite of physical, chemical and biological environmental parameters – including fish populations – should be monitored as part of future EIAs, to determine environmental effects of resettlement infrastructures, operations and human activities (Annex 5.2). The majority of questionnaire responses agreed with this list of monitoring parameters. Prior to any resettlement, it will be critical for FCO/stakeholders to consider and agree: a) limits of acceptable change for the various parameters, b) penalties for transgressions (causing the problem), and c) who will be bear the costs of dealing with the problem, if thresholds are crossed. It would also be important to establish baseline data.

EIA and monitoring are vital tools for monitoring and mitigating impacts on the environmental health and integrity of ecosystems, islands, atolls and the entire Chagos Archipelago. Without such measures, environmental deterioration is highly likely or inevitable, whichever re-settlement option is chosen. BIOT's unique international value, and flow of benefits that currently extend far beyond the Chagos Archipelago's 200 nm Environment Protection and Preservation Zone (EPPZ), could be affected in the event of resettlement. In the event of resettlement of the offshore islands (Option 1), zoning of the MPA to confine impacts to particular islands/atolls would likely be a beneficial measure. However, some and possibly significant environmental impact would be inevitable. Monitoring can determine the nature, magnitude and extent of impacts but not what level of damage is acceptable.

Standard works on the EIA process and practice are available[54] and should be consulted and applied in the event of resettlement (See also Annex 5.2, sub-section – Notes on environmental monitoring and costs. EIAs can help determine likely environmental effects of construction, infrastructures, operations and human activities progress. Options should be developed for mitigation – or even cessation of construction, for example of infrastructures, if environmental damage becomes unacceptable. While many costs for EIAs are embedded in monitoring costs (Annex 5.3; See also Section 7), mitigation costs are unlikely to be known in detail until the EIA has been done. Hence these could potentially be a significant additional downstream cost, which can only be determined as a separate exercise later[55]. Risk mitigation is addressed further in Section 6, while Annex 5.4 provides comprehensive guidance on the following, based on experiences in the Maldives:

- Mitigation of construction, operation and human/tourism activities.
- Method of energy generation.
- Method of energy conservation.
- Method of water production.
- Method of water conservation.
- Method of sewage treatment and disposal.
- Method of solid waste collection and disposal.
- Conservation of flora and fauna.

By active participation in aspects of environmental monitoring and conservation, settlers could make a positive environmental contribution. This would not completely offset environmental damage created by construction, infrastructures and activities, but it is nevertheless an important benefit.

Contingent liabilities[56] include environmental mitigation and legal liabilities. Potential contingent liabilities may include:

- Weather related: (i) flooding and over-topping - resulting in potential loss of life, damage to infrastructure, property, assets, agriculture and lifestyle; (ii) failure of sea defences; (iii) natural disasters, requiring partial or complete evacuation (e.g. tsunami); etc.

- Environmental: (i) damage to reefs by accident and/or activities of "re-settlers" and other visitors; (ii) over-fishing; (iii) illegally fishing; (iv) infringement of the MPA's regulations (v) environmental legal costs;

These could arise where thresholds of environmental parameters (such as maximum fish catch levels or waste disposal/containment limits) are exceeded, as a result of environmental impacts from resettlement. They could also arise where the thresholds have been set inappropriately because the environmental relationships have been misunderstood or relationships have changed because of global trends, for instance through climate change. As noted, the thresholds will need to be determined by UK government in advance of resettlement, but should be kept under review in the light of environmental trends and concerns and in the context of BIOT ordinances and regulations. Environmental monitoring is critical for tracking these trends and to provide early-warning of any pending problems. Detecting infringements early will help trigger timely action on environmental management and mitigation, and reduce the eventual remediation and liability costs. Legal hearings and associated costs might also be incurred from environmental disputes associated with resettlement[57]. Financial assessment of contingent liabilities is not possible without more detailed design of the resettlement plans. Given that future population demographic and absolute size is so uncertain, it would be appropriate to undertake more detailed assessment as part of any design and implementation processes.

5.2.7 Environmental lessons from the Maldives and other regions

The Maldives, Marshall Islands and other low-lying coral island states face many challenges that will likely confront BIOT if resettled. Prior to the onset of tourism in the early 1970s, environmental pressures from development in the Maldives would have been relatively modest. Within 20 years, a range of practical problems (e.g. sand and coral mining), environmental and other issues emerged[58]. Particularly significant was the need for an artificial breakwater in the capital, Malé[59], and the many impacts when islands of Seenu atoll were interlinked. Since 2000, additional problems in the Maldives have included inundation from the 2004 tsunami as well as a swell event and wave overtopping in 2008. These incidents, against a backdrop of global climate change, highlight the vulnerability of these islands and the importance of healthy coral reefs and appropriate infrastructure[60]. Many lessons learned in those atolls will undoubtedly have application to BIOT in the event of resettlement (Annex 5.5). Although tourism impacts from early developments are undeniable[61], newer resorts in the Maldives can be seen as far less damaging. As noted in Section 5.4.2, such examples might provide the basis for 'best practice' in the Chagos.

5.2.8 Offsetting environmental damages from resettlement

Construction, infrastructures and operations, along with Chagossian activities, would inevitably put variable pressure on the environment. 'Monetary' and 'environmental' compensation (the latter through e.g. 'habitat equivalency analyses' and environmental restoration projects) are mechanisms commonly used for addressing ecosystem damage arising from development. This may have application in BIOT in the event of resettlement.

Given Chagossian current engagement with restoration in plantation areas of Diego Garcia, capacity is already building with respect to conservation activities involving restoration. These or similar activities might be appropriate as part of any future environmental compensation in the event of resettlement[62]. Restoration is seen as a potentially valuable environmental offset, involving very substantial input from members of any resettled community. Related to restoration work, Chagossians should be able to play an active role in determining the risk of new invasive species, and also in the removal, policing and monitoring of invasive species, plus scientific support for this. Invasive species are listed as one of the key stressors affecting BIOT in the Interim Conservation Management Plan, with species such as the black rat continuing to cause ecological damage across much of the Territory. Problems from invasive ('hitch-hiker) species could rise as a result of an increase in the import of goods. (Arguably, therefore, the need for assessment and management of invasive species would probably be lower in the absence of resettlement).

Details of any system to help offset collateral damage from development would need to be determined and agreed by the BIOT Administration and Chagossians if resettlement occurs. Plantation restoration (or even hardwood restoration over former plantation) can never be compensation for either that particular ecosystem or some other ecosystem, such as coral reefs. Through habitat equivalency analysis, an injured or lost ecosystem in one area is 'compensated' for by restoration of (ideally) the same ecosystem through a project in a (preferably) nearby area. Environmental compensation is never considered an adequate alternative to avoiding reef damage in the first place. In the case of reefs, there is no completely adequate way of compensating for reef damage (other than some artificial reef development, which could be undesirable in Chagos). The best approach is always impact avoidance wherever and whenever possible – as the highest priority. Environmental compensation is desirable when this is not possible, but certainly is not as an equivalent alternative, particularly in the case of highly invasive projects, such as an airport or port for one of the offshore coral islands.

5.2.9 Decision-making and governance in the event of resettlement

Future governance of BIOT, including ownership issues and local decision-making, will need careful consideration in the event of resettlement, as would associated costs of their establishment and operation. Comprehensive determination of governance details and associated costings, if resettlement occurs, fall beyond the scope of this feasibility study. As noted, the environment will be

affected by, and should also influence many aspects of governance. BIOT laws and MPA ordnances will serve as a broad *'top-down'* framework for management decisions; for example the number of islands that may be developed and overarching fishing regulations. Complementary *'bottom-up'* regulatory bodies and decision-making by Chagossians would also be necessary; for example for provision of local planning laws, building regulations. More detailed discussion of governance issues is contained in Section 4.

5.3 Evaluation of potential resettlement locations

Environmental considerations are critical for comparative evaluation of island options and resettlement options. As noted, the island options most appropriate for any initial resettlement include Diego Garcia, Ile du Coin and Boddam[63]. Environmental assessment of these island options is summarised below; the environmental criteria used, together with the level of certainty/uncertainty, are shown in Annex 5.6.

It is important to note that the ranking scores used are *relative* ranking scores. They do not distinguish between large or small differences in absolute/quantitative values for a particular environmental factor. For some factors, rankings represent clear-cut differences, while for others differences may be only marginal. Several of the rankings are tentative at present. Nevertheless, for many key environmental factors (e.g. sustainable aquifer yield, carrying capacity, scientific importance for research and monitoring, international significance), differences between islands are clearly discernible. Whilst acknowledging variability in the quality of data, and without weighting key factors, conclusions of the analysis are considered to be reasonably robust. As shown in table 5.2 below, Diego Garcia is the favoured island for resettlement – on environmental (and economic) grounds, in comparison with Ile du Coin and Boddam – selected as exemplars of islands in the outer atolls.

Table 5.2: Ranking of 3 Islands for Resettlement Potential against environmental factors (1 = most suitable/least risky, 3 = least suitable/most risky).

Environmental Factor	Diego Garcia	Ile du Coin	Boddam
Rainfall	3	1=	1=
Sustainable Aquifer Yield	1	2=	2=
Soil Quality and Agro-Forestry Potential	1	2=	2=
Coral reef fish abundance	1=	1=	3
Food from local or external sources	1	2=	2=
Building materials from local or external sources	1	2=	2=
Previous human population size & est. current carrying capacity	1	2	3
Naturalness	1	2=	2=
Scientific importance for research and monitoring	1	2=	2=
International significance	1	2=	2=
Sea level and coastal intrusion	3	1=	1=
Size of island	1	2=	2=
Approach and ease of access	1=	3	1=
Ecotourism value of fishing and coral reefs for diving	3	1=	1=
Ecotourism value of islands for land and inshore recreation	1	2=	2=

Source: Study assessment.

5.3.1 Carrying capacity, life support systems (self-sufficiency)

Rainfall

Atolls/islands with higher annual rainfall allows for greater direct use of freshwater and/or aquifer recharge than for islands/atolls with lower annual rainfall. Hence, according to this factor,

atolls/islands with more rainfall would be more favourable for resettlement than those with less rainfall. However, the utility of ranking by rainfall is unclear. Droughts can happen anywhere and Diego Garcia is the only island with viable longer-term water reserves. Sustainable aquifer yield (below) is probably a more important ranking factor than rainfall.

Sustainable aquifer yield

Islands having a larger freshwater 'lens' (aquifer volume) are likely to support a given resident population size more readily than islands having a smaller lens; the size of a freshwater lense(s) increases non-linearly with island size. Hence, in the absence of desalination, islands with larger aquifer yields will be more favourable options for resettlement than islands with smaller yields. Even on Diego Garcia including the Naval Support Facility, freshwater needs can be met using natural sources (rainfall and aquifers).

Soil quality and agro-forestry potential

Islands with rich soils will have greater potential for agro-forestry or agriculture (locally grown crops etc.) than islands with poorer soil quality, thus reducing reliance on external sources and associated costs. However, as noted elsewhere, local resource-use can impose a high ecological footprint (e.g. extra water demand from irrigation[64]). Soil quality on Ile du Coin and Boddam is unusually rich in organic matter[65], while on Diego Garcia it is variable but also good[66]. The extent and nature of previous agriculture provides a relative indication of its relative viability on different islands in the event of resettlement. Islands with extensive/diverse agriculture formerly would be more favourable options for resettlement. Under previous resettlement copra production from coconuts was the main agricultural activity and mainstay of the economy. The extent of former coconut operations was greatest in Diego Garcia and least in Ile du Coin.

Coral reef fish abundance

Since fishing would have previously been atoll-wide (rather than island-specific), coral fish abundance on different atolls provides a relative index of this resource's capacity to support Chagossians. For virgin stocks (i.e. with no fishing), atolls with higher coral fish abundance are likely to have greater capacity to support a given resident island population than atolls associated with lower abundances. Hence, those with abundant resources would offer a more favourable resettlement option than atolls having lower coral fish abundance. Both total fish biomass and targeted fish biomass (groupers, snapper, and emperors) are highest for Peros Banhos, intermediate for Salomon and lowest Diego Garcia[67]. However, this is an inverse of current fishing pressure, and so it is likely that the situation could reverse within a year of any re-settlement. If the extent of accessible fishing area is taken into account, a more important consideration than fish density per unit area, this is greater for Diego Garcia and Peros Banhos (Ile du Coin) than Salomon atoll (Boddam). As noted in Section 5.2.5, over-harvesting is likely without adequate safeguards in place, including no-take areas, and ongoing monitoring. Also, impact on fish population size is reported, even at relatively light or modest levels of recreational fishing as on Diego Garcia. Because of past non-sustainable exploitation of sea cucumbers, and their known importance is maintaining reef health, these animals should probably not be used a ranking factor – or exploited in the future.

Food from local or external sources

Food obtained from external sources reduces the ecological footprint on Chagos – whichever island(s) may be resettled. Largely due to transport and logistics issues, the cost of importing food is likely to be lower for islands closest to Diego Garcia than for more distant islands assuming the Naval Facility remains operational. However, this factor could be less relevant if an airport or port (both highly invasive environmentally) were built on an island in an outer atoll. Sacrificing one or more northern islands for port or airport development is not advocated, as the feasibility study is a neutral one. But it remains an option, albeit one that would carry major environmental impacts.

Building materials from local or external sources

Rocks, sand and cement, in particular, obtained from outside Chagos, places less burden on its coral reefs and associated environments than if these resources were extracted in Chagos. The cost of importing building materials is likely to be lower for islands which are closer to Diego Garcia. However, this factor could be less relevant if an airport or port (both highly invasive environmentally) were built on an island in an outer atoll.

Previous human population size and estimated current carrying capacity

Previous population size on different islands provides an approximation of relative carrying capacities. Islands or atolls with higher Chagossian populations formerly (highest in Diego Garcia and lowest in Boddam) might be expected to support higher populations in the future. Estimated current carrying capacity determined by this study and the environmental questionnaire (Section 4) for these islands confirmed this ranking. Based on past population size, or estimated current carrying capacity, islands able to sustain larger populations would be more favourable options for resettlement than islands supporting lower populations. However, past or present population size does not necessarily reflect concern for the environment or its stewardship, local resource consumption and sustainability or former quality of life (Section 5.2.4).

5.3.2 Other natural assets and environmental significance

These environmental factors consider the ecological and wider international significance of Chagos. The logic is that islands or atolls having these attributes should be less favourable for resettlement than islands/atolls lacking them. For many of these factors – including ecological importance[68], biogeographic importance[69] and extent of ecological knowledge[70] – understanding is insufficiently advanced for their current use in comparative evaluation of different island options. Nevertheless, in the event of resettlement they should be examined further.

Naturalness

Naturalness reflects the extent to which an area has been protected from, or has not been subject to, human-induced change. Such areas are relatively undisturbed and have higher conservation value than more impacted areas, and include here the outer islands of Ile du Coin and Boddam. According to this factor, these islands would be less favourable options for resettlement than Diego Garcia, which is more disturbed[71],[72].

Scientific importance for research and monitoring

The scientific importance of a region, for example for research and monitoring, is also an important consideration. In Chagos, more research has been done in the outer atolls than in Diego Garcia. This makes islands, such as Ile du Coin and Boddam, more important for science, research and monitoring than Diego Garcia, especially for use as an international 'reference' or control site – which is a globally recognised value of the archipelago. Hence, according to this criterion, Ile du Coin and Boddam would be less favoured island options for resettlement than Diego Garcia[73].

International significance

This factor includes issues such as whether the area is or has the potential to be an internationally recognised or special protected area. Such areas should be a lower priority for resettlement than areas lacking such significance. Eastern Diego Garcia is a Ramsar Site[74] (for internationally important wetlands) and this island also harbours one of BIOT's ten IUCN Important Bird Areas (IBAs). The IUCN Category 1 No-Take Marine Protected Area (MPA), created in 2010[75], encompasses all the outer atolls and islands of BIOT – hence Ile du Coin and Boddam, but not Diego Garcia. All of Chagos is of outstanding international significance, and the archipelago is a priority site highlighted by 'marine biodiversity hotspots' analysis and the WWF Global 2000 priority Ecoregions[76] There is also a commitment by UK government to manage the Chagos Archipelago 'as if it were a World Heritage Site'. Additionally, the large No-Take MPA, encompassing the outer islands but not Diego Garcia, provides a further layer of protection. This helps to underpin the Chagos Protected Area as a global reference site for a wide range of scientific ecological, oceanographic and climatic studies, as well as its continued benefits to humans into the future. According to this criterion, therefore, Ile du Coin and Boddam would be less favourable sites than Diego Garcia for resettlement.

5.3.3 Impacts of environment on resettlement – climate change and other factors (atoll robustness)

Sea level rise and coastal intrusion

Atolls or islands with the greatest rates of sea level rise in the recent past may be more vulnerable in the future than atolls/islands with lower rates. These would probably be less favourable options for resettlement than atolls and islands associated with lower rates. Future rates of sea level rise clearly matter for resettlement risks and prospects. However, projected future rates for different atolls or islands in Chagos cannot be reliably distinguished, and determination is problematic even for large ocean areas. Given this uncertainty and that the differences in sea level are marginal, relative sea level rise may be of less environmental significance

than factors such as island elevation and land area – to protect against gradual recession of the coastline and one-off flooding events (see below). Many other factors, including coral reef health, present and future reef accretion rates[77], erosion rates and storminess[78], create further complexity and uncertainty. This limits their inclusion in comparative evaluation of different island options. The relatively likelihood of overtopping and saline intrusion into aquifers is also difficult to determine at present, although issues related to these impacts are considered further below.

Size of island

Qualitatively, islands having greater height and area might be expected to be more substantial and robust than smaller ones against sea level rise and other physical environmental disturbances. Hence, these islands would be more favourable resettlement options than smaller ones – aside from greater space available for development. The total and potentially habitable area of Diego Garcia is much larger than Ile du Coin or Boddam, and its maximum height (more than 5 metres) and breadth are also greater[79]. However, average values can be misleading. Diego Garcia also has extensive tracts of low-lying shore, close to sea level, and overtopping occurs. These and other factors, such as beach width and rock/coral porosity (which are variable), is highly complex. Many uncertainties remain, and full details are not known for all islands. Hence the comparative evaluations according to size of islands are tentative[80].

Approach and ease of access

Navigational hazards (coral heads etc.), exposure to wind and waves, jetty needs are among the natural environmental features influencing the safety of approach to shore and ease of access to BIOT islands. Some of these vary seasonally, i.e. according to the monsoons. Islands with relatively easy approaches will be better options for resettlement, from practical and economic standpoints, than those that are more hazardous.

5.3.4 Potential of natural resources for economic activities

Ecotourism value of fishing and coral reefs for diving

Pelagic/game/recreational fish are potentially important resources for economic activities (e.g. tourism). However, detailed data on abundances for different atolls are not available although, as noted, targeted fish biomass (groupers, snapper, emperors) are highest for Peros Banhos, intermediate for Salomon and lowest Diego Garcia[81]. The ecotourism value of coral reefs for diving may have even greater potential to generate economic revenue than resource extraction. Islands/atolls with the most attractive and least disturbed coral reefs (or terrestrial habitats) will have greater appeal to tourists than islands/atolls having more impacted reefs. However, reefs can easily become degraded by coastal development pressures[82], and by damage from heavy diving[83].

Ecotourism value of islands for land and inshore recreation

In contrast to the marine environment, the terrestrial environment of Diego Garcia would probably have greater recreational and conservation attraction than Ile du Coin or Boddam. This reflects the extensive vegetation and important wildlife, including large populations of green and hawksbill turtles and birds on Diego Garcia[84]. As noted, the only Ramsar Site in Chagos is on eastern Diego Garcia. This island also harbours an Important Bird Area (IBA).

5.4 Summary environmental comparison of resettlement options

This section examines the three different *re-settlement (development) options*, with respect to anticipated environmental impacts from construction, infrastructures, their operations and also human activities, following any return to BIOT islands by Chagossians. These impacts are also summarized in Section 8.2. A summary evaluation of resettlement locations (*island options*) is shown in Section 8.1. This is based on detailed comparative environmental evaluations of Diego Garcia, and Ile du Coin and Boddam – as exemplars of outer islands in different atolls that might be selected for any initial resettlement (Section 5.3). The detailed and summary evaluations of islands were determined using relative ranking scores (1 = most suitable or least risky island option; 3 = least suitable/most risky island option).

For any resettlement option, ongoing environmental monitoring is essential for determining the severity of projected impacts and effects of any remediation intended to alleviate these[85]. As noted in section 5.8, environmental monitoring should be an integrated component of any resettlement plan before, during and after any actual resettlement. Despite the impacts of a very large resettlement on Diego Garcia, the outer islands would be of some value as 'reference' sites for monitoring effects of resettlement in Diego Garcia. Undeveloped outer islands would be even more important for this purpose in the event of resettlement of Boddam or Ile du Coin.

In the event of resettlement of the outer islands, it would be also necessary to scale up routine MPA monitoring (e.g. during research cruises aboard the BIOT Patrol Vessel), to determine if impacts extend beyond any resettled islands and compromise MPA integrity. This would likely increase overall environmental monitoring costs (Annex 5.3; Section 7), as well as the costs of ongoing routine research assessing the status of the Chagos MPA.

5.4.1 Option 3 (small-scale resettlement) and option 2 (medium-scale resettlement)

Anticipated environmental effects of construction and infrastructures for these resettlement options are summarised in Table 8.2[86]. Impacts are inevitable, but overall are projected to be substantially less in Diego Garcia than from resettlements on the outer islands. As noted, an airport and port – both highly invasive, environmentally – already exist (only) on Diego Garcia, although use of US military infrastructure cannot be assumed. Lower anticipated overall impact on this atoll/island is consistent with the relative robustness of Diego Garcia to resettlement impacts, in comparison with Ile du Coin and Boddam (and probably also other offshore islands), in the questionnaire survey (Section 4)[87]. Particularly significant is that Diego Garcia does not lie within the Chagos No-Take MPA. Hence a limited resettlement on Diego Garcia is potentially achievable with no appreciable increase in impact on the environment beyond what has already been made by the Naval Support Facility (but see also the caveats and assumptions in Section 5.2). However, as noted, a Ramsar site encompasses the eastern side of the island. This part of Diego Garcia is a potential resettlement area. Siting of construction, infrastructure and facilities should avoid loss or injury of habitats and important wildlife in the most sensitive areas[88]. In addition to the established IBA in Chagos (Barton Point), another has been proposed, in view of significant populations of Red Footed Boobies in eastern Diego Garcia from the Plantation Gate to Barton Point, plus East, Middle and West Island. On the main island, construction should be avoided in and around these areas.

In order to retain the ecological integrity of a resettled island, quotas should be determined and set on permissible maximum areas of each island, its coral reefs, vegetation and other habitats that may be a) removed and b) degraded by construction and infrastructures. Establishing a provisional threshold may be appropriate, but figures will need to vary according to habitat type.

Non-sustainable use of coral and sand for building creates major impacts on reefs. For any significant infrastructures, imported materials will help alleviate problems, but of course this is costly. Similarly, caution is needed to ensure that timber for construction or other purposes is harvested sustainably.

Impacts arising from a range of operations and human activities are inevitable in the event of resettlement under options 2 or 3 (in Diego Garcia); several can be reduced if mitigation measures are adopted (Table 8.3). New impacts would naturally add to pressures from operation of the Naval Support Facility and other existing human activities.

As noted, environmental effects of construction and operation of resettlement are inevitable, but can be ameliorated to a greater or less extent. Annex 5.4 presents a schema for environmental criteria used in evaluation of proposals for the development or redevelopment of tourist resorts in Maldives. Many of the impacts and mitigation measures are potentially applicable to the proposed resettlement option in Diego Garcia (and particularly to Ile du Coin and Boddam, as described below).

5.4.2 Option 1 (large-scale resettlement)

In general, completely undeveloped remote islands are demanding environments, requiring significant infrastructure and facilities to make them 'habitable'. These inevitably carry extremely high environmental as well as financial costs. This is consistent with the relative fragility of Ile du Coin and Boddam to resettlement impacts, in comparison with Diego Garcia, determined from the environmental questionnaire survey (Section 3.2.2).

Projected environmental effects of construction and infrastructures for this resettlement option are summarised in Table 8.2. Overall, impacts are likely to be far more substantial than for the resettlement options 2 or 3 (in Diego Garcia alone). Resettlement of the outer islands would likely require an airport, port or both. Construction and operation of this infrastructure would be extremely invasive environmentally. Airports built on coral islands, as noted, typically require substantial quantities of rock and rubble to raise the base level by around one metre. How this might be done differently from other islands, to at least minimise impacts, would require very careful consideration. The island and its coral reefs would be adversely impacted, and a wide-range of secondary impacts (e.g. from shipping, pollution) would also be expected. Particular concern arises because Ile du Coin and Boddam (plus all other BIOT islands except Diego Garcia) lie within the Chagos No-Take MPA are part of the Big Ocean network, although it is noted that the latter includes many large MPAs that allow human use, including fishing. The Chagos No-Take MPA encompasses exceptional conservation values that benefit BIOT and other countries. Large-scale resettlement could easily erode these values unless impacts are carefully contained. The declaration of the MPA was originally made without prejudice to possible resettlement, in full acknowledgement that such resettlement might require the revisiting of the regulatory regimes. It would be critical to develop appropriate regulatory regimes to minimise impacts and reduce likelihood of ongoing expansion of impacts over time, adopting as many of the current MPA ordnances and BIOT regulations as practicable. Any form of development in Chagos has the potential to impact the MPA. A major differential between Ile du Coin and Boddam (or the other islands) compared to Diego Garcia is that the former two islands bear less of the impact of recent human habitation and start off from a less degraded state.

As noted, the potential exists for the MPA to be zoned (e.g. to potentially allow for resettlement, and fishing, but only in certain areas). Thus, the MPA is not necessarily immutable. Should resettlement happen, environmental monitoring would be critical in addition to zoning, to determine whether consequential impacts cross acceptable thresholds of change; and, if so, what would be the consequences?

Construction of roads would also incur greater impact than in Diego Garcia, in view of their complete absence on the outer islands and need for extensive vegetation clearance. Impacts from construction of other facilities (housing, other buildings, etc.) would be broadly as for 'modern' resettlement option in Diego Garcia (Table 8.2).

Many of the impacts expected from operations and human activities in Ile du Coin or Boddam, if resettled (Table 8.3), are similar to those likely for a Diego Garcia resettlement. However, in the event of tourism developing on the outer islands, impacts from diving and snorkelling, boating, fishing and other tourism activities could become increasingly prevalent and harmful unless carefully controlled. Anchor damage and fishing above safe levels are particular concerns should resettlement proceed, not only in the outer islands but in Diego Garcia also. Annex 5.4 addresses these and other potential concerns (e.g. conservation of flora and fauna) further, based on experiences in the Maldives. This also examines environmental issues relevant to infrastructure and facilities appropriate for Ile du Coin and Boddam, including methods of energy generation and conservation; water production and conservation; sewage treatment and disposal; and solid waste collection and disposal.

Although not directly related to resettlement, it is noted that carefully managed use of live-aboard vessels, to allow remote adventure diving across the archipelago, would create relatively little impact on the no-take MPA. Clearly this would avoid the need for shore accommodation and supporting infrastructures including a port and/or airport, which are environmentally invasive. However, live-aboard accommodation does not constitute resettlement *per se* and would not be an acceptable option to Chagossians.

Zoning of the MPA, as indicated, is one potential mechanism for allowing resettlement in selected outer islands. The following points are particularly relevant:

- UK Government/BIOTA and CCT and partners have recognised that the MPA would have to change if resettlement were to happen.
- Some contend that it is not really justifiable to claim that taking a part out from this MPA (e.g. through resettlement on one or more outer islands) is somehow to destroy its purpose and integrity, and note that the current MPA already has a large 'hole' around Diego Garcia, the largest atoll.
- It is not clear that a smaller 'hole' around another (outer) atoll, or indeed part of such an atoll, should have highly adverse effects.

These positions are understandable. However, several other perspectives may also be relevant here, which may be summarized as follows:

- Many conservation scientists would have preferred Diego Garcia to have been included in the MPA. The exclusion of this atoll/island from the MPA, apparently due to political and strategic (rather than conservation) reasons, does not necessarily make the decision acceptable environmentally.
- As noted, the ecological footprint in Diego Garcia has been reduced appreciably by importing food and other critical resources and other measures, not all of which may be possible in the event of resettlement on outer islands.
- While zoning should help contain the spread of impacts beyond islands/atolls on which resettlement might be permitted, this comes with no guarantees. A port and/or airport, housing and other infrastructure are very invasive environmentally. These are a likely requirement, given that (much less invasive) ship-based accommodation is not considered an acceptable resettlement option.
- Many or most populated coastal areas of the western Indian Ocean – whether 'protected' or unprotected – are environmentally degraded and/or experience substantially reduced reef fish catches.

- Even Australia's Great Barrier Reef, a zoned multiple-use MPA and often regarded a flagship MPA, is now suffering serious environmental problems. However, threats are not due to settlements within the MPA, but are due to very large-scale issues of continental agricultural run-off and decisions to dredge massive shipping lanes across the reefs and continental shelf, such that sediments flow freely across the reefs.

5.5 Indicative cost estimates of environmental impact assessment and future annual environmental monitoring and evaluation

Requirements for EIA and related environmental monitoring are outlined in Section 5.2.6. The estimated capital costs are US$2.3 million, while estimated annual monitoring costs are between US$2.0 million and US$2.2 million. Further details (which apply to all three resettlement options), are given in Annex 5.3. Estimated costs shown do not include figures for aerial surveys, as estimates cannot be obtained at the present time. Similarly, possible or likely mitigation requirement/costs, if one or more islands are developed, cannot yet be determined. Details will only emerge once the EIA process is well underway.

5.6 Conclusion and key policy implications

A summary environmental comparison of different resettlement options is outlined later in Section 8 of this report. These are separated into indicative (or anticipated) construction and infrastructure effects (Table 8.2) and operations and activities effects (Table 8.3). Environmental comparisons are provisional, pending comprehensive specifications of design and construction requirements for facilities needed in the event of resettlement. Environmental impacts would increase, progressively, depending on the resettlement option.

From examination of environmental issues, a number of key policy implications have emerged with much significance to resettlement decisions. These include the following:

- Consideration of whether any early phase of resettlement would include the **outer islands**, all of which lie within the No-Take MPA. If so, zoning would help limit impacts from construction, infrastructure, fishing and other Chagossian activities to only certain islands. However, even with zoning, impacts from major infrastructure (e.g. a port and/or airport) on outer islands would likely be very significant and harmful to the MPA.
- **Fishing** and other resource use by Chagossians would be a step towards self-sufficiency, and a potential livelihood option for generating income. However, even relatively light or modest fishing can be harmful to fish populations and coral reef health. Importing food, as currently happens on Diego Garcia, helps impose a lower 'ecological footprint' on Chagos.
- **Climate change** and sea level rise are undeniable and major issues, but not necessarily a complete impediment to resettlement. However, having to evacuate BIOT in the event of sea level rise, coastal erosion and related impacts cannot be precluded.
- A **monitoring programme** and EIA are needed so that anticipated impacts from resettlement and climate change impacts (e.g. erosion) can be determined. However, levels of acceptable change (thresholds), and the consequences of any transgressions need to be determined in advance of resettlement.
- The overall **protection strategy** for BIOT reefs needs considering. Two ends of a spectrum are: allowing the reefs to be fished in a managed and zoned approach, accepting that they become a less complete system, with areas of reduced fish and less resilient reefs; or to retain all outer atoll reefs in their current status as a beacon for reef health in the Indian Ocean, but with extremely limited possibilities for any fishing.

[1] A US investment of over $30 million during 2014/15 to protect the shoreline from gradual erosion. (Written Ministerial Statement from FCO, 6th March 2014).

[2] Sheppard & Seaward, 1999.

[3] Spalding, 2005.

[4] Sheppard & Seaward, 1999.

[5] Overtopping (and associated flooding) allows a fresh layer of sediment to be added to island surfaces, thereby increasing land levels (Kench et al., 2006). According to CCT, however, this is not necessarily the case. Storms will do this, but overtopping commonly happens in several areas now on many calm high spring tides as well, that permeate the land without pushing any more sand onto it.

[6] Environmental consequences of no resettlement could also be relevant. Without shoreline armouring, some uninhabited BIOT islands could experience increased flooding, erosion or disappearance over the coming decades. There is a cost to prevent this, which, even if considered appropriate for only a few 'high-priority' islands, should arguably be netted off any costs of coastal defences budgeted for re-settlement. However, this would be a policy for consideration by UK government.

[7] 'Sustainability' is a misleading concept. In many parts of the Indian Ocean resource abundance diminished long ago. If it persists in this condition, it might be considered 'sustainable' – but only because the initial baseline was so poor. For these situations, 'persistence' is probably a better term. In Chagos, environmental health is good overall, i.e. the benchmark is set high; measured departures from this following any resettlement, by environmental monitoring, will serve as a gauge of sustainability.

[8] This is an expected environmental outcome, not a position or judgement on whether or not resettlement should proceed. Additionally, if resettlement occurs, it would probably be very difficult in practice to prevent inhabitation of additional islands in the future, if islands became over-populated and/or sustainability became compromised following initial resettlement. Population expansion across islands and atolls would inevitably add to progressive environmental pressures in BIOT and likely compromise the integrity of the MPA.

[9] IPCC Climate Change 2013: The Physical Science Basis.

[10] A recent paper indicates no evidence of acceleration in rise of global mean sea level in the twentieth century (Gregory et al., 2013). However, P. Woodworth (2014) notes that there is always acceleration in sea level, from year to year and decade to decade, just as there is in the weather.

[11] Woodworth, 2014.

[12] See Dunne, 2014.

[13] Forbes et al. 2013 (based on IPCC, 2007, projections).

[14] See, e.g., Sheppard, 2002, 2012; Chagos News No. 45. 2014; Dunne, 2014; Woodworth, 2014.

[15] Uncertainties about reef accretion may be summarised as 1) these are (pre-1999), not recent estimates, and rates may become lower as ocean acidification and other reef disturbances increase; 2) the data are not from Chagos, and 3) reef accretion rates for Chagos have not yet (Oct.2014) been measured.

[16] A study of shoreline changes in Diego Garcia between 1963 and 2013 has recently concluded (Purkis, 2015). Some of the key findings, all relevant to BIOT island stability and resettlement, are as follows: (1) Diego Garcia's coast, like all atoll islands, is naturally dynamic and will likely become more so in the future, increased by human modification of shorelines and sea-level rise; (2) Land area shows virtually no net change, while 12% of the shoreline has accreted and 15% receded/eroded; (3) Quarrying the reef flat in the 1970s from Simpson Point south, for spoil used for the airfield's runway, is an area of marked erosion; the excavated reef grooves may have led to doubling or tripling of the wave energy; (4) The shoreline around East Point area, a former settlement and potential resettlement location, has undergone complex changes. Coastal retreat has occurred on the eastern (seaward) shoreline, and both retreat and extension on western (lagoon side) shoreline. East Point is not one of the 7 coastal areas of most land loss identified, but is nevertheless a coastal area of 'notable erosion'; (5) Greatest erosion on Diego Garcia has occurred in an area containing the highest density of infrastructure; coastal areas in which *Scaevola* vegetation has been purposely removed have also undergone pronounced erosion.

[17] Changing shorelines, changing island shapes, growth of some islands and diminution of others are evidence of the dynamic nature of islands and changes in erosion.

[18] See Sheppard, 2002, 2012; Dunne, 2014; Purkis, 2015. Problems of erosion have occurred in a number of places – in addition to western parts, where construction of artificial defences is on-going, to counteract erosion and protect military facilities. For example, on the eastern arm of Diego Garcia, erosion has broken through to the century old track in many places; shoreline flooding is evident in several parts of Diego Garcia. While changes in erosion and accretion of white sand on any island occur seasonally, and over longer time scales, erosion of dark, organically enriched soils is of greater concern. This commonly supports mature hardwoods and palm trees. Migration of wooded 'brown soil 'to beach sand reflects long-term meaningful change and is quantified in the recent study of Purkis (2015), based on analysis of remote sensing images for 2 years (1963 and 2013) over a 50-yr period.

[19] As noted, marked shoreline changes in Diego Garcia are evident from the study by S. Purkis (2015), but on this island virtually no net increase in erosion is evident.

[20] See Purkis, 2015.

[21] Erosion and overtopping could increase from sea level rise and other 'external' events. For example, Dunne (2014) reports there is no evidence that extreme values (the highest tides) are increasing at a faster rate than mean sea level. However, this author shows that highest tides are indeed increasing but at the same rate, not at a faster rate, than mean sea level is rising. CCT stresses that sea level rise is evident from the data and, as such, needs to be recognised for the threat it represents to the Chagos. As noted in the report, erosion and overtopping can also result from reduced reef health, and interplay of many other factors; for example, island profiles influence overtopping risk more than average island heights. Section 5.3 considers the relative robustness of different islands and resettlement options to climatic impacts, erosion and other shore disturbances.

[22] Global change has many perspectives to consider. While the Pacific Islands of Kiribati have evacuation plan, a recent review (Webb & Kench, 2010) of 27 Pacific Islands over a 20 to 61-yr period when sea level rise 2 mm indicated: 43% remained stable, 43% increased in area and 14% decreased in area. On the other hand, there is good evidence coral reef health is in general decline, weakening their capacity to absorb the escalating impacts.

[23] Such 'hard engineering' may not be an optimal solution for islands such as BIOT. Arguably, if inundation becomes a recurrent problem in the future, then resettlement should cease and consideration should be given to evacuating the island(s). On the other hand, it is wiser to earmark costs for shore defence, even if this later proves to be unnecessary, than not to include costs but later to find increasing impact on resettlement from coastal erosion and overtopping.

[24] BBC news report 2004.

[25] However, the region's sea level history carries uncertainties and perspectives vary (e.g. Kench et al., 2004, 2005; Singh et al., 2001; Mörner & Tioley, 2005).

[26] Keyes, 2012.

[27] Variability is due to changes in natural processes; the precautionary principle therefore advocates a conservative estimate for carrying capacity; however, as noted, populations could expand and the number of islands colonised potentially increase – as capping of number of inhabited islands may be difficult to implement unless the MPA is zoned.

[28] CCT information.

[29] As noted elsewhere, as an interim measure a significant/unexpected change from ambient environmental conditions should trigger management concern and possible remedial action.

[30] Houk & Musberger, 2013.

[31] On Diego Garcia, estimated carry capacity is higher than for the outer islands, not only because the island is bigger, but also because the island already has major infrastructures, such as an airport and port (whose availability would have to be determined). Major infrastructures would be needed on the outer islands and leave a larger ecological footprint than any resettled population.

[32] 'Unit of environmental damage per person', or cost per person, would be a metric of greater resolution and utility than just absolute numbers of people, but cannot yet be determined. Even carrying capacity figures shown are very provisional and carry much uncertainty for the reasons explained in Section 5.

[33] The higher carrying capacity figures given by respondents to the environmental questionnaire for modern lifestyle, in comparison with subsistence life style, may partly reflect greater reliance on imported food and other resources for a modern lifestyle. As noted, importing resources for use in BIOT imposes a lower ecological footprint (locally), but the financial costs are likely to be high.

[34] Figures from Graham et al. 2013.

[35] See also McLanahan et al, 2011.

[36] It is worth noting that overfished fisheries can take 60-80 y to recover; Chagos reef fish populations may only now be nearing recovery from previously BIOT colonization (T. McLanahan, in review/press). CCT (2014) suggests that under fairly heavy fishing, there would be a bonanza for 2-4 years, then increasing degradation similar to that suffered on most other reefs in the Indian Ocean. CCT maintains that the best role for Chagos reefs for the benefit of the region generally is to ensure that fish biomass remains high as at present and not to semi-collapse it, which is what happens if it is viewed as a food larder. It is government that decides what the purpose of Chagos reefs is to be: to become a greatly diminished food larder, or to remain as it is now as a beacon for reef health in the Ocean.

[37] N. Graham also notes '.., very little fishing can deplete the biomass of large upper trophic level species, and thus alter the foodweb. These groups only appear to be protected in large remote unfished locations such as northern Chagos. But you can fish a reef a fair bit harder and still maintain most processes – it just becomes a less complete system.'

[38] 0.1 t/km2 = 100 kg/km2 = 1 kg/ha.

[39] Dunne et al. 2014.

[40] Dunne et al. 2014.

[41] See 'Fishbase'.

[42] A sustainable catch limit is not possible to calculate. Sea cucumber densities in Chagos are increasing again in that numerous small individuals are now evident in many shallow areas. No 'sustainable catch' limit is even possible given that gleaning often removes all from the areas being fished.

[43] Spalding, 2006; Price et al., 2010.

[44] Price et al., 2010.

[45] Dunne et al. 2014.

[46] Koldewey et al. 2010.

[47] Koldewey et al. 2010; Dunne et al. 2014.

[48] R. Dunne believes that BIOT Ordnance No. 5 (2007), allowing fishing for only 3 days, may be overly restrictive; 'artisanal' or 'subsistence' fishing as defined by FAO (See separate footnotes) is not permitted in Chagos. He feels that any increase in inshore fishing (by resident Chagossians), through changes in the law, could be partly offset by stopping all recreational fishing, and limiting fishing to subsistence, licensed and sustainable fishing by Chagossians on the east of DG. For example, according to Mr Dunne, fishing in the 3 nautical mile territorial sea surrounding Diego Garcia has the potential to yield about 26 tonnes per year (the present pelagic recreational fish catch). Fishing to support a resettled population could be offset by the cessation of the recreational fishery. A catch of this size would provide approximately 255 people with their total protein intake (based upon the consumption of tuna in the Maldives – ~100 kg per year per person [the highest fish consumption per capita in the world, where nearly all protein is derived from tuna]). Recreation involving fishing could perhaps be replaced by other tourist/leisure activities (Chagossian-US arrangement) for N personnel as noted above. Mr Dunne also considers that limited pelagic fishing should not be problematic. However, these views are not necessarily a consensus of opinion of CCT, Dunne et al. (2014) also suggest that or the pelagic fishery, similar concepts of sustainable yields (as used for reef fisheries) are not applicable because of the migratory nature of the fish.

[49] A fishery where the fish caught are shared and consumed directly by the families and kin of the fishers rather than being bought by intermediaries and sold at the next larger market. Pure subsistence fisheries are rare as part of the products are often sold or exchanged for other goods or services.

[50] Typically traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital, relatively small fishing vessels, making short fishing trips, close to shore, mainly for local consumption. In practice, definition varies between countries, e.g. from hand-collection on the beach or a one-person canoe in poor developing countries, to more than 20 m. trawlers, seiners, or long-liners over 20m in developed countries. Artisanal fisheries can be subsistence or commercial fisheries, providing for local consumption or export. Sometimes referred to as small-scale fisheries In general, though by no means always, using relatively low level technology. Artisanal and industrial fisheries frequently target the same resources that may give rise to conflict. However, these are very vague terms and could translate into almost any level of fishing.

[51] This would likely be beneficial, and good insurance, particularly given the regional variations in fish abundance. In Chagos and difficulties in setting clear-cut catch quotas. To work properly, any reserve as to be respected. A comprehensive review of fisheries in the context of the Chagos No-Take MPA has recently been produced, and provides many other details and perspectives.

[52] E.g. Williamson et al., 2004. No-take marine reserves increase abundance and biomass of reef fish on inshore fringing reefs of the Great Barrier Reef. Environ. Conserv. 31, 149-159.

[53] For example, the following might be possible broad options: in Salomon fishing across a significant proportion of the atoll, with only fisheries NTZ areas; on Peros Banhos, large conservation NTZ areas as well as fisheries NTZ areas; in Diego Garcia inclusion of a very large proportion of conservation NTZ (M. Spalding, communications). However, these are tentative options from a range of possibilities, and certainly not recommendations. The implementation and locations of any No Take Zones/Areas are policy issues beyond the scope of this feasibility study and would be a decision for UK government.

[54] E.g. Glasson et al., 2005, Scottish Natural Heritage (SNH), 2013, Wood, 2002.

55 Aerial photography of BIOT is another example of likely additional downstream costs. This would be valuable tool for assessment (Annex 5.2, but a very significant cost. However, costs cannot yet be determined, so are not included in Annex 5.3. In the absence of aerial photography, use would need to be made of satellite imagery alone in EIA and environmental monitoring.

[56] i.e. later costs that may or may not be incurred depending whether or not resettlement generates environmental costs that need to be mitigated through additional investment

[57] In BIOT the probability is low because of its remote location with limited access for independent environmental assessment or direct damage to third parties. However, convening technical experts and workshops in the future to consider implications of 'exceedances' that might arise in the course of resettlement are a contingent liability. Potential legal disputes are not limited to resettlement issues or to environmental issues.

[58] Price & Firaq, 1996.

[59] Extensive coastal infilling and reclamation occurred around the capital, Malé, which is now almost square. This greatly impaired the natural protective capacity of the reefs, resulting in the need for an artificial breakwater on the south of the island for protection against flooding events. This high technology solution, costing US$12 million, or US$8,000 per linear metre, would not have been necessary had the possibility of adverse environmental impacts been considered.

[60] Construction of raised dwellings and other buildings to confront sea level rise and/or overtopping is one example, and a practice of clear relevance to BIOT if resettled.

[61] E.g. Price et al., 1998'.

[62] Any 'compensation' should not be seen as reparations or punitive measures following resettlement; nor is it intended in this way, but rather as a means of helping to offset inevitable effects of development and human settlement and activity. Care would also be need to ensure that project to offset environmental damages associated with resettlement is not blamed for environmental injury that might reflect other causes, such as seawater warming and coral death from bleaching.

[63] This does not necessarily preclude other islands for any later phases of resettlement although, as noted, a cap on the total number of islands developed may be desirable to maintain the environmental health of Chagos.

[64] Under former occupation of Chagos, soil was apparently imported from Sri Lanka on some islands.

[65] See Ch. 4 and Posford Haskonig (2002) feasibility study. Some soils are phosphate-enriched by guano from nesting seabirds.

[66] On all islands, food crop production may be influenced more by human issues (settlers' capabilities & aspirations) than agronomic limitations.

[67] For reef shark biomass, no significant difference between atolls is evident (Graham et al., 2013).

[68] Ecological importance encompasses biodiversity (range of ecosystems & species richness), biological productivity, critical habitats or feeding areas for species of economic and conservational value (e.g. seafood species, birds, turtles), and as a fishery replenishment area (e.g. source of larvae for adjacent areas). Information for many of these factors in Chagos is very incomplete and complex – as in the case of birds, whose island preference can vary temporally. It is added that presence of a valuable ecological feature (e.g. occurrence of mangroves or special hardwood trees) in itself need not be factor precluding resettlement, as options for infrastructures or activities may be open in areas where these species are not present on the island.

[69] Here, conservational value is given to special biogeographic features, in particular whether the area contains 'endemic' or unique species, or is representative of a biogeographic 'type' or assemblage, or contains unique geographical features or seascapes. Such knowledge is incomplete for Chagos. Not many endemics are known for the archipelago, but levels may be higher than previously supposed.

[70] According to this factor, areas where ecological or environmental information is absent or incomplete should be less favoured development sites than those where reasonable information exists, assuming the latter are suitable from an environmental viewpoint. This will potentially help safeguard unknown and potentially important environmental areas.

[71] The conservation value associated with naturalness is considered the most important application of this environmental factor. However, unforeseen environmental and/or economic consequences, arguably, might be more likely in artificial or degraded areas (e.g. extensive coastal infilling in Diego Garcia, which may be a factor causing need for costly sea defences) than in more natural areas. Applying the naturalness criterion in this way, disturbed islands would be less (not more) favourable for resettlement than more natural areas.

[72] Other considerations also prevail, as noted. For example, resettlement on the eastern arm of Diego Garcia would bring human populations closer to some of the largest areas of remaining hardwood forest in Chagos. On the other hand, Chagossians could help restore naturalness, which would bring conservation benefits and help partially offset some resettlement impacts.

[73] The extent to which settlers could support research on different islands is a separate but related issue, although it is not clear if there would be any significant differences in the potential for research support between the different island options identified.

[74] Ramsar sites are sites recognised under the Convention on Wetlands, called the Ramsar Convention, In addition to 'wetlands', it affords protection to coral reefs, which are regarded by the convention as wetlands.

[75] Created as part of the Ocean Legacy Program.

[76] Olson & Dinerstein, 2002, Roberts et al. 2002.

[77] Coral reef accretion rates in Chagos have not yet been determined. A study of coastal erosion and shoreline changes in Diego Garcia has recently been completed (Purkis, 2015). Preliminary findings indicate very complex coastline changes over the last half-century. Some coastal areas on Diego Garcia, as noted, appear to have sediment accumulation while others have eroded. Interestingly, the net coastal change is close to zero; island area gained by shoreline extension is cancelled elsewhere by retreat – excluding modified areas (i.e. port, airport). It is not yet clear if there are differences in between Diego Garcia, Ile du Coin and Boddam, although patterns for these islands may well also be very complex. Similar findings were found in earlier work (Hamylton & East, 2012).

[78] Wave size and storminess are also determinants of vulnerability to coastal erosion. However, inter-atoll differences for Chagos are not evident. The last known cyclone to pass over the islands was in 1891 (Posford Haskonig, 2002), and there are no projected future changes in either the location of the tropical cyclone belt or frequency of storms for the Indian Ocean (IOPC, 2013a,b).

[79] Hence, the choice of Diego Garcia for the US Naval Support Facility is unsurprising.

[80] While comprehensive survey data are available for Diego Garcia, less detail is known for the other potential island options.

[81] However, as frequently noted, without adequate safeguards and monitoring, marine resource quantity and quality can easily diminish, even at relatively modest fishing levels.

[82] Recreational fishing on reefs from boats and, in particular, anchor damage to reefs can quickly constitute a major environmental problem following diving and ecotourism. Should this develop in BIOT, fixed moorings, fishing regulation and many other conservation measures would be needed.

[83] CCT Trustees have no view on tourism as it relates to BIOT other than to believe that it should not be ecologically damaging. Twenty years ago CCT proposed a mechanism for this. However, to date, government has not permitted it. Especially where tourism is ship-based, it need not be too damaging to reefs given proper control. Any tourist facilities and activities would need to be sited and managed to ensure that they did not impact bird colonies, turtle nesting beaches and other sites of particular value.

[84] However, high conservation attraction could also increase risks to wildlife populations on Diego Garcia from any (further) recreation and ecotourism – on top of visits to these areas by personnel at the US Naval Support Facility.

[85] For any island, monitoring should be undertaken probably twice a year, using a broad set of environmental parameters as outlined in Section 5.2.6.

[86] As yet, only indicative impacts from construction, infrastructures and operations given, as outlined facilities for resettlement at this juncture are more notional than specific, pending detailed specifications being drawn up.

[87] There was also a consensus from questionnaire respondents that none of the islands, apart from Diego Garcia, could sustain a resettlement based on a modern lifestyle. The ecology generally is seen as extremely fragile and resettlement likely to cause major environmental damage. It would be preferable to limit future development to Diego Garcia, since it already has the infrastructure to support a modern lifestyle.

[88] The Ramsar site and adjacent southern 'barachois', which is also protected, is of particular importance for juvenile Hawksbill turtles and other wildlife.

6 Infrastructure Analysis

6.1 Introduction and overview

People have lived on various islands in BIOT over the last several hundred years. Humans have inhabited housing, had access to drinking water, disposed of liquid and solid waste in various ways, and have utilised copra waste and other fuel wood as a cooking or heating source, and undertaken various commercial activities. Basic infrastructure was built to support those endeavours. For example, for copra post-harvest production, there were rails for hand-pushed trolleys to transfer materials to processing areas and to jetties. However the infrastructure has now become dilapidated and any resettlement area would need all infrastructure to be built new to meet modern quality, efficiency and environmental standards.

Much has changed over the years that influences the practicality, cost, and feasibility of replacement or additional infrastructure. Relevant factors include potential population size; the designation of an arguably unique international marine environmental protected area reserve; and many changes to the definition of acceptable international best practice and infrastructure standards.

Expectations around living standards have also changed, with many potential settlers indicating an expectation of a developed country standard of living. We have also considered the provision of housing and public services in other British Overseas Territories (See Box 6.1 at end of this Chapter), and norms in the region and in other Small Island Developing States (SIDS)[1].

Consideration of the need for infrastructure has also taken into account the following core principles:

- Do minimum additional harm to the environment (See Section 5);
- Focus on environmental protection and sustainability (See Section 5);
- Take into account economic and financial aspects, value for money, and sustainability (See Sections 7 and 8);
- Review demands and requests neutrally and objectively; and
- Respond to reasonable needs with feasible options (See Section 8).

The remainder of this section discusses the key infrastructure requirements likely to be associated with any possible resettlement. It summarises the key sources of information on which the study has drawn, and the key assumptions underpinning the possible costs of infrastructure development, which are set out in detail in Section 7 of this report.

This chapter is not organised around the resettlement options, but discusses infrastructure principles which are common to all options as well as those which are specific to Outer Island resettlement (Option 1). However, in Chapter 7 and Chapter 8 (and the Annexes for those chapters), infrastructure capital and operating costs are specifically tailored to the scale and type of resettlement being described.

6.2 Assessment of key infrastructure issues

6.2.1 Design, cost and contracting issues

The Chagos Islands pose specific and complex design and contracting challenges and these inevitably have a bearing on probable cost scenarios and contingencies that may be required for physical risk mitigation. Design issues can be divided into two broad headings: a) for Diego Garcia and b) for other islands.

Diego Garcia

At present, the BIOT Administration on Diego Garcia comprises a staff of approximately 25. Military salaries and service requirements permit personnel costs to be held to well below the market rates for such a remote location, also lacking access to many recreational and rest facilities. Civilian international contractors providing services have substantially higher costs than the BIOTA arrangements.

Infrastructure design on Diego Garcia fulfils military service specifications, and generally assumes unaccompanied status for staff (i.e. neither spouses nor children). Medical services are basic and patients with even moderately complicated issues are evacuated by air. Potable water, all of which originates from rainwater and aquifers, is not presently available on tap in accommodation facilities on Diego Garcia. It is only available from water bowsers spaced at regular intervals around the facility – from which bottles/containers are filled for carrying back to accommodation blocks.

The western arm of Diego Garcia is a UK/US military environment, and the eastern arm is an unoccupied nature reserve with occasional unpaved road maintenance by US contractors at the request of the BIOT Administration. This region encompasses the Old Plantation and its heritage sites. Diego Garcia US NSF and BIOTA buildings are generally robust, and in the past limited efforts have been made to incorporate energy-efficiency features. Buildings are not architecturally in keeping with regional or historic styles, and materials are generally sourced from regions outside BIOT.

Other islands

The other islands lack airport and/or landing strip provision, and any means of getting people and supplies ashore. An airport proposal would face challenges (including overall airspace security) and costs, and is a less practicable prospect than the building of harbour facilities capable of handling ship cargoes and passengers.

All commodities and materials used in BIOT are expensive for a combination of reasons:

- The US military-linked contracting process, which tends to require the highest performance standards;
- The transportation cost of materials and the cost of staff at this location;
- The absence of local competition for delivery of goods and services which comply with US Department of Defence procurement standards; and
- The relative absence of a local competitive market, supply-chain arrangements and related public and private sector institutions.

Thus costs from other regional sources for food, cement, steel, wood and other building materials are lower than the current prices being paid on BIOT. It would not however be appropriate to apply these costs for Diego Garcia, as the most plausible approach would be to integrate the infrastructure provision within the common existing supply chain. However options should certainly be explored to reduce costs through design and supply if resettlement investments are undertaken.

There are few direct comparisons and comparators that can be applied, as might be the norm on a more typically populated island, or mainland location. For example, in the UK, the Royal Institution of Chartered Surveyors produce 'benchmark' prices[2]. We have reviewed relevant regional institutions, professional engineering and building bodies, international maritime and aviation authorities, and a number of regional bodies and countries to identify a range of costs that permit an estimate to be inferred for particular infrastructure provision. Without more detailed site investigation against specific designs, any particular estimates remain 'indicative' and subject to a wide range of design and cost uncertainty.

Maintenance of infrastructure assets is an often neglected and underfunded activity –evidenced in many developing countries by severely potholed roads. Adequate routine maintenance results in long-term cost reductions, reducing the need for partial or complete replacement. Some of the key approaches and issues are set out in Annex 6.2, which also gives guidance on the percentage of capital value that should be allocated for maintenance.

US NSF services are provided by the current prime US contractor, G4S. It is mandated that Federal Contracts for Diego Garcia be a Joint Venture (JV) between a US Prime Contractor and a subsidiary UK company[3]. There is no independent UK service provision, outside of that provided by the BIOTA staff on Diego Garcia. All services and all other supply logistics are supplied by means of request to the US military and US State Department, which are translated into a service order to G4S, which provides a cost estimate for BIOTA approval and payment. This arrangement would need to be re-negotiated to be made available to any wider expansion of a civilian population on Diego Garcia or the other islands. Alternative contracting arrangements are likely to need to be put in place.

There can be no automatic presumption that existing US navy facilities on Diego Garcia would be allowed to be made available to an expanded BIOTA and new civilian population (e.g. airport, harbour, water supply, wastewater treatment, solid waste disposal, electricity, etc.). This would all be a matter of future negotiation between the UK and US Government.

6.2.2 Transport and island access

Remoteness, distance from each other, and from any sizeable mainland are amongst the greatest challenges for any potential inhabitants of BIOT. Air and sea transport to and between the islands have been considered in this study. The options depend largely on the number and type of transit movements required.

Air transport

For a stable small population (say 150 to 500 people) based on Diego Garcia, semi-commercial arrangements using either existing or enhanced flights to the US NSF may be sufficient. As stated previously, the US authorities would need to review its position for any such support. Diego Garcia is a military airfield, which was not intended or designed for civilian use.

For additional movements to Diego Garcia, the United States may support UK government aircraft transporting Chagossian residents to and from Diego Garcia via the military airfield of the NSF. The details would be a matter of negotiation between the UK and US Governments. The costs of associated re-fuelling, customs and passenger-handling personnel and enhanced infrastructure will need to be met by the UK. Again, there can be no automatic presumption that such access would be permitted. Onward transit to the other atolls in the Chagos Archipelago could possibly be done by seaplane, subject to a range of local handling, tethering, air-traffic control, and safe re-fuelling arrangements – all of which would have associated costs.

This report has considered the option of building a new airfield as proposed in the '*Returning Home*' 2008 Chagos Refugee Group proposal. The likely costs to build a facility capable of international civil aviation accreditation will be much higher than the £4 million estimate proposed. The former USAF Airlift Command CO on Diego Garcia[4] provided estimates of £80-£100 million for an island runway and additional capital costs of, for example, electronic instrument landing systems at US$5 million/1,000 ft. (305 metres), and around US$8 million per year maintenance and operational costs for a new civilian airport[5].

Airport construction, maintenance and operation to international standards on remote islands is a difficult undertaking – even without the additional complexity of negotiating access to the BIOT airspace. The on-going cost to HMG, even with a commercial operator managing such a facility, would be considerable (Annex 6.3).

Sea transport

Diego Garcia NSF harbour has the capacity to handle the berthing requirements of a ship of equivalent tonnage and size to the existing Fisheries Patrol Vessel Pacific Marlin. An additional vessel would be required to provide cargo handling and passenger transit support to a larger civilian population on either Diego Garcia or other islands. This would require staff support, including for additional maintenance of facilities, safe waste-disposal and re-fuelling capacity. The terms of any limited military port facilities access would need to be negotiated between the UK and US government. Ocean currents and navigational issues would need careful assessment for any vessel used to transport Chagossians and freight.

Island access

Other than on Diego Garcia, there is no existing provision to land safely other than in small craft capable of being beached. New marine landing structures will be required for any resettlement. These will generally need to be much more robust than any built in the past for copra trading, and be capable of ship mooring and handling to international safety standards. Resettlement will involve an extreme peak load during the initial stages of building – when mechanical equipment and materials need to be transported ashore.

For the purposes of this report we have assumed a minimum safe water depth of 5 metres at the end of any pier or jetty that is built. Landing craft and/or small outboard-engine boats or sailing dinghies running ashore are not a practical proposition for civilian populations of mixed age and ability nor cargo movement. Additional design issues for jetties and marine structures are discussed in Annex 6.4, which also provides reference to the US Navy design codes required for military operations.

Sea defences

US Navy-sponsored studies[6] indicate clearly discernable shoreline loss in places on Diego Garcia. As a result, the US NSF is undertaking a number of 'revetment'[7] construction processes, for coastal defence. Some buildings are located close to the shore, or have been made vulnerable due to removal of vegetation. A recent study in Diego Garcia highlights the highly dynamic nature of BIOT island shorelines[8]. Hence, the recommended approach would remain: to interfere as little as possible with existing natural structures and retain vegetation where possible. Overall, this remains a dynamic, potentially floodable, and changing environment, and precautionary design principles should be adopted.

Costs are complex to calculate, given the need to bring in materials by barge and tug but an indicative cost may be seen from an award of US$8.9 million to Black Construction-Mace International JV to repair 700 ft. of revetment on Diego Garcia in 2010-2011[9]. In a written Ministerial Statement, the FCO flagged a US expenditure of over US$30 million during 2014/15 to protect the Diego Garcia shoreline from gradual erosion[10]. Preserving existing shoreline vegetation is generally desirable to mitigate against erosion, but the cost estimates assume there will be some "hard" engineering required in places (e.g. jetties/landing areas).

On low-lying islands, where tidal or storm inundation is to be expected, sea-defences would in general be very costly and impractical. Instead, housing infrastructure design (e.g. raised on 'stilts'/pillars) and equipment will need to take account of this threat. Storage tanks cannot be buried under-ground – they may "float" and catastrophically break connecting pipes and equipment, so elevated structures are likely to be preferred. Saline intrusion will pose a corrosion design challenge to metal structures and electrical cables. It is also possible to construct buildings that will "float" within restraining rails/dolphins. Examples from the Netherlands and UK are cited in Annex 6.5. The coral rock substructure, however, is likely to complicate suitable building anchoring. No such buildings exist in the Chagos Archipelago. Clearly 'houseboat-type' solutions are possible too, but maintenance costs are likely to be higher than for more traditional structures.

Roads on Islands

Diego Garcia has a mix of concrete and bituminous road surfaces (1-2 vehicle lanes) on the western arm. On the eastern arm, parts of which may be flooding more frequently, is a periodically re-graded rural unmetalled surface single-lane road. On the other islands, to address the issue of sea over-topping the outer perimeter ridge, or at extreme high tides when groundwater rises to flood some of the terrain, in places it would be necessary to elevate walkways by 0.25-0.5 metres to permit transit between buildings.

Initially, a bituminous surface road of approximately 10 km length and two lanes width (less than 5 metres with some passing points for extra-large vehicles) would be required for the eastern arm of Diego Garcia if that were to be substantially resettled. For the other islands, crushed coral rock surface walkways and paths and possibly reinstated rail tracks would suffice in any initial phase. The islands are sufficiently small to render the general use of motor cars unnecessary (and undesirable on environmental, safety, operational and maintenance grounds).

6.2.3 Shelter, governance, and law and order facilities

Shelter

A range of facilities would be required for normal full-time residents. These would include a range of accommodation buildings for various levels of occupancy, at least one meeting and recreational facility, administrative offices, and provision for shop(s), medical and postal services, telecommunications and schooling/play areas. A guide to a wide range of Building Costs is provided in Annex 6.5.

Governance, and law and order facilities

The existing administration on Diego Garcia lacks an independent conference/magistrate's meeting room and has to share facilities with US NSF personnel. Resettlement on a substantial scale is likely to require an independent facility to be built. A proposal to provide new a BIOTA administrative meeting room and administrative office facilities for existing needs has been priced at £3.82 million. At least an additional 3-4 police[11] would be required, with additional holding cell and jail facilities. These will need to be built to satisfactory international standards.

6.2.4 Energy and fuel

Energy (electricity)

Several key design principles will need to be determined before detailed planning and costing is finalised, as follows:

- For Diego Garcia, it is unlikely that off-take from the US NSF would be permitted. At present the US NSF has no authority to provide services to a civilian population. The main Diego Garcia electricity generating facility on Diego Garcia has on-going diesel generator set replacement programmes costing tens of millions of US$.
- If not, then detailed design would need to resolve whether an *'off-grid'* unitary housing solution or a centralised mini-grid from one or more core fossil-fuelled electricity generating unit(s) would be appropriate.
- What practical and value for money renewable energy supplements could be deployed (e.g. solar (PV, thermal, Concentrated Solar Power), wind, wave, heat pump, and biomass burning/incineration (from coconut wood/husks and other waste))?

Wave power has been considered, but has a number of engineering, installation and operational and maintenance challenges that are likely to make it an unattractive option. Additional information on energy and electricity is provided in Annex 6.6. Where practicable, the design principles of environmental sustainability and lower operational/recurrent cost are important factors.

Fuel

Motor vehicle fuel on Diego Garcia is provided by the US NSF and whilst kerosene suitable for aircraft engines is available (JP-5), it results in significant maintenance problems and adaptation requirements for BIOTA vehicles. Costs per gallon are cited in Annex 6.1, and are US$0.71, 0.82 and 0.69 respectively for JP-5, MoGas and Diesel. Diesel for the Pacific Marlin is also provided *via* the US NSF as are storage, handling and fire-defence systems. Operational costs are *circa* £2.5 million per year at present including fuel costing about £1 million annually[12]. On both Diego Garcia and any resettled islands, the prevention of fossil fuel leaks into the marine and land environment will be an absolute imperative, as will adequately trained and equipped fire-defence personnel. New and additional fuel storage and handling facilities will be required.

6.2.5 Other basic services

Safe drinking water

Useable groundwater exists in the form of freshwater 'lenses' on medium to large sized islands. These, coupled with rainwater captured *via* downpipes from roofs, provided a substantial and previously adequate supply of fresh drinking water for all larger islands for the populations which inhabited them. Groundwater lenses are also susceptible to pollution from chemicals, oils and fuels, and potentially, pathogens from buried bodies. On Diego Garcia, the US NSF drinking water source is supplied by a network of 99 wells located in the North West section of the island. Groundwater from these wells is pumped to treatment plants in the Cantonment and Air Operations areas where it is cleaned and disinfected. A Military Construction Project (MilCon P-184, US$26 million) to treat and distribute potable water through pipelines to be available in domestic and administrative accommodation taps is in progress, with a completion date of mid-2015. This plan makes no provision for any substantial change of existing use or user numbers, nor any significant extension of geographic network coverage. In the event that no linkage to US NSF facilities is permitted, then the Report budget provision cost sensitivity ranges will tend to rise to their upper bounds, and/or future detailed design compromises on what can be provided will been to be considered. In practice, there will need to be agreed shared management arrangements concerning water resources between any civilian and military entity in the interests of resource quality and quantity protection.

Toilet facilities and waste disposal

It has been assumed that modern pour-flush systems with reticulated water supply systems will be required. Alternative options such as ventilated pit latrines pose threats to the groundwater lenses, and are unlikely to be attractive operationally to any returnees. The 'WELL' resource centre at the University of Loughborough provides a substantial information resource on the subject[13]. 'Grey water' re-use would be a prudent design approach to reduce discharge volumes.

Wastewater treatment will be required, with liquid discharge of a permitted standard to the extremities of the atoll reef edge by some form of outfall pipe. The engineering difficulties and costs to both build and maintain such systems will play a key role in determining the most feasible options.

Solid waste from the treatment process, and household rubbish, will have to be collected and removed from islands at intervals. Appropriate additional storage and containment systems will need to be built to take account of the total requirement (probably on Diego Garcia as an interim consolidation point before removal of any residue to a mainland environment). An extension/addition to existing private contractor arrangements for off-site disposal would have to be negotiated separately.

Heating, cooking, cooling and lighting

Biomass with low moisture content (dried/pelleted or shredded coconut fuel sources are a possibility) can be used for cooking and heating purposes and a number of commercial companies offer woodchip burner systems for a range of scales[14].

Other primary energy sources include wave, solar and fossil fuels and are discussed in Annex 6.6. Ground source heat pumps and deep water source cooling are also considered Annex 6.6.

Telecommunications

'Sure'[15] has been operating on Diego Garcia since 1982 under a BIOTA licence to provide public telecommunication services on Diego Garcia. These include international telephone, broadband internet and Wi-Fi, GSM mobile, paging services and TV rebroadcast services. Sure International staff on Diego Garcia advised that fixed line telecommunication was unlikely to be cost effective for a user population of less than 500 people. The Diego Garcia 10-metre satellite dish/antenna would need to serve as a primary point from which signals could be transmitted to other BIOT islands with 4-metre antennae/receiving dishes and a vSAT terminal. Electric power (110v or Direct Current) would be required[16].

Costs will depend on many variables, including transport links for specialist service technicians to visit, but an approximate cost of £0.5 million per island would be a basic estimate for 512–2Mb broadband. Television off Diego Garcia would be more challenging and expensive. Operational costs may be estimated to be in the region of up to 20% of the capital investment cost.

Health/medical facilities

Basic medical services are provided from the Branch Health Clinic, Diego Garcia. They are a tenant command 'on-board' US NSF Diego Garcia and their parent command is the US Naval Hospital, Yokosuka, Japan. Because the clinic is designed and equipped to primarily treat general medical conditions, anyone requiring referral or ongoing care from cardiology, dermatology, gynaecology, internal medicine, neurology, orthopaedic, ophthalmology, or psychiatric specialties is not considered suitable for this isolated duty station. As for all other facilities on Diego Garcia, international contractor costs are difficult to determine, but indicative prices can be inferred by a 2007-2009 US$5.41 million contract to renovate Building 151, the Medical Clinic[17]. Annex A.1 gives basic user charges for medical services for contractors on Diego Garcia. It is probable that the US NSF medical resources will not be available for civilian use, and staff with medical competence will need to be part of the population for any of the Options proposed.

Off Diego Garcia, other small island facilities would be relatively rudimentary in the first instance, with emergency transfer to Diego Garcia and then onwards to mainland care is the most probable scenario. Time delay and expense will be a key factor that needs to be considered particularly with any elderly and/or very young resettlers.

Education facilities

There are no schools in BIOT, and any facilities would have to be built. Population demographics and birth rates would determine likely demand. Without estimates of the population age mix it is impossible to estimate costs in any detail. The feasibility of attracting qualified staff to any basic service facilities would need to be assessed. Primary and secondary school facilities would be required. College/university education would not be feasible or viable on BIOT.

Comparison with the provisions for other Overseas Territories is considered to be a reasonable basis for option definition and cost calculation for non-US Military contractors (See Box 6.1 at end of this Chapter).

US Navy contractors on Diego Garcia are likely to charge significantly more than these amounts. The standards, specifications and contracts will be different, and not directly comparable.

6.3 Summary of implications for resettlement

Costs are particularly difficult to estimate in this context, and vary enormously depending on the methodology chosen. Contractors providing extremely robust and high standard engineering services to the US Navy would imply high costs, if applied to resettlement infrastructure. The cost structures of small family businesses on, say, Mauritius, would imply an ability to build houses for a fraction of these costs. The issue for this review has been to find an appropriate balance taking account of:

- The expectations of potential re-settlers consulted;
- Reasonable comparators with other Overseas Territories; and
- The absence or paucity of existing supply chains against which costs can be more accurately calculated.

A key uncertainty is predicting the nature of future UK-USA negotiations over resettlement in principle, and the nature of amendments that would be required to existing service-level agreements with US NSF main contractors. They have not as yet been approached to provide cost estimates for offering to the BIOT Administration equivalent levels of service to a much larger population. That would be the simplest solution. It would, however, introduce a continuous dependency; would not necessarily offer environmentally sustainable solutions; and would not develop opportunities for entrepreneurship and public-private partnership.

The overall physical security enhancements and increased security and police staffing levels that will be required will be influenced by a range of other issues (including for example governance, population demographics, skill sets and training needs, and overall rights of movement on various parts of Diego Garcia and the other Chagos Islands).

A large proportion of Diego Garcia is a military operational facility with munitions, vehicular movement and marine and air deployment on a daily basis. It is always on standby for major war intervention. The US NSF remains an opportunity for those willing and able to work at existing contracting rates offered by prime contractors. In any event, the infrastructure options have assumed a relatively high standard of service provision.

An Option 1 population (up to 1500) would involve high levels of infrastructure provisions, probably with private sector inputs. Incremental expansion to other islands for various economic activities (e.g. fishing, nature tourism) could be considered. Section 7 provides a range of costs for key infrastructure, and these are supplemented by six Annexes. These are not "worked examples" or detailed assessments for infrastructure costs. Rather they provide background and contextual material illustrating the complexity of the issues being considered, and indicative and relevant design standards and codes and international and regional cost ranges to provide typologies of infrastructure. The breadth of coverage also reflects the suggestions and comments received with respect to options and alternatives. 'Budget provision' figures are given for key major elements of infrastructure.

These encompass the infrastructure development cycle (site survey, detailed design, site clearance and preparation, complete installation and commissioning). In coming to judgements and conclusions on these budgets, a range of factors have been taken into consideration, each to varying degrees depending on the strength and availability of evidence and an estimate of risk and uncertainty.

Box 6.1: Overseas Territories Cost Comparators

Airports

- **St Helena** airfield (1,650 metres, concrete), which requires substantial valley infill civil works, will cost some £200 million for design and construction (more than 60% completed), and is likely to cost £46 million for 10 years of airport operation.
- **Montserrat** airfield, a 600-metre runway will cost approximately £17.5 million.

Roads and Road Transport

- **St Helena** existing standard roads cost £73.2k/km to £97.1k/km for average width roads of 3.5 metres. Annual maintenance costs are approximately £3k/km per annum.
- **Montserrat** roads cost around £475k/km. This cost includes base drainage, minor land acquisition and minor culverts. Private contractor costs are not known. The costs to maintain 107 km are £3.2k per km per annum.
- **Montserrat** Government vehicle fleet maintenance (70 light and 70 heavy/construction vehicles) costs approximately £196k per year.

Buildings and Housing

- In **St Helena**, the total combined capital value of a new St Helena HM Prison and police station is approximately £250k. Annual maintenance for administrative buildings is £173k. There are 208 government-owned houses, of which 44 are beyond economic repair. Some £414k is spent annually on upgrade and reactive maintenance of 177 social houses, which have a capital value of approximately £5.2 million. Chief Secretary Houses have an estimated capital value of £4.3 million. A planned comprehensive maintenance refit is estimated to be likely to cost £738k.
- In **Montserrat**, the build only cost of a new two-bedroom house (708sq ft.) is £42.1k and a three-bedroom house (910sq ft.) is £54.2k. A three-storey administrative/ministry complex (6,000sq ft.) is £595k. The maintenance of 117 public buildings costs £1.3 million per annum. New builds and maintenance if contracted out (local SMEs) follow JCT IC or DB. Larger (international) contracts follow FIDIC red.
- On **St Helena**, capital costs for three primary schools (392 pupils) and one secondary school (236 pupils) were around £215k.
- On **Montserrat**, school build costs are £83.3p/Sq. ft.

Power

- Power generation for **St Helena** is primarily provided by three 1.6 MW Caterpillar generators along with another 2 back-up elderly 1.0MW Rushton generators and a single 0.8MW Caterpillar generator at Rupert's Valley power plant. The approximate cost to produce electricity is £0.24 per kWh, and the Utility Company Connect St Helena charges consumers between £0.23 and £0.44 per kWh according to a three-band tariff structure.
- On **Montserrat**, peak diesel generator demand had reached 2.0MW before demand was reduced through price rises in the basic tariff, which ranges between £0.11/kWh to £0.13 kWh. Fuel consumption of electricity alone is approximately 3.2 million litres of diesel per year. A new 1.5MW diesel power station is likely to cost £5.3 million, with maintenance and operational costs at £119K per annum, totalling £1.95 million. Geothermal options are being explored, with likely capital costs of around £30 million for a 3.5MW facility.

Factors which have been considered in formulating the budget estimates include: availability of supply chain evidence; imperative to follow international codes and standards and/or US Military standards; existing contracting frameworks and published costs; other OT data sets; assumptions about availability of labour and appropriate skills; previous reports & data, and consultations with UK DFID OT infrastructure experts and other specialist suppliers on appropriate and reasonable cost estimates.

The outline infrastructure budgets proposed will be subject to detailed design choices in the future. These will depend on the demographic composition of resettled group(s), and style choice options that should be detailed through future consultation. A cost-benefit balance will need to be struck between the robustness to hurricane, typhoon, tsunami, or earthquake extreme event forces and overall resistance to routine weather and sea-level rise inundation threats.

The choices are not straightforward, as design solutions for one type risk may conflict with design solutions for others[18]. An initial cost-effective approach could include extreme-event shelters (common administration buildings) to which a small population can retreat for the duration of the event. Emergency supplies and standby equipment can be located in or adjacent to the structures. Advance weather warning or tectonic movement signals will also be required. These are likely to be available from general Diego Garcia systems and/or Indian Ocean, post-Asian Tsunami improved warning systems.

Emergency evacuation and contingency plans have not yet been developed. It would be sensible to develop such plans once a population size and demographic profiles are determined. For extreme and sudden events, emergency evacuation from the island is unlikely to be possible. Instead, basic infrastructure will have to provide protection. For longer-term issues, such as inundation, appropriate solutions will need to be factored into the infrastructure design.

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[1] The SIDS are a group of 52 island economies working together in three geographic regions: the Caribbean Islands; the Pacific; and Africa, Indian Ocean, Mediterranean and South China Sea (AIMS).

[2] 2013 Royal Institute of Chartered Surveyors, Maintenance.

[3] For example, the San Juan Construction Company Inc., formed a JV with John Laing International to win and implement a US$14.16M construction and services contract on Diego Garcia between 2001 and 2004.

[4] Major Morris of the Turner et al CCT 2008 rebuttal of the Howell Report.

[5] The Howell report said (p15): "The capital costs of airport construction are exceptionally difficult to calculate because of the wide variation in site characteristics. This calculation is even more difficult in the case of Chagos because of the need to ensure minimal environmental damage. The best current estimate is £4 million although it may well be higher given uncertainties mentioned above as well as construction challenges Nonetheless, a similar capacity airport receiving international visitors in southern Africa would cost in the region of £1.5 million (including power supply, telecommunications etc.); and South African civil engineers, without any benefit of site inspection, feel that a Chagos airport should not be more than three times that cost." This FS report has the benefit of site inspection and advice from experienced US Air force personnel. Howell envisages what is essentially a "landing strip".

[6] Moffat and Nichol (2008) and Helber Hastert and Planners, Inc (2009)

[7] Revetment: engineered rock shoreline armoring to prevent erosion and inundation

[8] Purkis, 2015.

[9] 2010, October, NAVFAC press announcement.

[10] 2014 March 6th, Diego Garcia: Lagoon Environment, Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (Mark Simmonds), written Ministerial Statement, ~1pp.

[11] Interview with BIOT Police, Diego Garcia, May 2014.

[12] Data provided by Public Works Officer, NSF Diego Garcia, in December 2013 "Infrastructure update (for Official Use only).

[13] Loughborough University WELL.

[14] (E.g. Heizomat, ETA HACK, IHC-Innasol, HERZ). HERZ Combustion units capable of servicing the heating needs of ten dwellings cost between £75,000 and £120,000 on the UK mainland.

[15] Sure (Diego Garcia) Limited (previously Cable & Wireless Diego Garcia Ltd until 19 August 2013).

[16] The Sure on-site Manager was consulted and agreed the feasibility of this option in principle.

[17] RC2-04 Building 151, Medical Clinic Renovation at the U.S. Naval Support Facility, Diego Garcia, San Juan Construction Inc. Completed February 2009.

[18] For, example, resistance to earthquakes can be engineered by foundation dampening design, the strength of vertical to horizontal wall joints, and the probable need for A-frame style lighter roof structures – that provide for void space occupant survival potential in the event of building collapse. But these considerations may be at variance with hurricane-wind force resistance requirements.

7 Economic and Financial Analysis

7.1 Introduction and overview

This chapter outlines the economic and financial assessment for the potential resettlement of the Chagos Islands based on the options outlined in Section 3, namely:

- Option 1: Resettlement of 1,500 Chagossians;
- Option 2: Resettlement of 500 Chagossians; and
- Option 3: Resettlement of 150 Chagossians.

The analysis has focused on: (i) indicative estimates of the full cost of each resettlement option; and (ii) potential opportunities to establish and develop sustainable livelihoods, in terms of both income generation and sustainable lifestyles. In this context, reference has been made to other UK Overseas Territories and small island states (SIDS). The main aim of the assessment is to indicate: "*....the likelihood of the economy being financially self-sufficient and meeting prudential financial guidelines, and the timescale if this were to happen.*" A prime aim is the requirement to illustrate the full cost of each resettlement option to the UK.

7.2 Data sources

The analysis is based on a number of detailed supporting annexes that assess: (i) the indicative costs in terms of the capital investment and the annual operations and maintenance costs, plus periodic capital replacement and/or refurbishment; and (ii) the potential economic development opportunities. The supporting data that underpins this financial and economic analysis covers the following:

- Infrastructure costs;
- Environmental impact assessment costs;
- Fisheries;
- Tourism;
- Coconuts; and
- Resettlement options – indicative costs, income generation and financial forecasts.

7.3 Indicative cost estimates

7.3.1 Indicative capital cost estimates

The indicative capital cost estimates for each of the three options are summarised in this section.

Table 7.1 summarises the main infrastructure capital cost estimates, as follows:

- Option 1: £370.8 million, which would include: (i) an airport (capable of handling international flights) costing approximately £125 million; and (ii) a breakwater/harbour facility costing approximately £50 million.
- Option 2: £94.2 million for the main infrastructure components.
- Option 3: £54.6 million for the main infrastructure components.

The estimates in Table 7.1 also illustrate the impact of excluding the costs of the airport and the breakwater/harbour facility under Option 1: these demonstrate the potential savings through negotiating modest shared access to the US NSFDG airfield and port facilities[1]. In the case of Option 1, such an agreement would imply a lower indicative capital cost of £160.8 million – 57% less.

Table 7.1 Infrastructure – indicative capital cost estimates (2014 constant prices)

Component	Indicative Capital Costs (£ million)			Distribution %		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
Total						
Transport & Sea Defences	204	19	9.5	55.0%	20.2%	17.4%
Energy	22	9.5	6.5	5.9%	10.1%	11.9%
Housing & Public Buildings	58	40	23	15.6%	42.5%	42.1%
Utilities and Services	25	10	6.5	6.7%	10.6%	11.9%
Total – Base Costs	309.0	78.5	45.5	83.3%	83.3%	83.3%
Physical Contingencies(1)	61.8	15.7	9.1	16.7%	16.7%	16.7%
Grand Total(2)	**370.8**	**94.2**	**54.6**	**100%**	**100%**	**100%**
Estimates without Airport (Option 1 only)						
Base Costs	184.0	78.5	45.5	83.3%	83.3%	83.3%
Physical Contingencies(1)	36.8	15.7	9.1	16.7%	16.7%	16.7%
Grand Total(2)	**220.8**	**94.2**	**54.6**	**100%**	**100%**	**100%**
Est. Excl. Airport & Breakwater/Harbour (Option 1 only)						
Base Costs	134.0	78.5	45.5	83.3%	83.3%	83.3%
Physical Contingencies(1)	26.8	15.7	9.1	16.7%	16.7%	16.7%
Grand Total(2)	**160.8**	**94.2**	**54.6**	**100%**	**100%**	**100%**

Notes: (1) Physical contingencies set at 20%; and
(2) Totals may not add up due to rounding.
Source: Annex 7.4.

The Environmental Impact Assessment (EIA), prior to the commencement of the prospective infrastructure construction programme(s), is important given the environmental importance of BIOT and the significance of the MPA. The comprehensive EIA is estimated to cost £2.3 million (for all three options). In addition, annual environmental monitoring is anticipated during the construction phase at a cost of £100,000 per year.

The costs estimates have been drawn up on the assumption that it is possible for the UK to provide all key items rather than relying on shared facilities with the US Naval Support Facility (other than restricted use of the airport and port). This is why some service costs for 50-500 people remain high and do not reduce proportionately. The Option 3- has containerised/standby diesel generators, not a "power station" option, within the budget. A discussion of the uncertainties and variability of the costs is found in Annex 7.4 (Section 2, and in particular Table 7.4.1).

Table 7.2 summarises the total indicative capital costs (infrastructure, as per Table 7.1 above plus preparation and supervision, project management unit (PMU), EIA and training costs) for each of the three options with an assumed annual phasing programme:

- Option 1 over six years, indicative capital cost of £423.3 million.
- Option 2 over four years, indicative capital cost of £111.6 million.
- Option 3 over three years, indicative capital cost of £65.4 million.

Table 7.2 also summarises the potential phasing for Option 1 if the airport and breakwater/harbour are excluded. Under this scenario the total indicative capital costs would be £190.2 million i.e. 55% below the inclusive total.

Table 7.2 Total Indicative Capital Cost Estimates – Annual Phasing by Option (£ million, 2014 constant prices)

Component	Year 1	2	3	4	5	6	Total
OPTION 1 (pop. 1,500)							
Preparation Costs[1]	22.2						22.2
Infrastructure Costs[2] [5]		74.2	74.2	74.2	74.2	74.2	370.8
Construction Supervision[3]		3.7	3.7	3.7	3.7	3.7	18.5
Project Management Unit (PMU)		0.8	0.8	0.8	0.8	0.8	3.8
EIA – Construction Phase	2.3	0.1	0.1	0.1	0.1	0.1	2.9
Training Costs			0.8	1.5	0.9	0.9	5.1
Total[4]	**24.6**	**78.7**	**79.6**	**80.3**	**79.6**	**79.6**	**423.3**
OPTION 2 (pop. 500)							
Preparation Costs[1]	5.7						5.7
Infrastructure Costs [5]		31.4	31.4	31.4			94.2
Construction Supervision[3]		1.6	1.6	1.6			4.7
Project Management Unit (PMU)		0.8	0.8	0.8			2.3
EIA – Construction Phase	2.3	0.1	0.1	0.1			2.7
Training Costs		0.6	0.7	0.4	0.4		2.1
Total[4]	**8.0**	**34.4**	**34.5**	**34.3**	**0.4**		**111.6**
OPTION 3 (pop. 150)							
Preparation Costs[1]	3.3						3.3
Infrastructure Costs [5]		27.3	27.3				54.6
Construction Supervision[3]		1.4	1.4				2.8
Project Management Unit (PMU)		0.8	0.8				1.5
EIA – Construction Phase	2.3	0.1	0.1				2.6
Training Costs		0.3	0.3	0.2			0.7
Total[4]	**5.6**	**29.8**	**29.8**	**0.2**			**65.4**
OPTION 1 (pop. 1,500) – excluding airport and breakwater/harbour							
Preparation Costs[1]	9.6						9.6
Infrastructure Costs [5]		32.2	32.2	32.2	32.2	32.2	160.8
Construction Supervision[3]		1.6	1.6	1.6	1.6	1.6	8.0
Project Management Unit (PMU)		0.8	0.8	0.8	0.8	0.8	3.8
EIA – Construction Phase	2.3	0.1	0.1	0.1	0.1	0.1	2.9
Training Costs			0.8	1.5	0.9	0.9	5.1
Total[4]	**12.0**	**34.6**	**35.5**	**36.2**	**35.5**	**35.5**	**190.2**

Notes: (1) Preparation costs set at 6% of infrastructure costs;
(2) Incl. airport & breakwater/harbour;
(3) Construction supervision set at 5% of infrastructure costs; and
(4) Figures may not add up due to rounding.
(5) The US government has indicated that it will allow limited use of the airport and port for Chagossians. Additional costs would only therefore be required if there is a need (which is not yet possible to determine) for extra capacity

Source: Annex 7.4

The capital costs per head under each option are summarised in Table 7.3. Total costs are as follows:

- Option 1: estimated costs range from: (i) £282,000 per head for all capital cost components; (ii) £171,000 per head, excluding the airport; and (iii) £ 127,000 per head, excluding the airport and the breakwater/harbour.
- Option 2: £223,000 per head.
- Option 3: £436,000 per head.

Table 7.3 Indicative Capital Costs – Per Head by Option (£ 000, 2014 constant prices)

Component	Infrastructure Cost			Total Costs[1]		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
Population	1,500	500	150	1,500	500	150
Costs per Head						
Total	247	188	364	282	223	436
Total – Excl. Airport (Option 1 only)	147			171		
Total – Excl. Airport & Breakwater/Harbour (Option 1 only)	107			127		

Note: (1) Incl. (i) infrastructure costs; (ii) preparation and construction supervision costs; (iii) PMU costs; (iv) EIA costs – construction phase; and (v) training costs.
Sources: Tables 7.1 and 7.2; and Annex 7.4.

7.3.2 Indicative annual recurrent costs

The indicative estimates of annual recurrent costs are summarised in Table 7.4, covering; (i) operation and maintenance of the infrastructure; and (ii) annual environmental monitoring and evaluation. Estimates of the annual operating and maintenance costs for the infrastructure components are based on standard percentages of the capital cost estimates[2]. These estimates include allowances for salaries/wages, repairs and maintenance, fuel and spares. However, the annual recurrent costs for environmental monitoring and evaluation are estimated to be the same for all three options.

The resulting estimates are as follows:

- Option 1: from (i) £21.5 million p.a. to cover all components; (ii) £11.5 million p.a., excluding the airport; and (iii) £9 million p.a., excluding the airport and the breakwater/harbour.
- Option 2: £6.3 million per year.
- Option 3: £4.7 million per year.

The estimated environmental monitoring and evaluation costs amount to a significant proportion of the annual recurrent estimates.

Table 7.4 Indicative estimates of annual recurrent costs by option (£ million, 2014 constant prices)

	Indicative Annual O&M Costs (£ million)			Distribution (%)		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
Infrastructure						
Transport & Sea Defences	14.1					
Energy	1.3	1.2	0.6	66%	19%	13%
Housing & Public Buildings	2.7	0.6	0.5	6%	10%	11%
Utilities and Services	1.2	1.8	1.1	12%	28%	23%
		0.5	0.3	6%	8%	6%

	Indicative Annual O&M Costs (£ million)			Distribution (%)		
	Option 1	Option 2	Option 3	Option 1	Option 2	Option 3
Sub-Total Infrastructure	19.3	4.1	2.5	90%	65%	53%
Environmental Monitoring & Evaluation	2.2	2.2	2.2	10%	35%	47%
Grand Total	**21.5**	**6.3**	**4.7**	**100%**	**100%**	**100%**
Estimates Without Airport (Option 1 only)						
Infrastructure	9.3	4.1	2.5	81%	65%	53%
Environmental Monitoring & Evaluation	2.2	2.2	2.2	19%	35%	47%
Total – Without Airport	**11.5**	**6.3**	**4.7**	**100%**	**100%**	**100%**
Est. Excl. Airport & Breakwater/Harbour (Option 1 only)						
Infrastructure	6.8	3.8	2.3	76%	63%	51%
Environmental Monitoring & Evaluation	2.2	2.2	2.2	24%	37%	49%
Total Excl. Airport & Breakwater/Harbour	**9**	**6**	**4.5**	**100%**	**100%**	**100%**

7.3.3 Periodic capital replacement and refurbishment costs

Periodic capital replacement and refurbishment costs will be required. These have been provisionally estimated at 10% of the infrastructure capital costs every 10 years. The resulting estimates are as follows:

- Option 1: (i) £37 million to cover all components; (ii) £22 million, excluding the airport; and (iii) £16 million, excluding the airport and the breakwater/harbour.
- Option 2: £9 million.
- Option 3: £5 million.

More accurate estimates would be required at the stage of detailed design.

7.4 Income generation and livelihood sustainability

7.4.1 Introduction

This section summarises the main indicators and results of the study investigations into the opportunities for income generation and livelihood sustainability to support potential resettlement. Four main areas of investigation have been covered:

- Fisheries (See Annex 7.1).
- Tourism (See Annex 7.2).
- Coconuts (See Annex 7.3).
- General development opportunities and financial forecasts (See: Annex 7.4).

Each topic has been covered in terms of: (i) general background; (ii) data related to the experience of selected islands in the Indian Ocean, Pacific Ocean and the UK Overseas Territories; and (iii) potential investment opportunities that could generate income and provide for livelihood sustainability. The detailed reviews and data are in each Annex.

7.4.2 Fisheries

Licensed commercial fishing ceased in 2010 with the establishment of the "no take" Marine Protected Area (MPA – April 2010), which covers the territorial sea extending to three (3) nautical miles from each island in the Chagos Archipelago (covering approx. 640,000 km^2). The MPA lies within the Fisheries Conservation Management Zone (FCMZ). In addition, fishing for personal consumption is permitted anywhere in BIOT waters, as laid down the Fisheries Ordinance 2007. The creation of the MPA has had important consequences. It has eliminated the important annual income generated by fishing licenses, which has varied from £536,000 (2003/04) to an average of £2 million p.a. in the early to mid-1990s and just over £1 million in 2007/08. BIOTA now operates with a significant annual deficit that has risen from £2.7 million in 2010/11 to £3.2 million in 2013/14 (of which about 80% is expended on the contracted patrol vessel – Pacific Marlin – records indicate that 68% of vessel time is allocated to fishery patrols). Potential future fishing activities related to the resettlement options would require amendments to The Fisheries (Conservation and Management) Ordinance 2007 (amended: 8th December 2008; and 25th October 2013) and the ordinance or law for the Marine Protected Area when it is finalised.

Inshore fishery

The Chagossians expect to engage in artisanal fishing as the main source of food and protein. Fish and fishery products represent a valuable source of fundamental importance for diets. Fish consumption per capita tends to be much higher in coastal areas and small island states. Fish resources need to be managed in a sustainable manner that will ensure appropriate medium to long term community viability.

Estimates of the potential annual artisanal catch for each of the defined resettlement options are based on similar recent figures for islands in the Indian and Pacific Oceans and UK Overseas Territories (See Annex 7.1, Section 5.2). Based on an average per capita consumption of 75 kg/year, the estimates yield annual fish catch requirements of:

- Option 1 – 113 tonnes per year;
- Option 2 – 38 tonnes per year; and
- Option 3 – 11 tonnes per year.

These values were compared with estimates[3] of annual sustainable inshore fisheries yields in the Chagos Archipelago (See Annex 7.1, Table 4.2). The comparison yields the following results for the prospective resettlement islands of Diego Garcia, Peros Banhos (Ile du Coin) and Salomon (Boddam) – based on average consumption per capita of 75 kg/year:

- Diego Garcia: (i) Option 1 exceeds the minimum and maximum sustainable yields by a significant margin; and (ii) Options 2 and 3 are both within the sustainable yield estimates.
- Peros Banhos (Ile du Coin): (i) Option 1 exceeds both the minimum and maximum sustainable yield; and (ii) Options 2 and 3 are both within the sustainable yield estimates.
- Salomon (Boddam): Catch requirements exceed the minimum and maximum sustainable yield estimates for all three options.

These results imply that resettled communities on these islands would also need to fish around other adjacent islands.

Artisanal fishing will require: fishing gear; suitable fishing boats; and chest freezers for storage. The ownership and payment for this equipment will need to be agreed before possible resettlement proceeds. The options could be: (i) individual ownership by Chagossians who choose to work as fishermen; and/or (ii) formation of a fishing cooperative with links to the proposed Community Store.

- Indicative capital costs for fishing boats, fishing equipment and chest freezers for each of the resettlement options are summarised as follows[4]
- Option 1: 13 fishing boats and equipment, capital costs of £152,000 to £201,000.
- Option 2: 5 fishing boats and equipment, capital costs of £59,000 to £76,000.
- Option 3: 3 fishing boats and equipment, capital costs of £35,000 to £42,000.

Mariculture[5] opportunities

Developments in any of the outer islands would require specific amendments to the environmental and "no take" conditions of the Marine Protected Area (MPA). The options that might be considered are: (i) seaweed cultivation and harvesting; (ii) sea cucumber harvesting; (iii) pearl cultivation (iv) aquaculture e.g. prawns and other shell fish; and (v) aquarium fish – capture and export. Each of these would require specific training and expertise, plus appropriate harvesting and storage facilities, transport capability and recognised export markets. These would have to be studied in detail before an investment decision could be made.

Environmental activities related to fisheries conservation and protection

Resettled Chagossians could be engaged in a wide range of environmental and fisheries activities. These could involve employment in the following:

- Environmental monitoring activities – these could be based on prescribed series of tasks and data logging activities[6]. The activities could be carried out on the resettled island(s), adjacent islands and through participation in the patrols of the ship Pacific Marlin.
- Accompanying and assisting the Fisheries Protection Officer in the execution of his duties in island visits and data collection, and supporting scientific and research expeditions to the Chagos Islands.
- Environmental conservation and protection activities on the resettled island(s).

These activities could involve the regular employment of 5 to 6 Chagossians for an average of 100 to 150 days per year. The estimated cost could amount to £26,000 to £47,000 per year (based on £52 per day, based on current UK minimum wage). The Chagossians involved in these activities would require specific training and instructions, which may increase the daily rate depending on the level of expertise required. Specific training may be required by any resettled Chagossians who engage in fishing for personal and/or commercial reasons and in environmental activities related to fisheries protection and conservation. The training would be required to ensure that current and potential future ordinances, licences and regulations are understood and enforced. Chagossians would develop skills for boat handling, operation and maintenance; appropriate fishing methods; completion of all log sheets; reporting of any illegal fishing activity; etc. If commercial fishing is re-instated on Diego Garcia, then it would be expected the private sector partner would be directly involved in the training programme.

The fisheries training could be undertaken by individual fisheries training specialists; a fisheries training company; or one of the three island fisheries training centres in the Indian Ocean region[7]. Training in environmental activities related to fisheries protection and conservation would include instruction in collecting and reporting fish catch and effort data; and environmental monitoring to determine if fishing results in significant decline in target/other species or changes in species composition.

Indicative cost estimates for prospective training would be £140,000 – involving specialists working with the Chagossians on the island(s) for a period of up to seven months. However, finalisation of the training requirements would depend on assessment of the relevant skills and experience of the Chagossians. Details of any proposed resettlement programme and proposed procurement and payment obligations for the fishing boats and equipment would need to be agreed.

Finally, if resettlement were to proceed, then the Fishing Ordinance and regulations relating to the MPA would need to be amended in order to permit the levels of fishing required to provide for sustainable livelihood options in terms of subsistence/artisanal fishing and commercial fishing for sale to the Community Store, contract workers on Diego Garcia, BIOTA and catering division NSFDG. Possible fish processing factory, mariculture opportunities, and sport fishing would also involve appropriate regulations.

7.4.3 Tourism

Tourism development could be an important income generation and employment opportunity to support resettlement. A brief review of tourism on similar small islands is presented in Annex 7.2 for the following islands: (i) Indian Ocean: Comoros, Maldives, Mauritius and Seychelles; (ii) Pacific Ocean: Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Samoa, Tonga and Tuvalu; and (iii) UK Overseas Territories: Anguilla, Falklands, Montserrat, St Helena and Turks & Caicos Islands.

Air access is crucial for small islands heavily dependent on international tourism for economic growth and employment. Annex 7.2. (Table 3.2) illustrates the characteristics of the international and domestic airports and airstrips on each of the selected islands[8]:

- Almost all have at least one international airport that can accommodate most wide-bodied passenger aircraft[9].
- Most of the island nations in the Indian and Pacific Oceans have a number of domestic airstrips that provide air services in small aircraft to outlying islands[10].
- Overseas Territories – those too small and with insufficient land area to construct an airstrip have limited tourism development including Pitcairn (located in the South Pacific Ocean) [11] and Tristan da Cunha[12] (located in the South Atlantic Ocean)

Competing Island Resorts in the Maldives and Seychelles are reviewed in Annex 7.2 (Section 3)[13]. Most of these resorts operate at the upper end of the tourism market, with exclusive facilities on small islands. All transfers from the main international airport involve transport by seaplane, plane, helicopter and/or speedboat – which are not included in the resort prices. Resort prices are generally high, reflecting the geographic location, high investment costs and service exclusivity. These could present a suitable model for BIOT but would require private investment for high end facilities.

The World Tourism Organisation (WTO) and the World Travel and Tourism Council (WTTC) forecast continued and sustained growth in the tourism market for the next 10 to 15 years in the regions that include the islands in the Indian and Pacific Oceans (See Annex 7.2, Tables 3.3 and 3.4).

Two previous reports[14] include references to tourism development and air access. The main conclusions of these reports are reviewed in Annex 7.2 (Section 4). Neither of these studies presented a review of the tourism development potential of the Chagos Islands. The views of the Chagossians were not presented. The need to associate with a private resort development company to invest in and promote an appropriate tourism package was not recognised.

The Chagos Archipelago is an unknown destination in the international tourism market. Nevertheless, it has unique characteristics that could make it attractive to high-end tourism and the eco-tourism markets. The isolation, access and environmental protection/conservation issues would have to be addressed to preserve the unique status of

the archipelago. Nevertheless tourism could offer sustainable opportunities for resettled Chagossians. Section 5 in Annex 7.2 identifies key factors for tourism development.

Development and employment opportunities for resettled Chagossians have been reviewed in terms of different models[15]. Island development in the form of high-end tourism development – similar to the Maldives model is one option, but eco-tourism development to minimise the environmental impact is also possible. Tourism related activities e.g. sport fishing, snorkelling and scuba diving, other water sports, and marine and environmental tours, etc. would be important aspects of this. Other ideas include home-stays with Chagossian families; yachting and vessel safaris; and cruise ship visits. These potential opportunities are reviewed in outline below – with further details in Annex 7.4 (Section 6).

Training requirements for most of the potential livelihood options would have to be assessed based on the range of skills and experience of the Chagossians wishing to resettle. Tourism development opportunities would also be subject to appropriate regulatory controls[16].

High-end tourism development

Several key factors remain to be investigated before a final decision could be taken. These include the interest of potential private sector tourism developers and investors would need to be assessed. Selection of suitable sites on island(s) on which to locate the potential development[17] would be important, taking account of the key issue of transport access[18]. Training of resettled Chagossians in skills needed in high-end tourism hospitality would also be needed.

Indicative estimates were prepared for a resort with 30, 40 or 50 rooms in 2014 constant prices. The main results are summarised in Table 7.5. For a resort with 50 rooms, the figures are indicatively:

- Capital costs – £33-£38 million.
- Staff – 160 nos., with salaries/wages of £1.5 million p.a.
- Financial internal rate of return (FIRR) – 11% to 13%.

The full details, assumptions and parameters are presented in Annex 7.2[19]

Table 7.5 High-End Tourist Resort – Indicative Capital Costs, Staffing and FIRRs

Component	Unit	Facility Size		
		30 rooms	40 rooms	50 rooms
Indicative Capital Cost				
Upper capex estimate	£ million	27.3	32.6	37.9
Lower capex estimate	£ million	24.2	28.7	33.2
Staff Estimates				
Senior Management	nos.	8	8	8
Middle Administration	nos.	12	12	12
All Other Staff	nos.	84	112	140
Total – Staff Estimates	nos.	104	132	160
Estimates of Salaries and Wages	£ million	1.1	1.3	1.5
Financial Internal Rate of Return (FIRR)				
Room Rate: US$ 1,250/£770/day				
Upper capex estimate	%	7.7%	9.7%	11.1%
Lower capex estimate	%	9.3%	11.5%	13.1%

Source: Annex 7.2 (Section 6.2).

Initially, it is anticipated that prospective employment opportunities for resettled Chagossians would be in the least skilled category. It is assumed that 40% to 60% of such jobs could be allocated to Chagossians. Average salaries for appropriately trained staff would be approximately £620 (US$ 1,000) per month. These percentages would have the following implications for each resort size:

Resort Size	30 room	40 room	50 room
Chagossian Employment	34-50	45-67	56-84
Earnings £000/yr	£250-£370	£330-£495	£415-£620

It is clear that tourism would have potentially important employment implications for resettlement. Employment would however probably be unaccompanied[20] – depending on which island the resort might be located on.

Leading resort development companies may require assurances on the issue of transport access. The successfulness of marketing of the Chagos Islands with an unknown brand, and the price that high-end tourists would be willing to pay for an isolated pristine island resort would be key questions. It is difficult to produce accurate cost estimates[21]. Any investor would face significant uncertainty concerning the average occupancy rate, especially in the early years of operation. They would also face the challenge of major objections from environmental groups that may affect the investment decisions of well-known resort development companies.

Eco-tourism development

An eco-tourism facility adjacent to a Chagossian resettlement community could create direct employment opportunities and maximise the benefits to the Chagossians. Factors which would need to be investigated include:

- Potential interest of private sector operators of similar eco-tourism facilities to assist, train and mentor the Chagossians to develop the idea.
- Site selection adjacent to a Chagossian community – with the necessary privacy and access to an appropriate range of environmental and leisure activities.
- Transport access to/from the eco-tourism facility (i.e. same facilities used by the Chagossian resettled community).
- Training of resettled Chagossians in wide range of skills needed in eco-tourism hospitality.

Indicative estimates were prepared for a facility with 10, 20 or 30 chalets in 2014 constant prices. The main results are summarised in Table 7.6. For an eco-tourism facility with 30 chalets, the indicative estimates are:

- Capital costs – £12 to £14 million.
- Staff – 36 nos., with salaries/wages of £360k p.a.
- Financial internal rate of return (FIRR) – 11% to 13%.

The full details, assumptions and parameters are presented in Annex 7.2.

Table 7.6 Eco-Tourism Facility – Indicative Capital Costs, Staffing and FIRRs

		Facility Size		
Component	Unit	10 chalets	20 chalets	30 Chalets
Indicative Capital Cost				
Upper capex estimate	£ million	4.7	9.4	14.3
Lower capex estimate	£ million	4.1	8.1	12.1

Component	Unit	Facility Size 10 chalets	20 chalets	30 Chalets
Staff Estimates				
▪ Senior Management	nos.	2	2	2
▪ Middle Administration	nos.	4	4	4
▪ All Other Staff	nos.	10	20	30
Total – Staff Estimates	nos.	16	26	36
Estimates of Salaries and Wages	£ 000	210	290	360
Financial Internal Rate of Return (FIRR)				
Room Rate: US$ 650/£400 per day				
▪ Upper capex estimate	%	8.6%	10.2%	10.6%
▪ Lower capex estimate	%	10.5%	12.3%	12.9%

Source: Annex 7.2 (Section 6.3).

It is assumed that 100% of low skilled jobs could be allocated to Chagossians – average salaries would be approximately £620 (US$ 1,000) per month, but could be less. This percentage would have the following implications for each eco-tourism facility:

Resort Size	10 chalet	20 chalet	30 chalet
Chagossian Employment	10	20	30
Earnings £000/yr	£75	£150	£220

The appropriate skills and experience of the resettled Chagossians, and their willingness to undertake appropriate training is unknown, as is their willingness to accept and inter-act with an adjacent eco-tourism facility. Chagossians may not have the necessary skills and experience to manage and administer the proposed eco-tourism facility. However, it has been assumed that expatriate management will be required for the first 3 to 5 years.

The configuration (and cost) of transport access is likely to be an important factor for eco-tourists. Again, there would need to be effective promotion of eco-tourism on the Chagos Islands. This would probably require the appointment of a Tourism Marketing Representative focusing on the most appropriate markets in Europe and Asia[22].

Tourism related activities

Potential employment opportunities also exist in a number of tourism related activities. These could include:

- Tourist and environmental guides on or to individual islands[23].
- Sport fishing[24].
- Snorkelling and scuba diving[25].
- Other water sports.

Many of these activities are likely to be offered by the high-end tourist resort(s), and could be staffed by Chagossians employed by the resort. Services could also be developed by entrepreneurial Chagossians.

Homestays with Chagossian families could be a small source of income from visitors wanting to experience a unique lifestyle. There are intrepid travellers who seek to experience faraway places that are "off the beaten track"[26].

Yachting and vessel safaris charter yacht services for cruising, sport fishing, snorkelling and diving, environmental exploration and photography in and around the islands could be developed over time[27]. These services could be offered as specific holiday options or day trips from resort island(s).

Cruise ships might be another revenue earning opportunity in the medium or long term[28]. This would not involve the construction of an expensive cruise ship terminal, but would be facilitated by ships' lighters to/from the settlement's landing jetty. These visits are carried out successfully in a number of Overseas Territories[29].

Training – involvement of resettled Chagossians in tourism will require a detailed Human Resources Study, which will include an assessment of skills, aptitude and training needs and staffing requirements. This would involve any prospective private tourism development company or companies. Hospitality training centres in the region[30] might well be involved.

7.4.4 Coconuts

Coconuts and their cultivation are deeply embedded in the history of the Chagos Archipelago and the Chagossians. The international market for coconuts and competing products has changed significantly over the last 40 years – favouring large producing countries with direct access to major shipping routes[31]. The Chagos Islands have major disadvantages vis à vis the international market for coconut products: (i) isolation and high shipping costs; (ii) requirement for substantial land clearance and replanting of old coconut areas; (iii) high investment costs in new processing and transport facilities; (iv) doubts as to whether a private agro-based investment company would be prepared to take the risk – without the support of substantial subsidies.

The estimated land area of the islands visited is approximately 2,088 has. Of which about 1,095 has. (52%) are covered by coconut trees (See Annex 7.3, Table 3.1). The largest are those that were previously inhabited[32]. The density of coconut trees is mostly very high because the plantations were abandoned more than 40 years ago, so access to the interior of many islands is very difficult. Rehabilitation and/or resettlement would require significant effort[33] and cost to clear the space necessary for coconut production[34], resettlement, or other rehabilitation and development[35].

Annex 7.3 includes a brief review of available indicators and data for coconuts and coconut products on a selection of small islands – many in isolated geographic locations, with small populations, limited natural resources, but with sandy soils in coastal areas that are suitable for coconut cultivation[36]. Development of substantial palm oil plantations in the 1960s, 70s and 80s (especially in Indonesia and Malaysia) had a significant impact on the international trade in coconut oil. This lead to increased focus on economies of scale, which in turn favoured the larger producers with more efficient bulk transport links. Small and isolated island producers have found it increasingly hard to compete. Most coconut growers are small farmers[37].

Currently, international concern has been expressed by the Asian & Pacific Coconut Community (APCC) and the FAO that production and trade is falling behind as coconut trees continue to age (i.e. more than 30 years old) and are not being replaced with sufficient speed, because small farmers do not have the necessary financial resources[38].

Market demand for certain coconut products (e.g. fresh coconut water and milk) are forecast to grow steadily over the medium to long term, given the market trend in health and wellness products[39].

Overall therefore, it is doubtful that the market for coconuts would be successful on BIOT for the following reasons:

- International market for coconut products is dominated by the big producers[40].
- Re-establishment of an export-oriented coconut industry would be expensive[41] and unlikely to attract a development partner from the private sector.

- Sea transport would be expensive compared to the large regional producers.
- Rates of return in commercial small-holder coconut production are generally low.

There is however some scope for the resettled Chagossians to develop small coconut plots for their own consumption and use, plus potential supply of by-products to NSFDG, tourism developments and the construction sector. Coconut by-products could have applications for: (i) food, beverages and related products; (ii) household and agricultural uses; (iii) animal feed; (iv) ornaments and handicrafts; and (v) construction materials. Indicative costs of coconut cultivation and land clearance costs are illustrated in Annex 7.3. (Section 7.3).

Indicative estimates of the rehabilitated areas that could be required to satisfy potential coconut demand under the three development options[42] are:

- Option 1 indicative area required: 13 to 39 hectares.
- Option 2 indicative area required: 4 to 13 hectares.
- Option 3 indicative area required: 1.5 to 4 hectares.

Environmental impact assessment (EIA) and future monitoring activities would ensure that mono-crop and inter-crop cultivation conform to the required environmental standards. Relevant ordinances would need to be amended and/or new ones drafted. Rehabilitation and cultivation of old coconut areas will require a review of the range of agronomic skills and experience of the Chagossians wishing to resettle. Training could be organised by an experienced and qualified agronomic consulting company. Training visits could be commissioned by extension specialists from training centres in major regional producing countries. It would be worth also training a cadre of trainers in the region.[43]

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[1] cf. shared use of Wideawake Airfield on Ascension Island in the Atlantic Ocean.

[2] Ranging from 3% p.a. for energy transmission and distribution, to 5% p.a. for potable water and wastewater facilities, 8% for diesel generators and 10% for support service equipment.

[3] MRAG Ltd.

[4] Based on per capita consumption of 75 kg per year and average catches per boat of 50 kg per day (full details are presented in Annex 7.3, Table 5.4).

[5] (Cultivation of marine organisms for food).

[6] Set by: (i) BIOTA's environmental adviser; (ii) MRAG; and (iii) requests from scientific researchers with direct interests in the Chagos Islands, the impacts of climate change, etc.

[7] (i.e. (a) Maldives – Maldives Fisheries Training Centre; (b) Mauritius – Fisheries Training and Extension Centre; or (c) Seychelles – Maritime Training Centre).

[8] Other factors that are important for domestic airports/airstrips: (i) runway surfaces range from grass to gravel (coral) and paved; (ii) operation and ownership is both public and private, especially in the Maldives and Seychelles; (iii) scheduled and non-scheduled services; (iv) generally no night landing or refueling facilities; (v) most have limited terminal facilities; and (vi) many of the domestic airstrips on the Pacific Islands were constructed by the US military in 2nd World War, and the main construction costs were not incurred by the islands themselves.

[9] The only exceptions are in the Overseas Territories: (i) Anguilla and Montserrat – serviced by links to neighbouring Antigua; and (ii) St Helena – new airport is under construction and scheduled for completion by February 2016 (runway length 1,550 metres).

[10] These are particularly important in the Maldives, Seychelles and many islands in the Pacific Ocean, where tourism is continuing to grow.

[11] Transport access is by chartered ship that provides scheduled passenger services to/from one of the outer islands of French Polynesia.

[12] Transport access is by fishing vessels (operated by the lobster concessionaire) that include scheduled passenger services to/from Cape Town.

[13] Including: (i) names; (ii) number of rooms, chalets or villas; (iii) distance from the main international airport; (iv) mode of transport from the main international airport; and (v) range of room prices.

[14] Returning Home – A Proposal for the Resettlement of the Chagos Islands, March 2008

An Evaluation of "Returning Home" – A Proposal for the Resettlement of the Chagos Islands (Howell Report), Dr J R Turner et al, June 2008.

[15] Basic cost and operational data were provided by: (i) Rider Levett Bucknall (RLB) – independent global property and construction practice, services include: cost management, project management and advisory services directly related to tourist resort development worldwide; and (ii) BDO – Hotels, Leisure and Hospitality, Travel and Tourism Division.

[16] Development may require: (i) the drafting of new ordinances and/or amendments to existing ordinances; (ii) adherence to BIOTA's building regulations – if they exist, if not then specific regulations may need to be drafted; and (iii) review of the ordinance or law for the Marine Protected Area when it is finalised.

[17] (E.g. island in the Salomon Atoll or Diego Garcia – if Île Anglaise is not suitable).

[18] I.e. dedicated island airport or access to the Diego Garcia airfield.

[19] (Section 6.2 and Appendix B – including the Cost-Benefit tables over a discount period of 25 years).

[20] i.e. employees would be under contract for specified periods, with periodic home visits

[21] Which would be fine-tuned with (i) more detailed site investigations; (ii) transport of machinery, materials and supplies; (iii) cost over-runs; and (iv) issues relating to climate change and sea defences.

[22] (cf. Pitcairn Island Tourism has recently appointed such a representative in Sydney).

[23] For example for walking or sailing. These services could include presentations of Chagossian history and visits to old settlement sites.

[24] Subject to the prevailing environmental, fishing and safety ordinances, and the availability of suitable boats and equipment.

[25] Subject to the prevailing environmental and safety ordinances, and the availability of appropriate equipment.

[26] This type of visit occurs in a number of Overseas Territories: (i) Falklands (via the RAF air-bridge from the UK and Ascension Island); (ii) Pitcairn (via air flights to Tahiti and Mangareva, then chartered ship to Pitcairn); (iii) St Helena (via the RMS St Helena from Cape Town or Ascension Island – ship will cease operations in 2016 when the new airport is completed) ; and (iv) Tristan da Cunha (via fishing vessel from Cape Town, operated by the lobster concessionaire).

[27] These services are active in the Maldives and Seychelles – according to the respective Tourism Boards: (i) Maldives – 99 registered yachts and cruisers; and (ii) Seychelles – 13 registered companies hiring out yachts and cruisers.

[28] (i) Passenger landing fees; and (ii) Sales of souvenirs and curios by the Chagossians.

[29] Including the Falklands, Pitcairn and Tristan da Cunha, plus Easter Island and the Galapagos.

[30] Maldives – (i) Faculty of Hospitality and Tourism Studies (Malé); and (ii) Villa College – Faculty of Hospitality Management and Tourism Studies. Mauritius – Mauritius Institute of Training and Development; and (ii) Constance Hospitality Training Centre. Seychelles – Seychelles Tourism Academy.

[31] Although some Pacific islands still export small to modest volumes of coconut products.

[32] Diego Garcia, Île du Coin and Boddam.

[33] In the context of these observations, it is worth quoting the following:

> "……Yet all would require substantial restoration of some of the plantations at least – and it must be appreciated that the plantations are now very overgrown and virtually impenetrable. Without mechanical equipment, the effort required to clear or restore significant coconut plantations will require millions of person-hours. For example, it took 1000 person days to clear much less than 1% of understorey vegetation on Eagle Island in 2006 during the rat eradication project." (Source: An Evaluation of "Returning Home" – A Proposal for the Resettlement of the Chagos Islands (Howell Report), page 10, last para.)

[34] (i) optimum yield of coconut trees is 10 to 30 years of age; and (ii) optimum planting is 158 coconut trees per ha. (Source: Coconut Development Authority, Sri Lanka).

[35] Of special significance to Chagossians and as possible tourist attractions – on Diego Garcia, Île du Coin and Boddam. For example on Diego Garcia, such rehabilitation might include: (i) manager's house; (ii) church; (iii) cemetery; (iv) hospital; (v) jail cells; (vi) copra drying facilities; (vii) rail track; etc. (See: Plan of East Point Plantation, Peak of Limuria, R Edis, Chagos Conservation Trust, 1993 – page 42).

[36] Basic data are presented for the following: (i) Indian Ocean: Comoros, Maldives, Mauritius and Seychelles; (ii) Pacific Ocean: Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Samoa, Tonga and Tuvalu; and (iii) major producing countries: Indonesia, Philippines, India, Sri Lanka, Vietnam, Papua & New Guinea, Thailand and Malaysia. No data have been included for the UK Overseas Territories because production is either very small or non-existent.

[37] The FAO estimates that about 95% of coconut trees are harvested by small holders with low incomes and significant levels of poverty.

[38] "Many of the coconut farmers, especially in the top producing countries are poor to begin with, so even if they want to replace the trees on their plot of land, they may not be able to do so." – R Pastor, editor of the Southeast Asia Commodity Digest.

"Asia and the Pacific's aging coconut trees simply can't keep up with growing demand" – Hiroyuki Konuma, Assistant-Director and Regional Representative for FAO.

[39] Source: Euromonitor, May 2014

[40] I.e. Indonesia, Philippines, Sri Lanka, etc.

[41] (Including extensive clearance and replanting of old and densely-packed coconut trees).

[42] The estimates are based on the following assumptions:

> FAO Food Balance Sheets for 2011 indicate the following annual unit coconut consumption for selected countries: (i) Fiji – 62.9 kg/head (equivalent to 44 nuts, average weight per nut 1.44 kg); (ii) Sri Lanka – 66.3 kg/head (46 nuts); (iii) Kiribati – 123.2 kg/head (85 nuts); and (iv) Samoa – 173.8 kg/head (120 nuts).
>
> Resettled Chagossians – potential consumption range: 50, 100 and 150 nuts per head/year.
>
> Average yield – 7,000 nuts per hectare/year.

[43] E.g.: Sri Lanka: Coconut Cultivation Board (CCB) – Coconut Training Development Center, Coconut Research Institute (CRI) – Technology Transfer Division; India: Coconut Development Board (CDB); Central Plantation Crops Research Institute (CPCRI).

8 Comparison of Resettlement Options

8.1 Choice of resettlement location

A summary evaluation and comparison of island options from an environmental perspective is shown below. This is based on the analysis in section 5. In the event of resettlement, Diego Garcia is the most suitable location, with an average rank score of '1' and having a rank score of '1' for twelve out of fifteen environmental factors assessed. In contrast, Ile du Coin and Boddam1, selected as possible outer island options, both had a rank score of '1' for only four of the factors. A similar pattern would very likely have emerged had other outer islands been used in the analysis (rather than Ile du Coin and Boddam). The suitability of Diego Garcia over Ile du Coin and Boddam also emerged from the questionnaire surveys described in section 3. In the main, respondents did not consider other islands suitable for re-settlement, especially as historically they had not supported permanent communities, apart from (for example) as leper colonies.

Table 8.1 Average (Median) and Frequency of Rankings against environmental factors for the three main islands (Source Table 5.1)

Environmental factor	Diego Garcia	Ile du Coin	Boddam
Median ranking score	1	2	2
Frequency of '1' scores	12	4	4
Frequency of '2' scores	0	10	9
Frequency of '3' scores	3	1	2

The most realistic initial resettlement options for Diego Garcia is 'modern' standards (with limited initial infrastructures and facilities) and for the outer islands (e.g. Ile du Coin or Boddam) the probable option is basic standards of infrastructure with a strong focus on environmental impact minimisation. The anticipated impacts from construction, infrastructure and operations are assessed comparatively in section 5, together with the expected effects of fishing and other human activities. While eastern Diego Garcia is a possible resettlement area, it was designated an internationally important wetland area by the BIOT Government in 2001 under the Ramsar Convention, and contains an Important Bird Area (IBA). The location of the IBA on DG is at Barton Point in the far north-east, where resettlement at East Point would likely have a minimum impact. Nevertheless the resettlement option for Diego Garcia would be significantly less invasive environmentally for BIOT than the option advocated for the outer islands. The main reasons for this judgement are:

'Pros' for Diego Garcia

- Diego Garcia lies outside the large Chagos No-Take MPA – which is of global significance. Nevertheless, as noted, the MPA was not intended as an obstacle to resettlement, and the potential exists for the MPA to be zoned, through revisiting of the regulations, for possible habitation and fishing by Chagossians in certain areas.
- Diego Garcia already has an airport and port, as well as many other facilities (although any civilian use is subject to agreement and cannot be assumed in many cases). Despite disturbance, the Diego Garcia lagoon actually recovered well after the construction. On land, the facility development was built over a plantation. Diego Garcia is the best-suited location for settlement because it has housing and port/other infrastructure already, as well as a number of other advantages over other possible locations.

'Cons' for Outer Islands

- In contrast, Ile du Coin and Boddam are remote, demanding environments, where all infrastructure and facilities would need to be established in the event of resettlement or tourism;

this would be costly environmentally as well as economically. Construction of a port and/or airport would be extremely invasive and create major environmental injuries to the coral reefs.

- Development impacts on one or more outer atolls would also extend to the Chagos MPA, potentially threatening its ecological integrity and diminishing the utility of this asset as a global reference site for environmental monitoring and in other ways. Zoning of the MPA may help alleviate some the impacts, although only to a degree.

Option 3 (with limited initial infrastructure and facilities) and, to a lesser, extent Option 2 (medium-scale development) on Diego Garcia, would appear to provide the strongest comparative environmental advantage. Challenges in the event of resettlement are substantial whichever island and development option/options are selected. This was also an important point emerging from the environmental survey. The reasons for this include the vulnerability of coral islands to natural processes, development impacts and disturbances from sea level rise, coastal erosion and overtopping (See also section 5). The dynamics are complex but still poorly understood for Chagos. In the event of resettlement, maintenance of coral reef health will be paramount, especially against a background of increasing ocean acidification and potential undermining of reef resilience from development pressures.

8.2 Environmental impacts and considerations

Potential or expected environmental impacts from construction and infrastructure for different resettlement options in BIOT, with and without mitigation, are illustrated below. The UK Government exercises complete control over all development in BIOT and also owns all land. Strict compliance is therefore assumed. Without this, impacts will be greater.

Table 8.2: Potential or expected environment impacts from construction and infrastructure for different resettlement options in BIOT, with and without mitigation.

	Impact with no or little mitigation (0 – none, + little/some, ++ moderate, +++ heavy impact)		Notes and possible mitigation effects (on-going monitoring essential)
	Option 3 (small-scale resettlement) and Option 2 (medium-scale resettlement)	Option 1 (Large-scale resettlement)	
Overall impact on Chagos protected area(s)	+/- Diego Garcia outside Chagos No-Take MPA; potential impact on Ramsar site and Important Bird Area. Construction impacts much lower than for Ile du Coin or Boddam, as less overall need for new infrastructure and facilities.	+/+++ Threat to integrity of MPA; reduced fish production, reef quality and other assets; undermining of global reference sites for monitoring climate change and other disturbances.	Impacts greater unless strict adherence to MPA and BIOT environmental regulations; quotas on number of islands resettled and resource-use/loss levels permitted will help reduce MPA damage depending on population size.
Port/access facilities (jetties, piers, groynes and breakwaters)	+ Some impact from new facilities in east; assumed resettled population has access to these facilities in west.	+++ Direct loss of coral reefs and island habitats from dredging, infill and sedimentation; major threat to resilience of island against erosion, sea level rise and other impacts.	Some reduction if best construction practices followed, but major impacts to reefs and islands unavoidable.
Airport	0	+++	As for ports (above); severe erosion of coral reef

	Impact with no or little mitigation (0 – none, + little/some, ++ moderate, +++ heavy impact)		Notes and possible mitigation effects (on-going monitoring essential)
	Option 3 (small-scale resettlement) and Option 2 (medium-scale resettlement)	Option 1 (Large-scale resettlement)	
	Access to existing airport for any resettled population assumed.	Impacts as for ports (above), but more substantial, long-lasting and irreversible.	quality and ecosystem services unavoidable.
Roads	+ Some loss of vegetation/habitat and bird life from new roads; assumed resettled population has access to existing roads.	++ Significant loss of vegetation/habitat and bird life from new roads following clearance of vegetation for access.	Some amelioration of impacts if BIOT environmental regulations followed and construction of infrastructure and facilities follows international best practice; minimise use of local coral and sand as building materials for all construction.
Housing School Clinic Administration buildings	++ New buildings needed; types of impacts (habitat loss etc.) as for roads above	++ New buildings and facilities needed; types and severity of impacts as for roads above; non-sustainable use of coral, sand and timber as construction materials.	
Power generation Telecommunications	+/++ Habitat loss etc., as for roads (above); assumed some use of existing facilities.		
Domestic water, sanitation and waste facilities	+ Some habitat loss from construction effects.		
Small tourism resorts	+ Assumed no or limited demand for tourism.	++ Design, size/area of units and number of units determine overall impact.	Advanced and innovative design to help reduce impact, but some habitat/wildlife loss following construction unavoidable.
Shore defences (against sea level rise, erosion) – precautionary principle	+/++ Boulders/defence needed for any resettlement in eastern DIEGO GARCIA; some environmental disruption of island/sea interface.	+/++ Boulders/defence needed for any resettlement in outer islands; some environmental incursion at island/sea interface.	Careful planning and best practice to help minimise impact; minimal removal of Scaevola/vegetation – which affords some natural coastal defence.

Potential or expected environment impacts from operations and human activities for different resettlement options in BIOT, with and without mitigation are shown the second summary table below.

Table 8.3: Potential or expected environment impacts from operations and human activities for different resettlement options in BIOT, with and without mitigation.

	Impact with no or little mitigation (0 – none, + little /some, ++ moderate, +++ heavy impact)		Notes and possible mitigation effects (on-going monitoring essential)
	Option 3 (small-scale resettlement) and Option 2 (medium-scale resettlement)	Option 1 (Large- scale resettlement)	
Overall impact on Chagos protected area(s)	Diego Garcia outside Chagos No-Take MPA; potential impact on Ramsar site and Important Bird Area. Impacts of operations and activities moderate and lower than for Ile du Coin or Boddam, as less overall need for new infrastructures and facilities.	/+++ Reduced fish production and reef quality; undermining of global reference sites for monitoring climate change and other disturbances.	Impacts of operations and activities greater unless strict adherence to MPA and BIOT environmental regulations – e.g. prevent excessive contaminant concentrations.
Solid waste	/- Hazardous materials problematic for human and environmental health; current levels dealt with adequately.	/+++ Potential major problem on outer islands; some solid waste impacts to islands from visiting yachts; impacts as for Diego Garcia resettlement; macro- and micro-plastics densities high.	Crushers, incinerators and removal of waste materials help alleviate problems; replication of beach clean-up of plastics on Diego Garcia needed on outer islands.
Sedimentation (more a problem from construction)	/- From various activities, including shipping; can result from non-sustainable agro-forestry (on any of the islands).	+++ Creation of access routes for port/harbour by blasting of reefs for channels particularly harmful.	Some amelioration of damage through careful construction and operations practices – including sustainable agro-forestry.
Sewage, including possible contamination of aquifer	- Health implications and harmful environmental effects from nutrients and pathogens (eutrophication, algal overgrowth on coral reefs).		Advanced technologies for sewage treatment; discharge pipes long enough to bypass reef slope and limit impact;
Pesticides, herbicides and other contaminants,	- Potential entry into aquifers and also the marine environment.	- Reports of copper (fungicide) residues in aquifer during previous occupation of outer islands.	
Agroforestry	/- Soils fragile and fertility easily lost through non-sustainable agriculture or agroforestry; limited buffering capacity of soil can lead to aquifer contamination; potentially non-sustainable use of aquifer water.		Impact reduced by limiting infrastructure development and ground compaction, plus other measures.
Sustainability of fishing	-/+++		Strict adoption of catch quotas and

	Impact with no or little mitigation (0 – none, + little /some, ++ moderate, +++ heavy impact)		Notes and possible mitigation effects (on-going monitoring essential)
	Option 3 (small-scale resettlement) and Option 2 (medium-scale resettlement)	Option 1 (Large- scale resettlement)	
	Impairment of fish populations a major concern; already evident for coral fish in Diego Garcia following recreational fishing (See also section 2.4); fishing impact from visiting yachts is probably minimal at the present time;		fishing area restrictions; population depletion less likely if fish also imported (See also section 2.4).
Diving and snorkelling	+ Damage may increase if resettlement, adding to pressures from existing recreational activity.	++/+++ Increased impacts if tourism develops; coral breakage from snorkelling, trampling and scuba diving expected.	Strict enforcement of MPA and BIOT regulation may help reduce reef injury.
Boating, fishing and other effects of tourism	+ As above.	++ As above; anchor damage to coral and fishing and collecting potentially serious impacts.	Monitoring and enforcement of regulations will help reduce damage.

Shoreline defence involving boulders or other coastal armament (Table 8.2) has been put in place in Diego Garcia as a management intervention to help combat sea level rise. By altering coastal dynamics, however, this can also act as an environmental disturbance and actually exacerbate coastal problems, especially if natural vegetation (e.g. Scaevola) is also removed. Such 'hard engineering' may not be an optimal solution for islands such as BIOT. Arguably, if inundation becomes a recurrent problem in the future, resettlement should cease and consideration should be given to evacuating the island(s). On the other hand, a 'precautionary' inclusion of costs for shoreline defences against inundation from high sea-water levels now, or in the future, may be prudent – even if the probability of needing to implement the option is relatively low.

Some of the impacts in Tables 8.2 and 8.3 may be at least partially offset by the potential role of resettlement and Chagossian activities, involving mitigation of impacts to the MPA (from resettlement and/or other influences) and through habitat restoration – particularly on Diego Garcia (See Section 5.2.8).

In summary, any form of development in Chagos has the potential to impact the MPA. A major differential between Ile du Coin and Boddam (or other islands in the outer atolls), compared to Diego Garcia, is that the former two islands bear less of the impact of recent human habitation and start off from a less degraded state. But even the outer atolls are affected from visiting boats/yachts. Hence, these too are not pristine environments, either due to this or due to previous occupation.

8.3 Comparative costs of resettlement options

8.3.1 Resettlement Options – Income Generation and Financial Forecasts

Key aims of the study are to: (i) investigate the possibilities for the development of sustainable livelihoods; (ii) explore income generation opportunities; and (iii) asses the financial implications over the next 5, 10 and 20 years – with specific reference to the medium to long term cost implications. Information was collected for other UK Overseas Territories (OT)[2]. These provide relevant comparisons for obvious reasons[3].

The review of the employment and financial situation in three OTs (St Helena, Tristan da Cunha and Pitcairn) highlights the challenges and difficulties of life and living on small remote islands with limited resources and employment opportunities, low levels of income, and dependence on recurrent budgetary support, capital investment and technical assistance. Reviews of the three OTs are presented in Annex 7.4 and focus mainly on public sector issues[4]. Similar challenges and difficulties are likely to be faced in any prospective resettlement of the Chagos Islands.

The following sections examine the indicators for the three resettlement options in terms of: Employment and Training; Technical Assistance; Income Generation; and Financial Forecasts.

Employment and Training

A **Human Resources Study** would be worthwhile to establish the skills, experience, training, background details and technical assistance requirements of prospective Chagossians wishing to resettle under each of the three Options. The study would address both individual and community needs.

Table 8.4 presents the indicative estimates of the labour force, potential employment by sector and training costs by option. Further details are provided in Annex 7.4. The estimates are based on the following assumptions:

- The labour force is assumed to be 50% of the population.
- Employment is distributed between: (i) public sector employment to sustain the normal operations of the community[5]; (ii) contracted employment for the US NSFDG[6]; (iii) potential tourism developments[7]; and (iv) other employment opportunities – assumed to be 4% of all other activities.
- Training costs assumptions: (i) 50% of potential employees in each sector will require some form of training[8]; and (ii) average training costs of £15,000 per person[9].

The resulting estimates are as follows:

	Option 1	Option 2	Option 3
Labour Force	750	250	75
Community Public Sector	*42%*	*70%*	*75%*
Naval Facility	*42%*	*25%*	*21%*
Tourism	*12%*		
Other Activity	*5%*	*4%*	*4%*
Total Cost	**£5.15m**	**£2.21m**	**£0.81m**

Table 8.4 Indicative Estimates of Potential Labour Force, Employment by Sector and Training Costs by Option

Component	Unit	Option 1		Option 2		Option 3	
		nos.	%	nos.	%	nos.	%
Population and Labour Force							
▪ Population	nos.	1,500		500		150	
▪ Labour Force	nos.	750	50%	250	50%	75	50%
Indicative Employment and Training Requirements							
Community – Public Sector							
▪ Employment	nos.						
▪ Requiring Training	nos.	263	42%	175	70%	53	75%
▪ Training Costs (1)	£ million	131	41%	88	71%	26	74%
		1.97	38%	1.31	59%	0.39	48%
US NSFDG							
▪ Employment	nos.	263	42%	63	25%	15	21%
▪ Requiring Training	nos.	131	41%	31	25%	8	23%
▪ Training Costs (1)	£ million	1.97	38%	0.47	21%	0.11	14%
Artisanal Fishing							
▪ Training Costs (2)	£ million	0.42	8%	0.35	16%	0.28	35%
Tourism Developments (3)							
▪ Employment	nos.	76	12%	0	0%	0	0
▪ Requiring Training	nos.	38	12%	0	0%	0	0
▪ Training Costs (1)	£ million	0.57	11%	0	0%	0	0
Other Employment Activities							
▪ Employment	nos.	30	5%	10	4%	3	4%
▪ Requiring Training	nos.	15	5%	5	4%	2	6%
▪ Training Costs (1)	£ million	0.23	4%	0.08	4%	0.02	2%
Total							
▪ Employment	nos.	631	100%	248	100%	71	100%
▪ Requiring Training	nos.	316	100%	124	100%	35	100%
▪ Training Costs	£ million	5.15	100%	2.21	100%	0.81	100%

Note: (1) based on average training cost of £15,000 per person; (2) See: Annex 7.1, Section 6; and (3) based on: high-end tourist resort (40 rooms); and eco-tourism facility (20 chalets) – See: Annex 7.2.

Technical Assistance

Technical assistance will be required to support the resettlement. The professionals required are likely to include: administrators, police, doctor, nurses, teachers, family/community advisers, operations managers and utilities managers. This will need to be specified when the results of the Human Resources Study are completed and reviewed. The indicative costs are presented in Annex 7.4 (Table 6.2) and summarised as follows:

- Option 1 – 18 professional specialists, annual cost of £2.2 million.
- Option 2 – 13 professional specialists, annual cost of £1.6 million.
- Option 3 – Seven professional specialists, annual cost of £0.9 million.

Income Generation Opportunities

This section presents indicative estimates of the potential income that could be generated from the employment by sector as summarised in Table 7.7. The income estimates are based on an average salary/wage of £620 ($1,000) per month/£7,440 per year – based on the following:

- Community public sector – average salaries/wages paid by the public sector in the three OTs cited in Annex 7.4.
- US NSFDG – assumes wages would be $1,000 (£620) per month, with the employee living in the prospective Chagossian settlement on Diego Garcia[10].
- Tourism employees (i.e. upmarket tourist resort and eco-tourism facility) are also assumed to earn £620 ($ 1,000) per month (See: Annex 7.2, Section 6).

The resulting indicative annual income estimates by sector and option (all expressed in 2014 constant prices) are:

	Option 1	Option 2	Option 3
Employment	631	248	71
% of Labour Force	84%	99%	94%
Annual Income	£4.69 million	£1.84 million	£0.53 million

Table 8.5. Indicative Estimates of Potential Employment and Income by Sector and Option

		Option 1		Option 2		Option 3	
Component	**Unit**	**nos.**	**%**	**nos.**	**%**	**nos.**	**%**
Population and Labour Force							
▪ Population	nos.	1,500		500		150	
▪ Labour Force	nos.	750	*50%*	250	*50%*	75	*50%*
Total Potential Employment							
Community – Public Sector	nos.	263	*42%*	175	*70%*	53	*75%*
US NSFDG	nos.	263	*42%*	63	*25%*	15	*21%*
Tourism Developments							
▪ High-End Tourist Resort (40 rooms)	nos.	56	*9%*				
▪ Eco-Tourism Facility (20 chalets)	nos.	20	*3%*				
Other Activities	nos.	30	*5%*	10	*4%*	3	*4%*
Total – Potential Employment	**nos.**	**631**	***100%***	**248**	***100%***	**71**	***100%***
Percentage of Labour Force	**%**	***84%***		***99%***		***94%***	
Total Potential Salaries and Wages							
Community – Public Sector	£ million	1.95	*42%*	1.30	*70%*	0.39	*75%*
US NSFDG	£ million	1.95	*42%*	0.47	*26%*	0.11	*21%*
Tourism Developments							
▪ High-End Tourist Resort (40 rooms)	£ million	0.42	*9%*				
▪ Eco-Tourism Facility (20 chalets)	£ million	0.15	*3%*				
Other Activities	£ million	0.22	*5%*	0.07	*4%*	0.02	*4%*
Total – Potential Salaries and Wages	£ million	**4.69**	***100%***	**1.84**	***100%***	**0.53**	***100%***
Average Salary/Wage:							
▪ **Per month**	£/month	**620**		**620**		**620**	
▪ **Per Year**	£ per year	**7,440**		**7,440**		**7,440**	

Source: Annex 7.4 (Appendix A, Table 15).

Indicative Financial Forecasts

Table 8.6 presents the indicative forecasts of potential revenue and expenditure for each of the three options in 2014 constant prices – from Year three (years one and two are for preparatory studies and investigations). For Option 1, these include the results 'with' and 'without' the annual Operation and Maintenance costs associated with the airport and the breakwater/harbour. The 'without' alternative

has been included in order to indicate the implications of being able to access the existing airfield and harbour facilities on Diego Garcia – instead of having to build separate facilities. Details are presented in Annex 7.4 (in Section 8 of the Annex), including the revenue and expenditure parameters and assumptions.

The main indicative results for each option are summarised as follows:

- Option 1:
  - Revenue[11] is projected to reach £1.86 million in Year 10 and £4 million per year by Year 20.
  - Expenditure is forecast to rise to £28 million by Year 10. Annual expenditure would be dominated by the annual O&M costs for infrastructure, which would account for 69% of the annual costs. However, excluding the annual costs of the airport and the breakwater/harbour, the annual cost would be £15 million in Year 10.
  - Deficit – Option 1 would incur significant annual deficits by Year 10: rising to £26 million with the airport/harbour; or £13 million without these facilities.
  - Deficit cost per islander (pop. 1,500) – in Year 10, the deficit would be equivalent to: (i) with case: £17,350 per islander; and (ii) without case: £8,600 per islander.
- Option 2:
  - Revenue is projected to reach £1.3 million by Year 10 and £2 million by Year 20[12].
  - Expenditure is forecast to reach £10.5 million in Year 10. Annual expenditure would be dominated by the annual O&M costs for infrastructure (39%), followed by EIA – annual M&E (21%), shipping service (19%) and professional specialists (15%).
  - Deficit – the estimated annual deficit would rise to more than £9 million by Year 10. Deficit cost per islander (pop. 500) – in Year 10, the deficit would be equivalent to £8,400 per islander.
- Option 3:
  - Revenue is projected to reach £0.8 million by Year 10 £1.2 million by Year 20.[13].
  - Expenditure is forecast to reach to £7.4 million by Year 10. Annual expenditure would be dominated by the annual O&M costs for infrastructure (33%), followed by EIA – annual M&E (29%), shipping service (20%) and professional specialists (12%).
  - Deficit – the estimated annual deficit would be £6.6 million by Year 10. Deficit cost per islander (pop. 150) – in Year 10, the deficit would be equivalent to £44,100 per islander.

The indicative annual deficit for each option remains substantial throughout the period with little progress towards self-sufficiency. In each option there is a deficit throughout the period. In constant prices the annual deficit is projected to peak and then start to decline slowly. In Option 1 the decline is 9% between year 10 and year 20 (including airport and harbour). In Option 2 the decline is 13.6% between year seven and year 20. In Option 3 the decline is 14.5% between year six and year 20.

Table 8.6 Indicative Financial Forecasts by Option (£ million, 2014 constant prices)

	Years							
Component	3	4	5	6	7	10	20	Distr. (%)
OPTION 1								
Revenue								
Stamps, Coins, etc.	0.09	0.12	0.15	0.18	0.21	0.25	0.25	*6.3%*
Utility Charges (Electricity/Water/Sewer.)		0.07	0.15	0.22	0.29	0.49	0.61	*15.3%*
Landing Fees							1.00	*25.0%*
Tourism					0.34	0.34	0.68	*17.0%*
Shipping						0.38	0.63	*15.6%*
Taxes						0.23	0.47	*11.7%*
Miscellaneous		0.02	0.03	0.04	0.08	0.17	0.36	*9.1%*
Total – Revenue	**0.09**	**0.21**	**0.33**	**0.44**	**0.93**	**1.86**	**4.00**	***100%***
Expenditure								

Component	Years 3	4	5	6	7	10	20	Distr. (%)
Administration		0.34	0.56	0.77	1.09	1.33	1.33	*4.8%*
Annual O&M Costs		3.85	7.71	11.56	15.42	19.27	19.27	*69.2%*
Shipping Service		2.50	2.50	2.50	2.50	2.50	2.50	*9.0%*
Professional Specialists		0.37	0.74	1.11	1.48	2.22	2.22	*8.0%*
Medevacs		0.08	0.15	0.23	0.31	0.38	0.38	*1.3%*
EIA – Annual M&E[14]					2.17	2.17	2.17	*7.8%*
Total – Expenditure	**0.00**	**7.14**	**11.66**	**16.17**	**22.97**	**27.87**	**27.86**	***100%***
Exp. Without Airport and Breakwater/Harbour	**0.00**	**4.52**	**6.41**	**8.30**	**12.47**	**14.75**	**14.74**	
Surplus/(Deficit)	**0.09**	**(6.93)**	**(11.33)**	**(15.73)**	**(22.04)**	**(26.01)**	**(23.86)**	
Without Airport and Breakwater/Harbour	**0.09**	**(4.30)**	**(6.08)**	**(7.86)**	**(11.54)**	**(12.89)**	**(10.74)**	
OPTION 2								
Revenue								
Stamps, Coins, etc.	0.09	0.12	0.15	0.18	0.21	0.25	0.25	*12.3%*
Utility Charges (Electricity/Water/Sewer.)	0.05	0.09	0.13	0.16	0.21	0.21	0.21	*10.3%*
Landing Fees						0.02	0.03	*1.6%*
Tourism					0.34	0.34	0.68	*33.3%*
Shipping					0.30	0.30	0.50	*24.5%*
Taxes					0.09	0.09	0.18	*9.0%*
Miscellaneous	0.01	0.02	0.03	0.03	0.12	0.12	0.19	*9.1%*
Total – Revenue	**0.15**	**0.24**	**0.30**	**0.37**	**1.27**	**1.33**	**2.04**	***100%***
Expenditure								
Administration	0.18	0.25	0.42	0.48	0.50	0.50	0.50	*4.8%*
Annual O&M Costs	1.23	2.46	3.28	4.10	4.10	4.10	4.10	*39.0%*
Shipping Service	2.00	2.00	2.00	2.00	2.00	2.00	2.00	*19.0%*
Professional Specialists	0.25	0.50	0.87	1.11	1.61	1.61	1.61	*15.3%*
Medevacs	0.04	0.08	0.10	0.13	0.13	0.13	0.13	*1.2%*
EIA – Annual M&E			2.17	2.17	2.17	2.17	2.17	*20.7%*
Total – Expenditure	**3.69**	**5.28**	**8.84**	**9.99**	**10.51**	**10.51**	**10.50**	***100%***
Surplus/(Deficit)	**(3.54)**	**(5.05)**	**(8.53)**	**(9.61)**	**(9.24)**	**(9.18)**	**(8.46)**	
OPTION 3								
Revenue								
Stamps, Coins, etc.	0.09	0.12	0.15	0.18	0.21	0.25	0.25	*20.5%*
Utility Charges (Electricity/Water/Sewer.)	0.06	0.08	0.11	0.11	0.11	0.11	0.11	*9.3%*
Landing Fees						0.01	0.02	*1.3%*
Tourism					0.34	0.34	0.68	*55.5%*
Shipping								
Taxes					0.03	0.03	0.05	*4.3%*
Miscellaneous		0.02	0.03	0.03	0.07	0.07	0.11	*9.1%*
Total – Revenue	**0.15**	**0.23**	**0.29**	**0.32**	**0.76**	**0.81**	**1.22**	***100%***
Expenditure								
Administration	0.15	0.30	0.35	0.35	0.35	0.35	0.35	*48.%*
Annual O&M Costs	1.23	1.84	2.46	2.46	2.46	2.46	2.46	*33.1%*
Shipping Service	1.50	1.50	1.50	1.50	1.50	1.50	1.50	*20.2%*
Professional Specialists	0.26	0.52	0.78	0.91	0.91	0.91	0.91	*12.2%*

Component	Years							Distr. (%)
	3	4	5	6	7	10	20	
Medevacs	0.02	0.03	0.04	0.04	0.04	0.04	0.04	*0.5%*
EIA – Annual M&E		2.17	2.17	2.17	2.17	2.17	2.17	*29.2%*
Total – Expenditure	**3.16**	**6.36**	**7.29**	**7.43**	**7.43**	**7.43**	**7.42**	***100%***
Surplus/(Deficit)	**(3.01)**	**(6.14)**	**(7.00)**	**(7.10)**	**(6.67)**	**(6.61)**	**(6.20)**	

Source: Annex 7.4 (Appendix A, Tables 16, 17 and 18).

These costs are summarised in the table below, in 2014 constant prices. The indicative capital costs include the costs for: (i) physical infrastructure; (ii) preparation and construction supervision; (iii) project management unit; (iv) EIA prior to and during the construction phase; and (v) training costs.

Table 8.7: Resettlement Option Summary Costs

	Option 1	Option 2	Option 3
Indicative total capital cost estimates	£423.3 million – phased over six years	£111.6 million – phased over four years	£65.4 million – phased over three years
Indicative capital costs, without airport and breakwater/harbour (Option 1 only)	£190.2 million – phased over six years	£111.6 million – phased over four years	£65.4 million – phased over three years
Capital costs per head of population			
3. Total capital costs	£282,000 per head	£223,000 per head	£436,000 per head
4. Capital costs. without airport and breakwater/harbour (Option 1 only)	£127,000 per head	£223,000 per head	£436,000 per head
Indicative annual O&M costs			
1. Total per year	£21.5 million p.a.	£6.3 million p.a.	£4.7 million p.a.
2. Total, without airport and breakwater/harbour (Option 1 only)	£9 million p.a.		
Indicative capital replacement and refurbishment costs (after 10 years)			
1. Total	£37 million	£9.4 million	£5.5 million
2. Total, without airport and breakwater/harbour (Option 1 only)	£16 million		

Indicative cost estimates have been prepared for a 'pilot resettlement scheme' of about 50 Chagossians – who might form an initial community, before a larger resettlement programme might be planned. A pilot scheme has the advantage of Chagossians being able to experience the conditions and learn lessons before a large programme of resettlement might be implemented.

The estimates presented below assume that the pilot scheme would cater for 50 Chagossians (plus supporting specialists) and would be based on Diego Garcia. However, reducing the initial population to a third of Option 3 (pop. 150) would not reduce the costs proportionately – since there is a range of basic service provisions that would have to be met. Prospectively, the lower number would also entail appropriate selection procedures and not include families with children.

Table 8.8 presents a 'best estimate' of the indicative capital costs for the 'pilot resettlement scheme'. The estimates assume a practical, modern support and lifestyle, and that linkage with US Naval Facility water supply and waste disposal facilities could be agreed. The estimates also assume that the infrastructure provided would be amenable to medium term use, upgrading and expansion. In addition, the indicative estimates include: (i) preparation costs (i.e. site investigations, engineering designs and plans, etc.); (ii) construction supervision; (iii) project management unit; (iv) environmental impact assessment; and (v) training costs.

The indicative capital cost estimates amount to £32.4 million over an implementation period of two years, which would amount to £648,000 per head.

Table 8.8 Option: Pilot Resettlement Scheme – Indicative Capital Cost Estimates in 2014 Constant Prices

Component	£ million	Distribution (%)
Preparation Costs[1]	**1.33**	***4.1%***
Infrastructure – Civil Works		
Transport and Sea Defences[2]	6.00	*18.5%*
Energy[3]	2.05	*6.3%*
Housing and Public Buildings[4]	10.50	*32.4%*
Utilities and Services[5]	3.60	*11.1%*
Sub-Total – Base Costs	22.15	*68.3%*
Physical Contingencies (20%)	4.43	*13.7%*
Sub-Total – Civil Works	**26.58**	***82.0%***
Construction Supervision[6]	**1.11**	*3.4%*
Project Management Unit[7]	**0.50**	*1.6%*
Sub-Total – Infrastructure Costs	**29.52**	***91.1%***
Other Costs		
EIA – Construction Phase + Annual Monitoring[8]	2.50	*7.7%*
Training Costs[9]	0.38	*1.2%*
Sub-Total – Other Costs	**2.88**	***8.9%***
Total	**32.40**	***100%***

Notes:
(1) Set at 6% of infrastructure base costs.
(2) Assumes requirement for berthing of small vessels, lower road traffic and less technical support.
(3) Diesel generation: capex estimate of £2.0 million – minimum estimate for purchase, shipping and installation of two (2) containerised diesel generator sets.
(4) Provision of accommodation, administration, medical and recreation facilities; but no school.
(5) Drinking water supply costs maintained, with reduced costs for wastewater and solid waste disposal.
(6) Set at 5% of infrastructure base costs.
(7) PMU – two specialists for one year.
(8) Estimate prepared by the Environmental Specialist – applies to all options.
(9) Assumes 50% of the Chagossians in the pilot scheme will require training at £15,000 each.

Table 8.9 presents the indicative annual recurrent cost estimates. These imply costs of nearly £5 million per year, which is equivalent to £100,000 per head. The main component costs would be: (i) infrastructure operations and maintenance 36%; (ii) shipping service 30%; and (iii) EIA – annual monitoring and evaluation 20%.

Table 8.9 Option: Pilot Resettlement Scheme – Indicative Annual Recurrent Cost Estimates in 2014 Constant Prices

Component	£ million	Distribution (%)
Administration[1]	0.24	*4.8%*
Infrastructure – Civil Works[2]		
Transport and Sea Defences	0.39	*7.8%*
Energy	0.75	*15.1%*
Housing and Public Buildings	0.48	*9.7%*
Utilities and Services	0.18	*3.6%*
Sub-Total – Infrastructure	**1.80**	***36.3%***
Other Costs		
Shipping Service[3]	1.50	*30.2%*
Professional Specialists[4]	0.41	*8.3%*
Medevacs[5]	0.01	*0.2%*
EIA – Annual Monitoring and Evaluation[6]	1.00	*20.2%*
Sub-Total – Other Costs	**2.92**	***58.9%***
Total	**4.96**	***100%***

Notes:
(1) Set at 5% of all other annual costs.
(2) Estimates prepared by Infrastructure Specialist.
(3) Same estimate as Option 3.
(4) Assumes three (3) professional specialists: doctor, policeman and operations manager.
(5) Set at £250 per head.
(6) Estimate prepared by the Environmental Specialist – reduced to £1 million.

8.3.2 Next Steps

The issues and challenges facing the potential resettlement of selected islands in the Chagos Archipelago are very significant. They include: human, physical (infrastructure), political, environmental, financial and economic. If a decision is taken to proceed, then careful planning and consultation will be required at every stage.

The main steps are:

- Establish how many Chagossians want to resettle and on what basis[15]:
- Conduct further studies and investigations including:
  - **Human Resources Study** of Chagossians proposing to resettle, covering: (i) family size; (ii) age profile; (iii) education and employment background; (iv) skills and experience; (v) aptitude and training potential; (vi) financial resources; etc.
  - **Training Programme** based on the results of the Human Resources Study and commitments by Chagossians wishing to resettle.
  - **Site investigations, engineering studies, final designs and costs** – based on selected island(s). These investigations should also focus on cost minimisation and value for money.
  - **Implementation and Action Plan** – including procedures for appropriate consultation with Chagossians and other stakeholders.
  - **Risk Management Study and Plan** to address all relevant risks and uncertainties; and propose mitigation measures to reduce their impact e.g.: (i) implementation delays; (ii) cost over-runs; (iii) climate change issues; (iv) environmental impacts; (v) welfare for ageing population; (vi) Chagossians who decide not to stay; (vii) limited and insufficient capital resources; (viii) Disaster Management and Evacuation Plan to prepare for unforeseen natural and man-made emergencies[16]

- **Funding Study** to identify sources of funding to support potential resettlement e.g.: (i) capital works[17] and (ii) environmental investigations and monitoring[18]

- Prepare appropriate Constitution and management structure for potential resettlement.
- Investigate potential opportunities for access to facilities of US NSFDG e.g.: (i) airfield and port facilities; (ii) utilities for electricity, potable water, wastewater disposal and solid waste management.
- Investigate potential opportunities to provide services to US NSFDG e.g.: (i) personnel through the facility contractor; (ii) provision of fresh fish, coconut products and other products; (iii) small restaurant and recreational facilities; etc.
- Investigate and promote interest of private sector in opportunities to support potential resettlement e.g. Upmarket Tourism Development and Eco-Tourism Development.
- Investigate and address related issues e.g.: (i) land ownership; (ii) accommodation ownership, mortgages and repayment; (iii) remittances; (iv) entitlement to pensions; (v) access to loans; etc.

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[1] Eagle Island and Egmont atoll were mentioned as possibly suitable for a temporary limited scientific research station and Egmont for an eco-village; See Section 4.

[2] Consulting Programme Managers in DFID's Overseas Territories Department (OTD) and senior managers on the remote OTs of St Helena, Tristan da Cunha and Pitcairn.

[3] (i) small populations; (ii) remote ocean locations; (iii) lack of air access; (iv) shortage of sustained employment opportunities; (v) challenges relating to education, training, health facilities, etc.; and (vi) varying degrees of dependence on UK budgetary support.

[4] Relating to: (i) employment and wages; (ii) revenue and expenditure; (iii) development support; (iv) taxation; (v) unemployment; (vi) pensions; (vii) electricity and water consumption and charges; (viii) engagement of expatriate specialists; etc.

[5] Based on comparative employment levels in the other OTs.

[6] This could be on "single" basis if potential resettlement would be located In Peros Banhos or the Salomons.

[7] In the form of a high-end tourist resort and an eco-tourism facility (See: Annex 7.2).

[8] Actual requirements would depend on the results of a Human Resources Study if a resettlement programme were to proceed.

[9] Final estimates of the training costs may vary considerably, depending on the type and length of training required, and the location of the most appropriate training establishments e.g. UK, Mauritius, Seychelles, etc.

[10] Under this option, the contractor would not be incurring the costs of food and accommodation, etc. which they do in the case of contracted employees from other countries. At present, it is reported contracted employees earn a net average of US$ 300 to US$ 350 (£185 to £216) per month.

[11] The main sources of income are expected to be utility charges, landing fees, tourism levies, shipping receipts and income taxes.

[12] The main sources of income are expected to be tourism levies and shipping receipts; followed by stamps/coins, utility charges and income taxes.

[13] The main sources of income are expected to be tourism levies, stamps/coins and utility charges.

[14] EIA is assumed to commence on completion of the infrastructure. Option 1 EIA therefore starts latest and Option 3 starts earliest. However all Options include EIA investment in year 1 and some ongoing capital investment until the completion of the construction phase. Details are set out in Annex 7.4 and accompanying financial forecasts.

[15] (i) Permanent; (ii) provisional; (iii) periodic visits; etc. Also, including potential need to sign commitment papers.

[16] E.g. reported impact of tsunami on 26th December 2004 was: (i) dead – Sri Lanka 31,000, Maldives 81 and Seychelles <10; and (ii) economic costs – Sri Lanka US$ 1.3 billion, Maldives US$ 0.5 billion and Seychelles US$ 30 million.

[17] FCO and DFID; EU (especially EDF funds); private national and international foundations (e.g. Gates Foundation); public appeals; Chagossian resources and remittances; etc.

[18] FCO and DFID; EU; national and international environmental groups (e.g. Pew Foundation, Bertarelli Foundation, RSPB, universities, etc.); public appeals; Chagossian resources and remittances; etc.

Terms of Reference

For a new Feasibility Study into the resettlement of the British Indian Ocean Territory (BIOT)

January 2014

Foreign and Commonwealth Office

Objective

1. To advise on the feasibility of different options for the resettlement of the British Indian Ocean Territory (BIOT), estimating their likely costs and risks. To address all relevant issues, including financial, legal, environmental, logistics, social, economic and defence.

The Recipient

2. The BIOT Administration.

The Scope

What is included:

3. The **Feasibility Study** will consider a range of **options** for the resettlement of BIOT, **differentiated by factors**, including:
   - The **location**, which would include consideration of the outer islands and of Diego Garcia.
   - The **scale** of possible resettlement and sustainable socio-economic development options in the short (5 years), medium (10 years) and long-term (20 years), including livelihood opportunities.
   - The **types** of possible resettlement drawing on suggestions from the initial consultation.
   - The **environmental carrying capacity** of the proposed locations (access to water, energy, sources of food etc.). The environmental feasibility will take into account likely scenarios of climate change and sea level rise, following good practice from the IPCC (Intergovernmental panel on climate change).
   - Take full account of scientific uncertainty around areas such as climate change, sea level rise and carrying capacity, including fisheries productivity by expressing ranges and probability instead of a single model as the basis.
   - When considering the options, the Study will address the following **questions**:
     - What would be the cost to the UK of establishing and maintaining a settlement over 5, 10 and 20 years?
     - Could a settlement be economically self-sustaining and if so within what time period and under what conditions?
   - The Study will factor in the suggestions made in the **initial consultation** on the review of resettlement of BIOT and propose which specific options will be considered. The options to be analysed will form part of the Inception Report. The Study will take account of the suggestions made during the consultation on the type of resettlement. These suggestions include: a modern lifestyle; a subsistence lifestyle; an eco-village; a pilot resettlement with some employment on the Diego Garcia military base; a scientific research station.

What is excluded:

4. Proposals or suggestions not directly relating to the feasibility of resettlement are outside the scope of this study. This includes any issues relating to sovereignty, nationality, and historical compensation payments.
5. This work is undertaken without prejudice to any on-going litigation.

Requirements

6. The options should be developed using multi-disciplinary expertise. Drawing on experts will be essential, inter alia, in the fields of livelihoods and social development, economics, defence, industrial development, anthropology, health care, education, environment, climate change, science and conservation.
7. The Feasibility Study would need to analyse each option, in a neutral way. It should include analysis of the factors below, but could use an alternative framework to the PESTLE one suggested. The framework must be specified in the Inception Report.

- **Political** factors, including how the US Naval Support Facility on Diego Garcia could impact the feasibility of resettlement options.
- **Economic** factors, including the full 'lifecycle' cost (5, 10, 20 years) of any resettlement option to the UK. All options should consider the development of a sustainable local economy, social and livelihoods development and income generation for any resettled individuals and the infrastructure and other requirements for this. It should assess, with reference to other UK Overseas Territories and other low-lying small island states, the likelihood of the economy being financially self-sufficient and meeting prudential financial guidelines, and the timescale if this were to happen. See below for a fuller analysis of potential cost implications. It should explore economic opportunities through models of eco-tourism or non-damaging eco-system use for example.
- **Social** factors, including the practical aspects of life in a remote location and the extent of public service provision (including health, welfare and social services, education, law enforcement and housing provision at a scale appropriate for each option) and population levels in view of the options in question and of 'basic social needs'. Consider the standards in the Millennium Development Goals.
- **Technological** factors, including the need to establish and maintain access to the islands, both by the resident population and for goods and services; the development of infrastructure (including running water and waste management), transport, communications and coastal engineering.
- **Legal factors**: BIOT ordinances and the nature of the BIOT Marine Protected Area (MPA) can be amended. In considering options, the extent to which existing provisions, in Ordinances and the environmental obligations of BIOT will be considered. The impact on the present MPA, will need to be highlighted, along with any possible new legal implications. Human rights considerations should also be taken into account.
- **Environmental** factors: The study should assess:
  - Environmental factors which would affect habitation: for example, Carrying capacity assessments to examine the potential natural resources in situ which support life (potable water, food, energy) and the viability of economic activities such as tourism development, fishing, and industrial development.
  - A climate change and variability assessment looking at future scenarios and how these might affect life on the island. This should include sea level rise models, rogue waves, coastal erosion and tropical cyclone/storm event frequency and intensity and changes in wave/wind conditions.
  - Possibilities for the island's natural resources to promote economic activities should also be examined, for example, fishing (pelagic, inshore recreational/game fishing), together with the coral reefs and other marine and terrestrial resources and their potential eco-tourism value.
  - Impacts of resettlement on the environment: including change in land use, waste management and economic activities. Costs and benefits associated with each of the options should be considered, including initial capital costs, running costs and contingent liabilities, including from the UK's legal obligations.
- The costs of mitigating risks, in the event of a resettlement, should also be considered. The options should be cognisant of the 2012 HMG White Paper on the Overseas Territories which restates UK policy and obligations, including the policy that their "reasonable assistance needs, where financial self-sufficiency is not possible, are a first call on the aid budget".

8. The 2000-2002 Feasibility Study will be made available for its detailed content and conclusions to be considered as part of this study. Other background material relevant to the Study, including other reports relating to the 2002 Feasibility Study and the extensive documentation gathered as part of the initial consultations of stakeholders in July 2013 will also be made available for consideration.

Reporting requirements:

9. The following are essential:
   - An **Inception report**. This should specify the different options for resettlement to be considered as part of the Study, and the framework for the analysis, including how risk and cost, will be evaluated. It should explain the methodology to be used. It should provide project management information:
     - a standard format for the monthly update reports;
     - a risk management plan for the project; and
     - a proposed timeframe for delivery and reporting, including monthly milestones.
     - A list of proposed experts to be engaged and their subject areas (together with curriculae vitae).

     The BIOT Administration will consult stakeholders on this document before it is finalised.
   - Monthly **update reports** should provide information about progress against the monthly milestones, and include a forward planning timetable. Monthly reports should be kept brief to retain the focus on producing the main study. These reports may be used to inform and consult stakeholders, by the BIOT Administration.
   - **Exception reports** as necessary to bring issues or risks to the attention of the Recipient, including problems with delivery, or proposed amendments to the project.
   - A **Final Report** setting out the different options for resettlement of BIOT and analysis of the feasibility each option. The BIOT Administration is committed to publishing the full factual feasibility study by the consultants, without revision.

Performance requirements:

10. Attention to detail and a sound and agreed quality assurance process is essential. The study will seek input from Chagossians in the UK, Seychelles and Mauritius and other interested parties throughout the review. There should be clarity about how this input relates in process terms to the analysis of the Feasibility Study, and clear parameters on transparency and confidentiality. Consultants will be required to visit the Islands which will be funded by the BIOT Administration.

Security requirements:

11. Consultants contracted to deliver the review will need to comply with contractual security requirements, including compliance with the requirements of the Official Secrets Act.

Information management and reporting:

12. The outputs of the Study and the rights to the material collated in the process of conducting the Study, including all communications will be the property of the BIOT Administration. An information management system should be agreed at the start of the process, including the disclosure of any documents, as per contractual requirements.

Risk and issue management:

13. The consultants should have a robust risk management procedure, including appropriate, agreed mechanisms for internal escalation, and an understanding of when such mechanisms will be invoked.

Timeframe

14. The Inception Report should be agreed, taking account of input from the stakeholders within four weeks of project initiation. The analysis of the feasibility and costs of the options for the resettlement of BIOT should be completed within 12 months. Extensions/amendments to this timeline subject to unforeseen circumstances and requirements of the project shall be agreed by the recipient at least one calendar month in advance.

Competition Criteria

15. We aim to conduct the competition using HMG Consultancy One framework agreement and the evaluation rules which relate to it. Typically we will be looking for a provider who is credible, impartial and can deliver value for money.

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ANNEX 56

Policy Review of Resettlement of the British Indian Ocean Territory: Written statement – HCWS272 (Mr Hugo Swire, Minister of State at the Foreign and Commonwealth Office), 10 February 2015

Policy Review of Resettlement of the British Indian Ocean Territory:Written statement - HCWS272

WS **Foreign and Commonwealth Office** Made on: 10 February 2015

Made by: **Mr Hugo Swire** (Minister of State at the Foreign and Commonwealth Office)

Commons **HCWS272**

Policy Review of Resettlement of the British Indian Ocean Territory

I am writing to inform the House of the publication today, of the report of the independent feasibility study on resettlement of the British Indian Ocean Territory by consultants KPMG LLP. We particularly welcome the contribution of Chagossians and other interested parties here, in Mauritius and Seychelles, in developing the outcome of this factual study resulting in a credible, comprehensive evaluation of the practicalities and substantial challenges of possible resettlement. This is an important milestone, enabling interested parties with different perspectives to better understand the range of issues affecting any potential resettlement.

Whilst recognising the options in KPMG's report are not exhaustive even for resettlement, the report provides a solid basis on which to begin our Policy Review. The Government will need to consider carefully the study's factual findings alongside a range of factors, including the history of the territory and its former population, ongoing costs and liabilities to the UK taxpayer, the ability of the military facility on Diego Garcia to operate unhindered and other Chagossian aspirations that do not involve permanent resettlement of BIOT.

I will keep the House updated on developments. Copies of the full report and accompanying annexes are attached to this statement.

Feasibility Study (PDF Document, 1.6 MB)
Volume 2 Annexes (PDF Document, 2.84 MB)
Annex 7.1 Fisheries Data (Excel SpreadSheet, 81.3 KB)
Annex 7.2 Tourism Data (Excel SpreadSheet, 91.66 KB)
Annex 7.3 Coconuts Data (Excel SpreadSheet, 49.89 KB)
Annex 7.4 Resettlement Options Data (Excel SpreadSheet, 225.88 KB)

This statement has also been made in the House of Lords: **HLWS247**

ANNEX 57

Progress in reviewing policy on resettlement of the British Indian Ocean Territory: Written Statement – HCWS461 (James Duddridge, Parliamentary Under Secretary of State at the Foreign and Commonwealth Office), 24 March 2015

Progress in reviewing policy on resettlement of the British Indian Ocean Territory :Written statement - HCWS461

WS **Foreign and Commonwealth Office** Made on: 24 March 2015

Made by: **James Duddridge** (Parliamentary Under Secretary of State at the Foreign and Commonwealth Office)

Commons **HCWS461**

Progress in reviewing policy on resettlement of the British Indian Ocean Territory

My Right Honourable Friend the Minister of State for Foreign and Commonwealth Affairs (Mr Hugo Swire) informed the House on 10 February 2015 of the next steps in the Government's review of its resettlement policy in the British Indian Ocean Territory (BIOT), following completion, on schedule, of an independent feasibility study. The study found there was not a clear indication of likely demand for resettlement, and costs and liabilities to the UK taxpayer were uncertain and potentially significant. Ministers have now agreed that further work should proceed to address these fundamental uncertainties to a point that a decision on the way ahead is possible.

This statement has also been made in the House of Lords: **HLWS440**

ANNEX 58

BIOT Resettlement Policy Review: Summary of Responses to Public Consultation, 21 January 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.

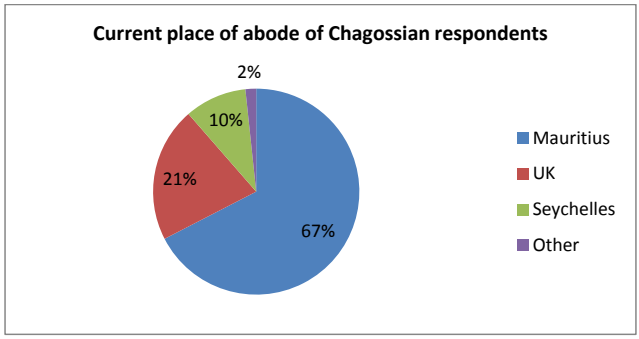
Types of responses

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.

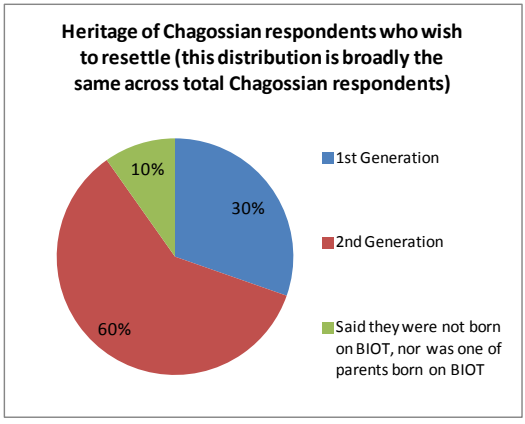
Individual responses from Chagossians

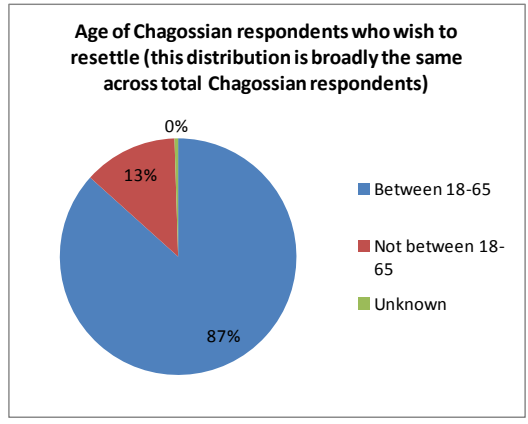
Chagossian respondents

The majority of Chagossians who responded are currently living in Mauritius.



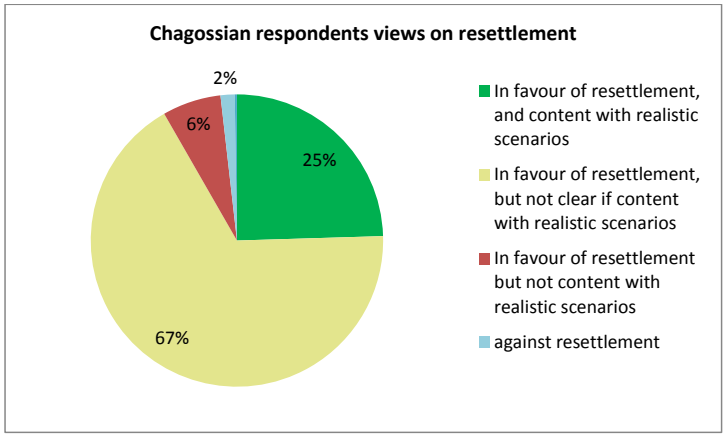
Most Chagossian respondents are of working age and have a connection to BIOT through their parents (what we define as “2nd Generation” in the table below) rather than having been born there themselves.





Views on resettlement

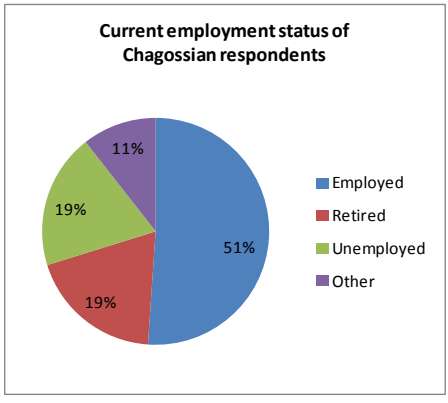
Though the vast majority of Chagossians were in favour of resettlement in principle, there were more nuanced views about the scenarios that were presented in the consultation document as the most realistic description of how it might work.

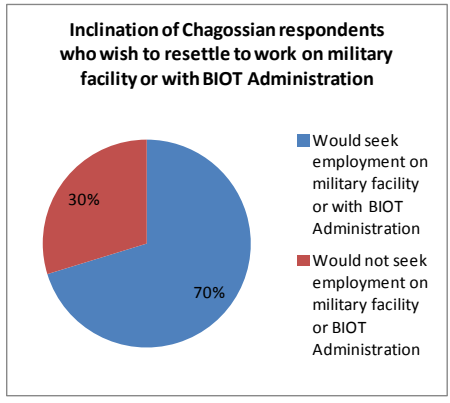


Employment opportunities in any resettlement

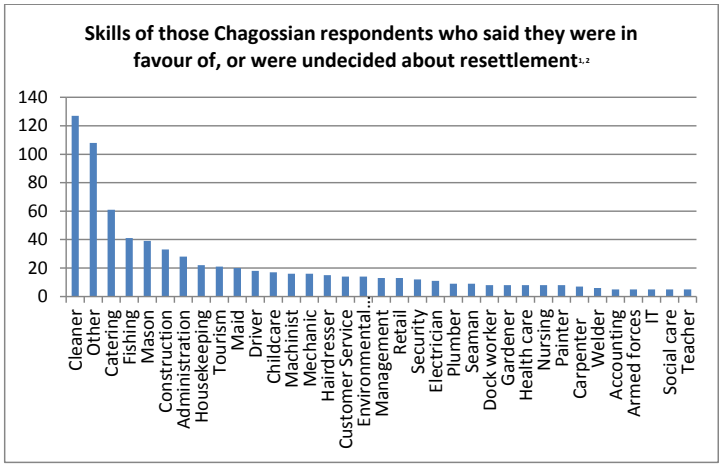
Around half of Chagossians who wanted to return are currently in employment (see chart overleaf). Of those who responded to the questionnaire, over 1,000 additional dependents were indicated, though it is impossible to determine whether some of these dependents are also respondents themselves.

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.



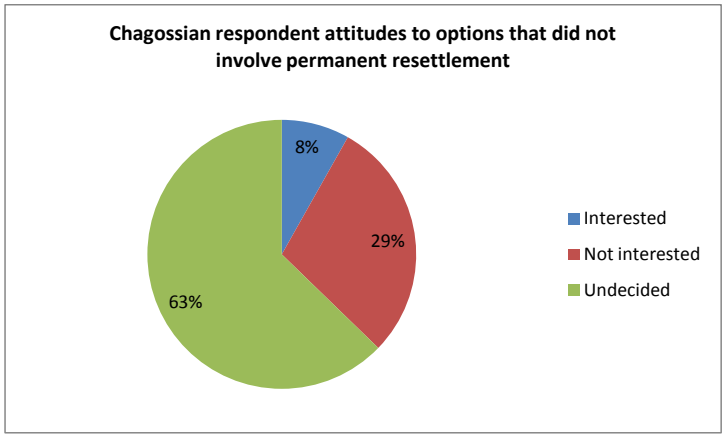


A range of practical skills were declared by Chagossians in their responses, though many indicated they would seek training in other areas including tourism, environmental management, and Territory administration.



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 Chagossian representatives, including the UKChSA 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.

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 59

British Indian Ocean Territory (BIOT) Policy Review of Resettlement Consultation with Interested Parties, 4 August 2015

BRITISH INDIAN OCEAN TERRITORY (BIOT) POLICY REVIEW OF RESETTLEMENT CONSULTATION WITH INTERESTED PARTIES

Introduction

1. The UK Government announced in December 2012 that it would take stock of its resettlement policy towards the British Indian Ocean Territory (BIOT).[1] An independent feasibility study on resettlement of BIOT was subsequently commissioned from consultants KPMG in March 2014, concluding in January 2015 with a report published on 10 February 2015.[2] Ministers of the previous Government considered the KPMG study, balancing a range of factors including the history of the territory and its former population, potential costs of resettlement and the ability of the military facility on Diego Garcia to operate unhindered.

2. On 24 March 2015 the UK Government announced that the independent feasibility study[3] showed that there was not a clear indication of the likely demand for resettlement, and costs and liabilities to the UK taxpayer were uncertain and potentially significant. Ministers asked for more information on these areas to enable a decision on the way ahead. Further work is currently underway led by the Foreign and Commonwealth Office in consultation with other government departments to clarify these areas. As part of this further work, the UK Government is running a consultation exercise between August and October 2015 to seek views from Chagossians and other interested parties on the areas listed below:

Consultation with Chagossians and other interested parties

3. **This consultation document is not a statement of UK Government Policy.** No decisions in respect of resettlement have yet been made, but for the purposes of better gauging demand, the UK Government has sought to present the most realistic way in which such a resettlement would hypothetically take place. Based on this, we would like views on:

i) How many Chagossians want to resettle in BIOT?

ii) The UK Government's latest assessment of the likely costs and liabilities to the UK taxpayer.

iii) Alternative options not involving resettlement that could respond to Chagossian aspirations.

Purpose of consultation and assumptions

4. The primary objective of this consultation is to understand the demand for resettlement from Chagossians which will then lead to a clearer assessment of the likely costs and ongoing liabilities to the UK Government. Whilst no policy decisions have been taken on any aspects of resettlement, we wish to make it clear from the outset that a resettlement which is open to all may not be viable, depending on the cost of providing adequate social support, including health and education, for those living on such remote islands.

5. A resettlement could be based on conditions that require resettled Chagossians of working age to have a job; security clearances and, that all resettlers are sufficiently resilient to be able to cope with the limited healthcare facilities and lifestyle realistically available in BIOT. Although yet to be determined, permission to reside could be revoked for individuals who are unable to meet these or other requirements following resettlement.

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[1] https://www.gov.uk/government/news/european-court-of-human-rights-decision-on-chagossian-case

[2] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-02-10/HCWS272/

[3] Written Ministerial Statement http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-24/HCWS461/

Who would be eligible for resettlement?

6. The UK Government will determine any eligibility criteria and clarify any conditions should it decide to proceed with resettlement. Conditions may include employment status and medical screening given the limited social and medical infrastructure. For the purposes of this consultation, we are interested in understanding the demand for resettlement from Chagossians and their immediate dependants which may include a spouse/long term partner, children up to 18 and parents. Appropriate child safeguarding measures would be required for any resettled population that included children. Although yet to be determined, it may not be viable for children to be included in a pilot option.

What is out of scope of this consultation exercise?

7. This consultation is focused on the practical feasibility of resettlement. British nationality and immigration criteria remain out of scope. Eligibility for UK pensions and social benefits, and access to UK healthcare would remain unchanged.

Sovereignty

8. The UK Government has no doubt about its sovereignty over BIOT. However, the UK Government has a long standing commitment to cede the Territory to Mauritius when no longer required for defence purposes. This commitment means that the UK Government could not guarantee continued support or permission to reside to Chagossians on the Islands once the Territory is ceded to Mauritius. The views of the Government of Mauritius are also being sought on the potential resettlement of Chagossians and will be taken into account.

What action do you need to take?

9. **For Chagossians:** Based on the information in this document about the type of lifestyle and jobs that could realistically be made available in BIOT (Table 1.0), would you wish to resettle? By completing the **questionnaire at Annex A** you will help the UK Government to better understand how many people would resettle and how much this is likely to cost the UK Government. You are also welcome to comment on the latest indicative costs compiled by the UK Government associated with resettlement (Tables 1.1 – 1.3) as well as on the alternative options which will be considered alongside resettlement options by the UK Government. **Please submit your questionnaire to** BIOT.FeasibilityStudy@fco.gov.uk **by 27 October 2015.**

10. **For other interested parties:** your assessment of the likely demand for resettlement and/or views on any of the proposals are invited. **Please submit your questionnaire to** BIOT.FeasibilityStudy@fco.gov.uk **by 27 October 2015.**

How will the Consultation Exercise be run?

11. Views will be sought from Chagossians and interested parties primarily through e-mail correspondence supplemented by meetings with FCO and BIOT Administration Officials in Mauritius, Seychelles and the UK as required. French /Creole translations of correspondence and interpretation for meetings will be provided where possible. You are welcome to circulate this document and request for views to other interested parties should they wish to comment.

How will questionnaires be used?

12. Completed questionnaires will be analysed to develop a better understanding of the numbers, skills, age range and locations from which Chagossians wish to resettle as well as interest in alternative options. This analysis will form part of the UK Government's Policy Review of resettlement and all personal data will be handled appropriately and not shared externally. **Please submit any queries to** BIOT.FeasibilityStudy@fco.gov.uk.

Resettlement Options - Most Realistic Potential Lifestyles

13. The UK Government is continuing to analyse KPMG's three resettlement options of a pilot, medium and large resettlement as well as another medium size option on the Outer Islands only. The following table clarifies how, hypothetically, these resettlement options could work and the type of living conditions and jobs most likely to be available. It is important to note that these do not constitute any form of commitment by the UK Government to resettlement taking place, or in the forms below, but present our assessment of the most realistic scenario for the purposes of clearly assessing demand from Chagossians. **Please consider the descriptions below when answering the questionnaire at Annex A.**

Table 1.0

Options under consideration	Pilot option in Diego Garcia	Medium option in Diego Garcia	Medium option in Outer Islands only	Large Option in Diego Garcia & Outer Islands
Approx Population	**50-150**	**500**	**500**	**1500**
Implementation	A pilot settlement would most likely be offered on a 1-2 year temporary basis on Diego Garcia and evaluated[4] over that period before any further potential expansion of population numbers. It is possible that a decision could be taken to end resettlement at this point if the pilot proved to be unsuccessful or economically unsustainable.	It is possible that the largest option could develop from the medium option, and the medium option in Diego Garcia could develop from the pilot.		
Transport/Access to BIOT	No commercial flights would be permitted to land in Diego Garcia. The UK Government would need to charter periodic flights (unlikely to be from the UK but from the nearest appropriate location) and resettled Chagossians would be required to pay a subsidised cost (to be determined) for flying to and from Diego Garcia from this location. Similarly boat access to the Outer Islands would be provided at a subsidised rate (to be determined). Resettled Chagossians would not be able to have visitors in Diego Garcia, and everybody, including visitors to the Outer Islands, would be required to comply with BIOT laws in place at the time.			

4 Evaluation would be carried out by the UK Government and the data gathered during it used to provide greater certainty on the factors affecting resettlement including political, financial, legal, environmental, logistics, social, economic and defence considerations (BIOT Feasibility Study Terms of Reference, January 2014).

Options under consideration	Pilot option in Diego Garcia	Medium option in Diego Garcia	Medium option in Outer Islands only	Large Option in Diego Garcia & Outer Islands
Approx Population	**50-150**	**500**	**500**	**1500**
Livelihoods Overview	Obtaining employment in BIOT is likely to be a precondition of resettlement for all except Chagossians of retirement age and their immediate dependants which may include a spouse/long term partner, children up to 18 and parents. Potential job opportunities are listed below subject to applicants meeting the necessary requirements. Should the UK Government decide to proceed with resettlement, it would review the provisions of the Marine Protected Area (MPA), as necessary. KPMG assess that there is some scope for resettled Chagossians to develop small coconut plots for personal consumption and use with potential supply of by-products[5]. The UK Government does not assess large scale coconut production to be a viable industry in the Territory. Management of a limited tourist industry in the Outer Islands could be implemented on a trial basis initially and would require relevant training for those interested in such work. This would be likely, at least initially, to involve supporting and guiding an increased level of yacht visits rather than permanent new infrastructure such as hotels.			
Type of Jobs	Livelihoods under this option are likely to be: the military facility (e.g. cleaning, working in the catering facilities, environmental and pest control, mechanical repairs, driving transport, port and airport services) and BIOT Administration (BIOTA) (e.g. in environmental work, environmental protection and monitoring, work aboard the BIOTA patrol vessel, administrative support).	Livelihoods under this option are likely to be: the military facility, BIOTA, limited tourism in the Outer Islands and potentially, if Ministers consider it appropriate, some degree of low level commercial fishing.	Livelihoods under this option are likely to be: the military facility, BIOTA, limited tourism in the Outer Islands and potentially, if Ministers consider it appropriate, some degree of low level commercial fishing.	Livelihoods under this option are likely to be: the military facility, BIOTA, environmental work, limited tourism in the Outer Islands and potentially, if Ministers consider it appropriate, some degree of low level commercial fishing.

[5] KPMG Feasibility Study 30 January 2015, page 82

Options under consideration	Pilot option in Diego Garcia	Medium option in Diego Garcia	Medium option in Outer Islands only	Large Option in Diego Garcia & Outer Islands
Approx Population	**50-150**	**500**	**500**	**1500**
Allowances and support	Appropriate allowances and support specifically designed for BIOT would be provided by the UK Government based on need in exceptional circumstances e.g. an individual loses their job unexpectedly or becomes ill and is unable to work temporarily. Child allowances could also potentially be provided but this is unlikely to be made available in a pilot option. The UK Government would not provide UK pensions to those currently ineligible.			
Housing/Services overview	The UK Government would provide housing, utilities and telecommunications where possible to standards similar to those currently available in Diego Garcia, which are not comparable to the UK. Resettled Chagossians would be required to pay for the same services as other occupants e.g. internet provision and consumables. There would be no private ownership of land, as all land would continue to be owned by the Crown. On the Outer Islands, infrastructure and utilities would be more basic than those currently available on Diego Garcia, taking into account environmental risks, costs and practical feasibility, amongst other factors. It is likely that as a resettlement develops with increased numbers of people, utility charges would be payable by Chagossians as well as local BIOT taxes.			
Potential locations for resettlement	Likely to be located on the Eastern Side of Diego Garcia.	Likely to be located on the Eastern Side of Diego Garcia.	Ile du Coin and Ile Boddam are potential locations. Others could be considered.	Diego Garcia; Ile du Coin and Ile Boddam are potential Outer Island locations. Others could be considered.
Medical Provision	Only limited medical facilities would be available in BIOT. A clinic providing medical care similar to General Practioners (GP) in the UK would be made available developing into a health facility providing primary and limited secondary care for the largest resettlement option. Maternity care could not be provided in a pilot option on Diego Garcia. Treatment of serious health problems would require medical evacuation to the nearest appropriate location providing suitable medical facilities (funded by the UK Government). However individuals would be unlikely to be repatriated to the UK for treatment under the National Health Service (NHS) even if they are a British Citizen previously-resident in the UK.[6] Consequently those requiring specialist health advice and treatment or dedicated medical care would be unlikely to be accommodated by these facilities and would not be eligible for resettlement.			
Schooling	The provision of primary and secondary schools would depend on the level of demand and is unlikely to be viable in a pilot option. It is possible that children might be required to be schooled elsewhere. The UK Government would not pay for schooling or higher education outside of BIOT to those currently ineligible.			
Emergency Evacuation	Emergency Evacuation plans would need to be developed by the UK Government once a population size becomes clearer and for any tourism industry developed in the Outer Islands. Emergency Evacuation would likely be to the nearest place of safety. Emergency Evacuation of tourists would not, as a rule, be able to be facilitated through Diego Garcia.			

[6] The NHS requires a person to be ordinarily resident in the UK in order to qualify for free treatment.

	Can resettled Chagossians who want to leave BIOT, come to the UK?
	British Citizenship and UK immigration policy are not part of this consultation exercise. These issues would need to be considered by the UK Government should it decide to proceed with resettlement.
	What support would the UK Government provide to resettled Chagossians who then want to leave BIOT and return to their current place of abode?
	The UK Government would not provide any financial support to Chagossians or their dependants should they decide to return to their current place of abode. The subsidised transport (by air or sea) to the nearest appropriate location would be available to those leaving BIOT. On return to the UK, access to social benefits and pensions would need to follow standard rules and application processes and would be considered against the relevant eligibility criteria. The UK Government would not provide any preferential access to social housing or financial support to returning Chagossians.

Indicative Costs of Resettlement and Annual Costs

Introduction

14. KPMG's cost estimates have been refined on the basis that the UK Government would need to provide separate infrastructure and services from the military facility on Diego Garcia[7] to support resettled Chagossians under the hypothetical lifestyles explained in Table 1.0. It should be noted that the indicative estimates in Tables 1.1. -1.3 could still change following further analysis.

15. The UK Government has provided an indicative budget for each resettlement option, taking into account capital, training, annual and replacement costs (Table 1.1). Annual recurrent costs (Table 1.2) include:

- Operation and maintenance costs of the infrastructure
- Replacement costs of infrastructure components
- Environmental monitoring and evaluation
- Administrative support costs

Table 1.1 **INDICATIVE COSTS (£ MILLIONS) – PHASING BY OPTION as at 4 August 2015**

RESETTLEMENT OPTIONS		OPTION 1 PILOT: DIEGO GARCIA		OPTION 2 MEDIUM 500 PEOPLE		OPTION 3 LARGE 1500 DIEGO GARCIA & OUTER ISLANDS
		50 people	150 people	2 (a) DIEGO GARCIA	2 (b) OUTER ISLANDS ONLY	
A. Capital Costs of infrastructure, based on KPMG's phased implementation	Construction Period	Phased over 3-4 years		Phased over 4 years	Phased over 6 years	Phased over 6 years
	Civil Infrastructure (including security-related infrastructure)	65.7	97.8	153.8	173.5	262.4
B. Initial Training costs	Based on Public Sector, military facility, tourism, fishing and other sectors; 50% labour force working; 25% require training	0.4	0.7	2.1	2.1	5.1

[7] The U.S. would allow limited use of the runway in Diego Garcia. However, the UK would need to provide separate infrastructure and transportation to support a civilian population.

Table 1.2 INDICATIVE ANNUAL RECURRENT COSTS (£ MILLIONS) as at 4 August 2015

RESETTLEMENT OPTIONS		OPTION 1 PILOT: DIEGO GARCIA		OPTION 2 MEDIUM 500 PEOPLE		OPTION 3 LARGE 1500 DIEGO GARCIA & OUTER ISLANDS
		50 people	150 people	2 (a) DIEGO GARCIA	2 (b) OUTER ISLANDS ONLY	
C. Annual Recurrent Costs, including Operation/ Maintenance & Environmental Monitoring including security-related costs	Civil Infrastructure	10.9	14	15.9	8.7	20.2
D. Refurbishment & Replacement costs, every 10 years[8]	Civil Infrastructure	4.7	7.5	12.4	14.9	22.1
E. Annual Technical Assistance (TA) Costs (e.g. expanded governance structures)	Technical Assistance	0.9	0.9	1.6	1.6	2.2
	TA plus Short term inputs	1.1	1.1	2.0	2.0	2.9
	Based on number of professionals and related costs; short term inputs estimated to be 25% of long term TA cost	7 professionals Short term visits from medical staff	7 professionals Short term visits from medical staff	13 professionals Short term visits from medical staff	13 professionals Short term visits from medical staff	18 professionals Short term visits from medical staff
F. Annual Misc Costs[9]						
	Shipping Service	1.5	1.5	2.0	2.0	2.5
	Administration Costs - 5% total cost	0.24	0.4	0.57	0.65	0.88
	Medevac based on £425 per patient	0.02	0.07	0.22	0.33	0.63

[8] Calculated from standard % of Infrastructure cost, depending on type, range from 3% to 10%
[9] KPMG Annex Table 7.4.21; medevac costs have been revised based on recent data from St Helena

Table 1.3 **TOTAL INDICATIVE COSTS (£ MILLIONS) as at 4 August 2015**

RESETTLEMENT OPTIONS		OPTION 1 PILOT: DIEGO GARCIA		OPTION 2 MEDIUM 500 PEOPLE		OPTION 3 LARGE 1500 DIEGO GARCIA & OUTER ISLANDS
		50 people	150 people	2 (a) DIEGO GARCIA	2 (b) OUTER ISLANDS ONLY	
TOTALS (£Millions)	**Civil Infrastructure**					
Capital	**Total**	**54.8**	**87.3**	**144.6**	**175.6**	**256.2**
	Per head	**1.10**	**0.58**	**0.29**	**0.35**	**0.17**
Annual Costs	**Total**	**5.1**	**8.4**	**12.0**	**13.6**	**18.4**
	Per head	**0.10**	**0.06**	**0.02**	**0.03**	**0.012**
Total: Capital, 10 years recurrent & 1st refurbishment	**Total**	**110.1**	**178.5**	**276.9**	**326.3**	**462.4**
	Total Security	**92**	**92.4**	**92.4**	**1.0**	**92.4**
	Per head	**4.04**	**1.81**	**0.74**	**0.65**	**0.37**

Footnotes

1. Each option is considered to be independent of another. In practice, option 3 could develop from option 2, option 2 (Diego Garcia) from option 1.

2. Civil infrastructure costs are to the extent possible based on the KPMG report, but with further refinement. This assumes a 'median' standard of living between the various approaches suggested (i.e. many Chagossians asked for a high level modern standard of living, while some said they would be content with a lower level of accommodation and services) and a median construction cost. Security-related estimates are based on comparable military facilities in similarly remote locations and would need to be refined following a detailed assessment.

3. Outer Island infrastructure costs are assumed to be 20% more than the cost of equivalent infrastructure on DG.

4. Due to the unique nature of this undertaking, there remains significant uncertainty in the estimates provided and costs may be significantly higher.

5. Except for Option 1, for costing purposes civil infrastructure assumes that a jetty and artificial breakwater would be required in both Diego Garcia and the Outer Islands. In practice, an artificial breakwater will only be built if it is not possible to use a natural breakwater based on the atoll's coral structure.

6. In the case of Option 1, a temporary, jetty-only arrangement would be provided during the first 1-2 years of habitation. If this is successful, a breakwater would be added if needed during a second phase of works.

Alternative Options to Resettlement

16. Options not involving resettlement are also being developed to enable the UK Government to consider the full range of options that could respond to Chagossian aspirations. The principle behind these ideas is to provide support for Chagossians to flourish in their current communities, and build their lives there, while allowing a degree of access to BIOT that recognises their historic connection to it, without returning on a long term basis.

17. We would like to gauge the interest in the following potential measures. This is not a mutually exclusive or exhaustive list of options, nor does it constitute a commitment by the UK Government to provide this type of support. We would also be interested to hear ideas for other sustainable measures of benefit to the Chagossian communities.

- Training and educational support for jobs in Chagossians' current places of abode. Training needs would require further assessment before any funding could be committed.
- Greater support through pre-qualifying training for Chagossians, to enable them to apply for more jobs at the military facility on Diego Garcia (e.g. cleaning, working in the catering facilities, environmental and pest control, mechanical repairs, driving transport, port and airport services). These would be subject to existing terms and conditions, which provide basic accommodation, salaries in the region of an average of US$ dollars 350[10] per month and do not allow the presence of dependants or entitlement to long term residence. Training needs would require further assessment before any funding could be committed.
- Increased opportunities for Chagossians to visit BIOT temporarily, and potentially for longer periods, spent primarily on the patrol vessel and visiting the Outer Islands. The UK Government would provide, and pay for a charter flight to/from Diego Garcia, temporary accommodation, and a passenger vessel to the Outer Islands.
- With support from the BIOT Administration, develop and historically restore the key cultural sites in the Territory which Chagossians would experience when they visit, by temporarily employing Chagossians to clear and historically restore the old settlements, developing a Chagossian museum in the Territory (possibly twinned with one in the UK), and gathering historical implements and artefacts from Chagossians to be preserved and documented. This could be supplemented by gathering oral accounts of former islanders of their experiences of life on the Islands.
- Increased participation of Chagossians in conservation, enforcement, and science work in BIOT, both on Diego Garcia and the Outer Islands. This would primarily involve terrestrial conservation work such as native plant species restoration, and bird, turtle, and crab monitoring but could over time and with appropriate qualifications also include marine conservation work. Limited funding from the BIOT Administration would be provided, and scientific organisations would be encouraged to use Chagossians more in their own conservation work.
- Key roles in new, limited tourism in the Outer islands for example as wardens for visitors in yachts, ensuring they respect the environment of the Territory, abide by its laws, and are informed about its history. Some limited refuge infrastructure on the Outer Islands might be necessary to support such activity.

Foreign & Commonwealth Office
4 August 2015

[10] KPMG Feasibility Study 30 January 2015, footnote 10 page 97

Annex A

Question	Answer
Your name	
Your current place of abode	
Are you interested in resettling in BIOT under the conditions in Table 1.0?	Yes/No/ Undecided (please delete as appropriate)
Why do you want to resettle in BIOT?	
If you answered Yes or undecided, how many dependents would need to accompany you? This may include a spouse, long term partner, child under18 or parent.	
Are you between the ages of 18 and 65?	Yes/No (please delete as appropriate)
Are you currently in employment? If so, what is your employment?	Yes/No (please delete as appropriate)
If you are not in employment, what is your status?	Unemployed/Retired
Would you seek employment on the military facility if you were resettled?	Yes/No (please delete as appropriate)
Would you seek employment in the BIOT Administration if you were resettled?	Yes/No (please delete as appropriate)
What skills or experience could you utilise in seeking employment in BIOT?	
What training would you need to seek employment in the potential sectors available in BIOT (military facility, BIOT Administration, environmental work, tourism)?	
Were you born in BIOT?	Yes/No (please delete as appropriate)
If you answered no to the above, were either of your parents born in BIOT?	Yes/No (please delete as appropriate)
Do you already have British Citizenship?	Yes/No (please delete as appropriate)
How many of your dependents have British Citizenship?	
Are there alternative options to resettlement that interest you?	Yes/No/Undecided (please delete as appropriate). Please explain:

ANNEX 60

Update on British Indian Ocean Territory: Written Statement – HLWS257 (Baroness Anelay of St Johns, Minister of State at the Foreign and Commonwealth Office), 16 November 2016

Update on the British Indian Ocean Territory:Written statement - HLWS257

WS **Foreign and Commonwealth Office** Made on: 16 November 2016

Made by: **Baroness Anelay of St Johns** (The Minister of State, Foreign and Commonwealth Affairs)

Lords **HLWS257**

Update on the British Indian Ocean Territory

On 24 March 2016 the former Parliamentary Under-Secretary for Foreign and Commonwealth Affairs, the hon. Member for Rochford and Southend East (James Duddridge) informed the House that the Government would be carrying out further work on its review of resettlement policy in the British Indian Ocean Territory (BIOT). I would now like to inform Parliament of two decisions which have been made concerning the future of BIOT.

Parliament will be aware of the Government's review and consultation over the resettlement of the Chagossian people to BIOT. The manner in which the Chagossian community was removed from the Territory in the 1960s and 1970s, and the way they were treated, was wrong and we look back with deep regret. We have taken care in coming to our final decision on resettlement, noting the community's emotional ties to BIOT and their desire to go back to their former way of life.

This comprehensive programme of work included an independent feasibility study followed by a full public consultation in the UK, Mauritius and the Seychelles.

I am today announcing that the Government has decided against resettlement of the Chagossian people to the British Indian Ocean Territory on the grounds of feasibility, defence and security interests, and cost to the British taxpayer. In coming to this decision the Government has considered carefully the practicalities of setting up a small remote community on low-lying islands and the challenges that any community would face. These are significant, and include the challenge of effectively establishing modern public services, the limited healthcare and education that it would be possible to provide, and the lack of economic opportunities, particularly job prospects. The Government has also considered the interaction of any potential community with the US Naval Support Facility – a vital part of our defence relationship.

The Government will instead seek to support improvements to the livelihoods of Chagossians in the communities where they now live. I can today announce that we have agreed to fund a package of approximately £40 million over the next ten years to achieve this goal. This money addresses the most pressing needs of the community by improving access to health and social care and to improved education and employment opportunities. Moreover, this fund will support a significantly expanded programme of visits to BIOT for native Chagossians. The Government will work closely with Chagossian communities in the UK and overseas to develop cost-effective programmes which will make the biggest improvement in the life chances of those Chagossians who need it most.

Parliament will also be aware that the agreements underpinning the UK/US defence facility will roll over automatically on 31 December if neither side breaks silence. In an increasingly dangerous world, the defence facility is used by us and our allies to combat some of the most difficult problems of the 21st century including terrorism, international criminality, instability and piracy. I can today confirm that the UK continues to welcome the US presence, and that the agreements will continue as they stand until 30 December 2036.

This statement has also been made in the House of Commons: **HCWS260**

ANNEX 61

United Kingdom Telegram No. 149 recording meeting between United Kingdom and Mauritian Deputy Prime Minister, 28 November 2000

29/11/100 05:28

PP PTLOU
FM GABOR TO FCOLN
281104Z NOV

FM GABORONE
TO PRIORITY FCO
TELNO 149
OF 281104Z NOVEMBER 00

FROM (OTD) VISITING

SUBJECT: BIOT: MEETING WITH MAURITIAN FOREIGN MINISTER

Summary

1. Measured meeting covering the outcome of the judgment and its consequences for the Ilois and the Mauritians and for handling by UK, USA and Mauritius. Gayan makes strong pitch for Mauritian sovereignty over the territory and indicates a determination to pursue his case.

Detail

2. Lyall Grant (Director Africa) and I met Gayan, who was accompanied by Gunessee (MFA), here today. We explained that we were fulfilling a commitment to discuss the outcome of the High Court action with the Mauritians. Gayan said he welcomed this and asked if we were bringing any message for him from the Secretary of State. I said, in a non-committal way, that there was not a letter to hand over, but we were able to discuss the issue fully with him

3. I explained the outcome of the court case, outlining the main features of the judgment and the sense of the Judge's pronouncements on future control of movement into the territory. I told Gayan about the new ordinance.

4. Gayan said he had read the judgment. The time had come for there to be negotiation between UK and Mauritius on the sovereignty issue. He said the world had moved on since the days of the creation of the territory (which Mauritius did not recognise). He wanted the sovereignty issue to be resolved before the current lease expired and so wanted trilateral negotiations with the Americans and us.

5. Gayan said he has reviewed the past records referring to the creation of BIOT. He had been appalled by the way in which HMG had conducted parallel negotiation with the Mauritians and the US. The Mauritians had not been told key facts and so had been hoodwinked. The deal done then was in his view challengeable in international law. He was examining how such a

challenge might be mounted. He said there were helpful UN resolutions supporting the Mauritian arguments. But Gayan indicated he would prefer to negotiate on sovereignty with us in quote a friendly manner unquote.

6. I explained our position on sovereignty in standard terms. Gayan countered that we could not tell Mauritius unilaterally when we did not want the islands, this must be settled in negotiation. He preferred not to have to raise these problems in public and wanted to engage us on them.

7. Gayan asked about our meeting with Bancoult. I told him that the Ilois had outlined their hopes and aspirations and that we had a joint interest in them at least as far as any issue of possible compensation was concerned, given the terms of the 1982 agreement. Gayan said that agreement was challengeable too! He asked about the feasibility study, commenting that Bancoult had been encouraged by the work done. I explained that the first stage was indicative only and that much more detailed investigation was necessary before we could take a view on whether resettlement was feasible.

8. Gayan raised the Joint Fisheries Commission. He said he was reconsidering the Mauritian position. We did not comment.

Comment.

9. Gayan was measured and friendly throughout. But while emphasising the importance he attached to our bilateral relationship, he made clear his determination to use every means open to him, political, legal and through the media to pursue the Mauritian sovereignty claim. The threats were scarcely veiled. We can expect an active time on this issue.

10. If there is to be any written message to the Mauritians it should now include mention of this meeting. But it need not take a position on the negotiation of sovereignty.

ANNEX 62

United Kingdom Telegram No. 5 recording meeting between United Kingdom Foreign Secretary and Mauritian Foreign Minister, 25 January 2001

29/01/101 05:01

.. PTLOU
FM FCOLN TO PTLOU
261423Z JAN

FM FCO
TO PRIORITY PORT LOUIS
TELNO 5
OF 261423Z JANUARY 01

FROM

SUBJECT: MAURITIUS/BIOT: FOREIGN SECRETARY'S MEETING WITH FOREIGN MINISTER GAYAN, 25 JANUARY 2001

SUMMARY

1. Discussion of BIOT,

DETAIL

BIOT: Sovereignty

2. Gayan expressed disappointment that there had been no progress since his meeting with Peter Hain in Gaborone in November. He hoped the two sides could "sort out this problem". His Government had stated publicly that they would allow the US to continue to use the islands for defence purposes, with security of tenure on terms negotiated bilaterally with the US. Gayan claimed that the previous US Administration had been happy with this approach, as had been confirmed during Mrs Albright's visit to Mauritius in December. The Foreign Secretary said that in previous contacts with us the US had stated quite clearly that they wanted no change to the current arrangements. He would discuss BIOT with the new US Administration when he visited Washington from 5-7 February.

3. Gayan said he had noticed a shift in HMG's position on sovereignty in recent months. Mauritius was unhappy that we had qualified our previous policy statement. The Foreign Secretary said there had been no shift in our policy position: we remained ready to cede the islands to Mauritius when they were no longer needed for defence purposes. We were not in that position now, nor were we likely to be in the foreseeable future. We had added the reference to the requirements of international law following our defeat in the Bancoult High Court case. The Ilois were now able to return to the outer islands, and a feasibility study on resettlement was under way. We did not ourselves see self-determination as a current issue, but we might have to reconsider that position in the event of future pressure from the UN Decolonisation Committee.

4. Gayan expressed disappointment. There might be implications for

the UK/Mauritius Fisheries Commission. He might have to revert to using megaphone diplomacy. The Foreign Secretary said he would regret such a move: this issue should not be allowed to affect our otherwise warm and friendly relations. Gayan asked whether c two Governments could agree to take the issue to the ICJ. The Foreign Secretary replied that the GoM of course had the right to pursue the idea if it wished. But he was confident that the UK's case was robust. Gayan commented that the documents from the time, since made public, would weigh heavily against us. The Foreign Secretary replied that the documents related to the treatment of the Ilois, not to sovereignty.

5. In further discussion, the Foreign Secretary suggested that there might be scope for officials to get together to discuss important practical issues relating to possible resettlement, on the basis of an agreed formula protecting our respective positions on sovereignty. Gayan thought that such discussions might cover fisheries, mineral resources and tourism. The Foreign Secretary commented that tourism presented difficulties. We would not be building an international airport. We would also need to consider protection of BIOT's important and unique environment. Other issues might include the need for a sustainable water supply and a source of economic viability now that copra was no longer an option. Gay. agreed. He hoped that discussions on these issues could lead to joint decisions on the way ahead. The Foreign Secretary asked officials to propose in more detail the areas that might be discussed. But he could not agree that the discussions might result in "joint decisions".

BIOT: Nationality

6. Referring to Mr Battle's statement in the Adjournment Debate on 9 January, Gayan asked about our position on British nationality for the Ilois. Mauritian press reports had said that we had decided to offer it, and that most Ilois would want to accept that offer. The Foreign Secretary said that the press reporting had been inaccurate. We hoped that we would be able to offer British citizenship to the Ilois, but no formal decision had yet been taken. We would keep Gayan informed, and give him prior notice of any announcement. In reply to the Foreign Secretary's question, Gayan said that the GoM had not yet considered how any conferral of British citizenship to the Ilois might affect their Mauritian nationality.

COOK

ANNEX 63

Note Verbale from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office dated 5 March 2009

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

Note No: 2009(1197/28)

05 March 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 article in *The Independent* of 9 February 2009 on the initiative of the Chagos Environment Network for the launching of a giant marine park plan for the Chagos Archipelago in early March 2009 at the Royal Society in London, United Kingdom.

The Ministry of Foreign Affairs, Regional Integration and International Trade wishes to restate to the Foreign and Commonwealth Office that, both under Mauritian law and international law, the Chagos Archipelago is under the sovereignty of Mauritius and the denial of enjoyment of sovereignty to Mauritius is a clear breach of United Nations General Assembly Resolutions and international law. The creation of any Marine Park in the Chagos Archipelago will therefore require, on the part of all parties that have genuine respect for international law, the consent of Mauritius.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE * MAURITIUS

Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

ANNEX 64

Note Verbale from the UK Foreign and Commonwealth Office to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius dated 13 March 2009

Note No. OTD 04/03/09

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius and thanks the Ministry for its Note No. 2009(1197/28) about the initiative of the Chagos Environment Network for the launch of proposals for a marine park in the Chagos Archipelago (British Indian Ocean Territory).

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland would like to re-affirm that the United Kingdom has no doubt about its sovereignty over the British Indian Ocean Territory which was ceded to Britain in 1814 and has been a British dependency ever since. As the United Kingdom has reiterated on many occasions, we have undertaken to cede the Territory to Mauritius when it is no longer required for defence purposes.

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland would like to point out that the proposal for a marine park in the Chagos Archipelago (BIOT) is the initiative of the Chagos Environment Network and not of the Government of the United Kingdom of Great Britain and Northern Ireland. However, the Government of the United Kingdom of Great Britain and Northern Ireland welcomes and encourages recognition of the global importance of the British Indian Ocean Territory and notes the very high standards of preservation there that have been made possible by the absence of human settlement in the bulk of the territory and the environmental stewardship of the BIOT Administration and the US military.

The Government of the United Kingdom of Great Britain and Northern Ireland has already signalled its desire to work with the international environmental and scientific community to develop further the preservation of the unique environment of the British Indian Ocean Territory.

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius the assurance of its highest consideration.

FOREIGN AND COMMONWEALTH OFFICE

LONDON

13 MARCH 2009

ANNEX 65

United Kingdom record of Foreign Secretary meeting with Mauritius Prime Minister Sir A Jugnauth, New York, 26 September 2016

From:
Sent: 26 September 2016 15:54
To: Peter Hayes (Sensitive)
Cc: Neil Wigan (Sensitive); Ben Merrick (Sensitive); ; Peter Wilson (UKMIS NY) (Sensitive); Tim Barrow * (Sensitive); Christian Turner (Sensitive); Mark Lyall Grant (Cabinet Office) (Conf); Nigel Casey * (No.10) (Conf);

Subject: FS - Jugnauth meeting, 22 September

Security Label:

Peter,

The Foreign Secretary had a short brush by with Sir Anerood Jugnauth, Prime Minister of Mauritius, at UNGA on 22 September. Cabinet Secretary Seebaluck and Chagossian leader Olivier Bancoult were present as part of the Mauritian delegation:

1. The Foreign Secretary noted that the issue of the Chagos Archipelago was of great importance to both Mauritius and the UK, and stressed it should be discussed bilaterally; it was not suitable for it to be brought to UNGA or the International Court of Justice. The Foreign Secretary was grateful that discussion in the UN had been deferred until at least June 2017. He sought Jugnauth's agreement that between now and then, our officials would keep discussing.

2. Jugnauth agreed, but warned the Foreign Secretary that if Mauritius did not achieve the outcome they wanted on the Chagos Archipelago, there would be no purpose to the discussions, and they would pursue this through the UN or ICJ. Excision was contrary to UNGA resolutions and followed threats that independence would not otherwise be granted. He set out his view that the UK kept shifting the goalposts. The Chagos Archipelago had not been part of the independence deal in the 1960s because the UK had cited its importance to defence of the West. Jugnauth had met Margaret Thatcher in the 1980s and she had told him the islands would be ceded to Mauritius when no longer needed for this, referencing the threat from the USSR and the Cold War. Jugnauth said the context had moved on, but the UK kept finding new security reasons to hold on to the Archipelago. Now it was said it was needed to counter piracy and terrorism, which he saw as a pretext.

3. Jugnauth said if the Archipelago was ceded to Mauritius, he would have no concerns about a base being maintained there. He was prepared to give the US a long renewable lease, but they had to pay. The Foreign Secretary asked how it would be possible to both maintain a US base there and resettle the Chagossians – would that be compatible with US security requirements? Jugnauth thought they could resettle Chagossians on the Outer Islands, although not Diego Garcia. Bancoult interjected that Chagossians should be allowed to live on Diego Garcia, as others did. The Foreign Secretary said he was keen to hear Chagossian views.

4. Jugnauth ended by saying he would be very frank: the question was sovereignty. We needed to agree how and in what timeframe Mauritius would achieve sovereignty. There were many ways this could be agreed – Mauritius and the UK had always been good friends. The Foreign Secretary said he was sure we could work it out.

5. At no point did the Foreign Secretary make any concessions on substance.

Private Secretary to the Foreign Secretary
Foreign & Commonwealth Office
Tel.

Private Office will not keep a record of this e-mail or any attachments.
It is the responsibility of the relevant department to ensure that it is properly stored.

ANNEX 66

United Kingdom Telegram No.1605281, 9 November 2016

From: Diptel PORT LOUIS (Sensitive)
Sent: 09 November 2016 15:17
To: Diptel FCO (Sensitive)
Subject: BRITISH INDIAN OCEAN TERRITORY (BIOT): TALKS WITH MAURITIUS FAIL TO MAKE PROGRESS [DIPTEL 1605281]

Diptel PORT LOUIS (Sensitive)

Foreign & Commonwealth Office Diplomatic Telegram

Rate this DipTel Add a Comment

Summary

UK-Mauritius bilateral talks on BIOT torpedoed over Mauritian refusal to agree to sovereigntv umbrella. Mauritian PM says need for a specific date for transfer of sovereignty non-negotiable.

3. The day before the talks, Hayes met Sir Anerood Jugnauth (SAJ), the Mauritian Prime Minister, and found him in uncompromising mood. SAJ, who retains a deep emotional connection to this dossier, noted that he would be happy to explore options for a deal – provided that the UK was "generous" – but that any offer must be accompanied by a clear date by which the UK would cede sovereignty to Mauritius. Hayes appealed to SAJ to empower his team to discuss other options under the protection of a sovereignty umbrella and without the constraint of a set date but SAJ was firm: a date – even one some time in the future – was crucial. He faced significant domestic political pressure and would need to save face internationally. He seemed unsure on the point about the sovereignty umbrella, but his team gave assurances that a form of wording had been found that would satisfy both sides. They set this out in a letter later the same evening but the assertion that the sovereignty umbrella could not be used remained.

ANNEX 67

Mauritius letter to the United Kingdom, 11 November 2016

REPUBLIC OF MAURITIUS

PRIME MINISTER'S OFFICE

Office of the Secretary to Cabinet
and
Head of the Civil Service

SEC/CHGOS/1 **11 November 2016**

Dear Dr Hayes,

My attention has just been brought to your letter dated 9 November 2016 in which you expressed your disappointment that Mauritius did not agree to hold talks under a sovereignty umbrella.

As I pointed out to you in my letter of the same date, these talks are aimed at the completion of the decolonisation of Mauritius and the exercise of full sovereignty by Mauritius over the Chagos Archipelago, and not at resolving bilateral issues, presumably concerning the implementation of the UNCLOS Award in respect of the Chagos Archipelago.

We reaffirm our position that the Chagos Archipelago has always formed and continues to form an integral part of the territory of Mauritius and that Mauritius does not recognise the so-called "British Indian Ocean Territory" which the UK purported to create by excising the Chagos Archipelago from the territory of Mauritius prior to its accession to independence in breach of international law and UN General Assembly resolutions.

The dismemberment of the territory of Mauritius continues to be a matter of direct interest to the entire UN General Assembly which has historically played a central role in addressing decolonisation, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the UN Charter. In furtherance of its active role in the process of decolonisation, the General Assembly has a continuing responsibility to complete the decolonisation of Mauritius. In this respect, the President of the General Assembly expects us to keep him updated on progress in our talks on a regular basis.

As we have made it clear in our letter of 8 November 2016 and at our meeting held on 9 November 2016, that the talks following the understanding reached in New York in September last relate to the completion of the decolonisation of Mauritius, thereby enabling the exercise of full sovereignty by Mauritius over the Chagos Archipelago, we reiterate that we do not agree that such talks be held under a sovereignty umbrella, the wording of which is set out in your letter of 4 November 2016 and reads as follows:

> *"Both Governments agreed that nothing in the conduct or content of the present meeting shall be interpreted as:*
>
> *(a) a change in the position of the United Kingdom with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago;*
>
> *(b) a change in the position of the Republic of Mauritius with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;*
>
> *(c) recognition of or support for the position of the United Kingdom or Republic of Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago.*
>
> *No act or activity carried out by the United Kingdom, the Republic of Mauritius or third parties as a consequence of and in implementing anything agreed to in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or the Republic of Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago. In this regard, each party reserves all its rights under international law, including under the UN Charter."*

In this regard, we note that the purpose of holding discussions under a sovereignty umbrella in the case of Malvinas was to prevent such discussions from being regarded as a step towards sovereignty negotiations (see letter of 5 June 2006 of Mr Chris Stanton of the Parliamentary Relations and Devolution Team of the UK Foreign and Commonwealth Office to the UK House of Commons Select Committee on Foreign Affairs). This reinforces the position of Mauritius that the talks in which we are engaged following our agreement in New York last September cannot be held under a sovereignty umbrella. Indeed, the letter from the Foreign and Commonwealth Office makes it very clear that while practical measures concerning cooperation between the UK and Argentina can be discussed under the sovereignty umbrella, negotiations concerning decolonisation and sovereignty are not to be held under such an umbrella.

Against this background, we fail to understand the UK's insistence on holding our talks under an umbrella which will prevent discussions on the very issue which is at the core of our concerns, namely the completion of the process of decolonisation.

At our meeting held on 9 November 2016, we have proposed two alternative wordings that would provide the protection being sought by the UK. Our latest proposal, which fully caters for such protection, is as follows:

> *"Nothing said, discussed, offered or accepted during these talks shall be used by either State against the other in the course of any proceedings before any domestic court or international court or tribunal or viewed as a change in the respective position of either State on its rights in relation to the Chagos Archipelago/British Indian Ocean Territory, unless there is a formal agreement between the two States."*

Mauritius has made special efforts to propose a form of wording that would provide adequate and full protections to both the UK and Mauritius. By contrast, the UK has shown no flexibility in its approach.

In the spirit of your declared commitment to hold talks with an open mind and to make progress on talks relating to item 87 of the agenda of the 71st session of the UN General Assembly, we invite you to reconsider your stand in the light of the wording which we have proposed.

We reiterate our commitment and willingness to pursue our talks with the UK and sincerely hope that we will be able to agree on the premises on which such talks will be held ahead of our next meeting.

Yours sincerely,

N.K. Ballah
Secretary to Cabinet
and Head of the Civil Service

Dr Peter Hayes
Director
Overseas Territories
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

ANNEX 68

United Kingdom Telegram No.79 recording meeting between Mauritius Secretary of Foreign Affairs and British High Commissioner, Port Louis, 7 September 2004

To: NYMIX - eTelegrams; NYMIZ - eTelegrams
From: COMCEN Gatewav 1a
Subject: I:RR: BIOT: UNGA: PRIME MINISTERIAL MEETING:PTLOU/FCOLN 79
Sent: 07 September 2004 07:12:49 GMT

RR NYMIS WASHI
FM PTLOU TO FCOLN
070734Z SEP

FM PORT LOUIS
TO PRIORITY FCO
TELNO 79
OF 070734Z SEPTEMBER 04

SUBJECT: BIOT: UNGA: PRIME MINISTERIAL MEETING

Summary

1. Secretary for Foreign Affairs tells me that Mauritius will not now table resolution on BIOT at this years UNGA. The Foreign Minister will address UNGA on 28 Sept. Enquiry as to where proposed prime ministerial meeting stands.

DETAIL

2. Vijay Makhan, Secretary for Foreign Affairs, told me today that Mauritius will not now be tabling an UNGA resolution referring BIOT to the ICJ at this session but the Foreign Minister will address UNGA on 28 September. Mauritius would however continue to use all international fora to present their position on the Chagos Islands.

3. Makhan said that the positive tone of Mr Blair's letter of 11 August, as far as it concerned Chagos had been noted and the Government was wondering when the prime ministerial meeting requested by Cabinet on 19 March would take place. Makhan emphasised that the PM would be ready to fit in with Mr Blair's schedule at any time. Berenger would be friendly and constructive in explaining the Mauritian position.

COMMENT

4. If we could offer a meeting before 28 Sept this would clearly have a helpful impact on the Mauritian statement to UNGA.

ANNEX 69

United Kingdom Telegram No.9, 17 January 2005

From: Swift Incoming Telegrams (Machine 1)
Sent: Monday, January 17, 2005 8:50 AM
To: OTD
Subject: LEAD: OO PTLOU/FCOLN 9: MAURITIUS: MR RAMMELL'S VISIT: BIOT: MEDIA COVERAGE

CDSN:
Classification:
DTGM: 170634Z JAN
Message To: FCOLN
MessageFrom: PTLOU

FM PTLOU TO FCOLN
170634Z JAN

FM PORT LOUIS
TO IMMEDIATE FCO
TELNO 9
OF 170634Z JANUARY 05

Please Pass to PS/Mr Rammell

My telno 8

SUBJECT: MAURITIUS: MR RAMMELL'S VISIT: BIOT: MEDIA COVERAGE

SUMMARY

1. Prime Minister Berenger reacts sharply to Mr Rammell's remarks about BIOT. Prompts flurry of media coverage.

DETAIL

2. Under banner headlines such as "Chagos: the duel", "Chagos - new war is declared", and "We will not fall into the trap", the newspapers have given prominence to Prime Minister Berenger's critical remarks when he was interviewed on Friday 14 January, and at a press conference on Saturday (arranged to mark the end of the SIDS meeting).

3. Berenger repeated Foreign Minister Cuttaree's earlier comment that the Government "smelled a rat". They suspected that our plan to use the MV Trochetia was a trick. He said that the Chagossians' wish to return to their homeland was understandable. But the Government could not allow a Mauritian vessel to be used. It would complicate and undermine their sovereignty claim. The British were well aware of this and their insistence on using the Trochetia was very suspicious. The British had a large fleet of their own which could be used.

4. He deplored the fact that the Mauritius Shipping Corporation had been dragged into the dispute; at the same time he castigated the company's management for not having informed the Government that they were in negotiation with the British High Commission.

5. Berenger said that it was provocative and unacceptable for a

"junior British Minister" whilst on Mauritian soil to question publicly his vetoing of the ship and to label the Mauritian sovereignty claim as invalid.

6. Berenger said that there was deadlock over the sovereignty question and a "cold snap" in relations with London following adoption of the Orders In Council last year and his failure to meet Mr Blair. That was why he had declined to see Mr Rammell during the SIDS meeting. It was against this background that the Government was considering when to bring its case before the UN General Assembly and the ICJ. "We do not want to be forced to raise the matter in the ICJ but will do so if the deadlock cannot be broken."

7. According to the Sunday newspaper the Week-End, however, Berenger also said that his Government continued to hope that a consensus could be reached with HMG.

8. L'Express Dimanche carried in full their interview with Mr Rammell, under the headline "Your sovereignty claim is invalid".

9. Le Mauricien (daily) contrasted Mr Rammell's reception by the Chagossian community with the warm greeting given to Commonwealth Secretary General Don McKinnon when he visited Olivier Bancoult's Chagossian Refugee Group headquarters at Cassis. McKinnon regretted that the Chagossians felt marginalized. He supported their right to visit the islands, but would not be drawn on the question of compensation. He urged the two Governments to look for a solution through dialogue. McKinnon had earlier told the press that he believed HMG was willing to take a fresh look at the issues following Berenger's visit to London last July.

10. Olivier Bancoult told the press that if the issue of a vessel is not resolved, members of the Chagossian Refugee Group will demonstrate (again) outside the British High Commission. Separately, Fernand Mandarin's Chagossian Social Committee declared their support for the Government's position on sovereignty and refusal to allow the Trochetia to be used. They have also rejected any British immigration controls or other conditions for the visit to the graves.

ANNEX 70

Mauritius letter from Minister of Foreign Affairs, Regional Integration and International Trade to UK Foreign Secretary, 20 October 2011

REPUBLIC OF MAURITIUS

Minister of Foreign Affairs, Regional Integration and International Trade

20 October 2011

Excellency,

Re: Application of the International Convention on the Elimination of all Forms of Racial Discrimination to the Chagos Archipelago

The Government of the Republic of Mauritius has taken note of the periodic report submitted in March 2010 by the United Kingdom under the International Convention on the Elimination of all Forms of Racial Discrimination ('CERD'). In particular, the Government has noted the statement set forth at Annex XI of the periodic report, in which the United Kingdom states:

> *"2. In providing a response to the Committee the United Kingdom would make clear that the Convention does not apply to the British Indian Ocean Territory. The United Kingdom does not consider Article 2 paragraph 2 of the Convention relevant to the territory of the British Indian Ocean Territory, or that any separate report was required; so far as concerns the Ilois, the Territory has no permanent inhabitants and members of the armed forces, officials and contractors in the Territory spend only brief periods there.*
>
> *3. Those individuals who are sometimes referred to as "Ilois" (or more frequently now as "Chagossians") are in many cases now British citizens, whatever racial groups of which they may be members, by virtue of the British Overseas Territories Act 2002. Such individuals now enjoy the right of abode in the United Kingdom and associated rights of residence in Member States of the European Union. A number have exercised their rights in this respect and are currently living in the United Kingdom, whilst others live in other States such as Mauritius and Seychelles."*

As you will be aware, the Government of Mauritius does not recognize the so-called "British Indian Ocean Territory" ("BIOT") which the United Kingdom purported to create by illegally excising the Chagos Archipelago from 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 (General Assembly Resolution 1514 (XV) of 14 December 1960) prohibiting the dismemberment of any colonial territory prior to independence, and General Assembly Resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967. Accordingly, the Republic of Mauritius has sovereignty over the Chagos Archipelago, including Diego Garcia. The Chagos Archipelago forms an integral part of the territory of Mauritius under both Mauritian law and international law. The United Kingdom's current *de facto* control over the Chagos Archipelago is preventing Mauritius from exercising its rights over the Chagos Archipelago.

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Against this background, the statement by the United Kingdom in its periodic report, as set out above, raises a number of concerns for the Government of Mauritius, which is a party to the CERD. The Government of Mauritius considers that:

i. as Mauritius is a party to the CERD, and the Chagos Archipelago is subject to the sovereignty of Mauritius, the CERD applies to the Chagos Archipelago;

ii. as the United Kingdom is a party to CERD, and as the United Kingdom exercises de facto (but unlawful) control over the territory of the Chagos Archipelago, the United Kingdom has an obligation to ensure that the CERD is applicable to that territory and to give effect to applicable CERD obligations;

iii. the United Kingdom has acted, and continues to act, in violation of Articles 2 and 5 of the CERD, *inter alia*, by preventing the exercise of the right of return of the former inhabitants of the Chagos Archipelago, as well as the right of entry of other Mauritian nationals.

It is apparent that there exists a dispute between Mauritius and the United Kingdom as to the interpretation and application of the CERD, including but not limited to the application of Articles 2 and 5 to the Chagos Archipelago.

Having regard to the passage of time over which this dispute has persisted, and the hardship caused to the former inhabitants of the Chagos Archipelago by the continuing violations of the CERD by the United Kingdom, the Government of Mauritius hereby invites the Government of the United Kingdom to engage in negotiation within the meaning of Article 22 of the CERD, with a view to an early resolution of the dispute.

Mauritius proposes that the negotiations commence on a mutually convenient date, subsequently to be agreed, in the month of November, in either Port Louis or London, and that the agenda include the matters identified in items numbered (i), (ii) and (iii) above.

Please accept, Excellency, the assurances of my highest consideration.

Dr the Hon. Arvin Boolell, GOSK
Minister

The Rt. Hon. William Hague MP
First Secretary of State,
Secretary of State for Foreign and Commonwealth Affairs
London
United Kingdom

ANNEX 71

United Kingdom Note Verbale No.69/2011, 22 November 2011

Note No. 69/2011

The High Commission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius and has the honour to refer to the Ministry's Note 36 (1197/28) 2011 of 20 October 2011 enclosing correspondence from Dr the Hon Arvin Boolell, Minister of Foreign Affairs, Regional Integration and International Trade, to the Right Hon William Hague MP, British Secretary of State for Foreign and Commonwealth Affairs, concerning the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the British Indian Ocean Territory.

The High Commission confirms that the CERD, which entered into force between the United Kingdom and Mauritius in June 1972, applies as a matter of law to the British Indian Ocean Territory. At the same time, the High Commission recalls that the immigration legislation in force in the British Indian Ocean Territory applies without distinction as to race, colour, or national or ethnic origin. Accordingly, there is no dispute between Mauritius and the United Kingdom concerning the interpretation or application of the CERD within the meaning of Article 22 thereof.

In conclusion, the High Commission should like to reiterate that the United Kingdom has no doubts about its sovereignty over the British Indian Ocean Territory which was ceded to Britain in 1814 from France and has been a British dependency ever since.

The High Commission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius the assurances of its highest consideration.

British High Commission
Port Louis
22 November 2011

BRITISH HIGH COMMISSION
1
PORT LOUIS

ANNEX 72

Mauritius letter from Minister of Foreign Affairs, Regional Integration and International Trade to United Kingdom Foreign Secretary, 21 March 2012

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

Ref. No. 8(1197/28 V.27) 2012 **21 March 2012**

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the High Commission of the United Kingdom of Great Britain & Northern Ireland and has the honour to enclose a Letter dated 21 March 2012 from Dr. the Hon. Arvin. Boolell, Minister of Foreign Affairs, Regional Integration & International Trade of the Republic of Mauritius, addressed to the Rt. Hon. William Hague, M.P., First Secretary of State, Secretary of State for Foreign and Commonwealth Affairs.

The Ministry would appreciate it if the High Commission could forward the said Letter to its higher destination.

The Ministry of Foreign Affairs, Regional Integration & International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the High Commission of the United Kingdom of Great Britain & Northern Ireland the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG INTEGRATION & INT TRADE MAURITIUS

High Commission of the United Kingdom of Great Britain & Northern Ireland,
7th Floor, Les Cascades Building
Edith Cavell Street
P.O.Box 1063
PORT LOUIS

Port Louis, 21 March, 2012

REPUBLIC OF MAURITIUS

Minister of Foreign Affairs, Regional Integration and International Trade

21 March 2012

Excellency,

I wish to refer to Note No. 69/2011 of 22 November 2011 from the British High Commission in Port Louis concerning the International Convention on the Elimination of all Forms of Racial Discrimination ('CERD') and the Chagos Archipelago, in reply to my letter of 20 October 2011.

I reiterate the position of the Government of the Republic of Mauritius, as stated in my letter of 20 October 2011, that there is a dispute between Mauritius and the United Kingdom concerning the interpretation and application of CERD and renew our invitation to the Government of the United Kingdom to engage in negotiation within the meaning of Article 22 of CERD, with a view to an early resolution of the dispute.

Application of CERD to the Chagos Archipelago

In its Note of 22 November 2011, the British High Commission stated that CERD applies as a matter of law to the so-called "British Indian Ocean Territory" ("BIOT").

The Government of Mauritius does not recognize the so-called "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 international law and the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514 (XV) of 14 December 1960) prohibiting the dismemberment of any colonial territory prior to independence, and General Assembly Resolutions 2066 (XX) of 16 December 1965, 2232(XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967. Accordingly, the Republic of Mauritius has sovereignty over the Chagos Archipelago, including Diego Garcia. The Chagos Archipelago forms an integral part of the territory of Mauritius under both Mauritian law and international law.

The United Kingdom exercises *de facto* control over the Chagos Archipelago, thus preventing the exercise by Mauritius of its rights over the Chagos Archipelago as well as the exercise of the right of return of the former inhabitants of the Archipelago and the right of entry of other Mauritian citizens.

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The Republic of Mauritius and the United Kingdom are both parties to CERD. The United Kingdom signed CERD on 11 October 1966 and ratified it on 7 March 1969. The Republic of Mauritius acceded to CERD on 30 May 1972. Neither State has made any declaration or reservation in respect of CERD.

As Mauritius is a party to CERD and the Chagos Archipelago is subject to the sovereignty of Mauritius, CERD applies to the Chagos Archipelago.

As the United Kingdom is a party to CERD and exercises de facto (but unlawful) control over the Chagos Archipelago, it has an obligation to give effect to applicable CERD obligations with regard to the Chagos Archipelago.

Relevant Provisions of CERD

Article 1, paragraph 1 of CERD gives the following definition of "racial discrimination":

> "[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Article 2, paragraph 1 of CERD provides that:

> "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
>
> (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
>
> [...]
>
> (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
>
> (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization."

Article 2(2) provides that:

> "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. [...]"

Article 5 provides that:

> "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
>
> [...]
>
> (d) Other civil rights, in particular:
>
> (i) The right to freedom of movement and residence within the border of the State;
>
> (ii) The right to leave any country, including one's own, and to return to one's country;
>
> [...]"

The Government of Mauritius considers that, by its conduct in respect of the Chagos Archipelago, the United Kingdom has violated its obligations under CERD.

Factual Circumstances of the Dispute

The Chagos Archipelago

The Chagos Archipelago comprises a number of islands located in the Indian Ocean, including Diego Garcia, Peros Banhos and the Salomon Islands. Until 1965, the Chagos Archipelago was administered by the United Kingdom as part of the Territory of Mauritius, over which it exercised colonial authority. The settled population of the islands at that time numbered approximately 2,000 people, who are referred to as Chagossians ("former residents of the Chagos Archipelago"). They are recognised by the Constitution of Mauritius as citizens of Mauritius (see below) and formed a settled and well-established community on the Archipelago.

The Removal of the Population of the Archipelago

In 1964, the United Kingdom secretly agreed to provide Diego Garcia to the United States for the purpose of establishing a military base there. It was apparent at that time that Mauritius was likely to gain its independence in the near future, and would have sovereignty over the Chagos Archipelago. The United States did not wish sovereignty over Diego Garcia and the rest of the Chagos Archipelago to pass to an independent Mauritius. Accordingly, the United Kingdom made the "British Indian Ocean Territory Order 1965" ("the Order"), under the United Kingdom's Colonial Boundaries Act 1895. The Order purported to establish a so-called "British Indian Ocean Territory" consisting of the Chagos Archipelago which the UK illegally excised from Mauritius, and the separate islands of Aldabra, Farquhar and Desroches taken from the colonial territory of Seychelles. In 1976, when Seychelles gained independence, the latter three islands were returned to it. The Order created the office of the Commissioner of the so-called "BIOT" and conferred upon him power to "make laws for the peace, order and good government of the Territory."

At the end of 1966 there took place a secret exchange of notes between the Governments of the United Kingdom and the United States, by which the United Kingdom agreed to make the so-called "BIOT" available to the United States for defence purposes for an "indefinitely long period" with an initial term of fifty years, renewable for a further period of twenty years. The United Kingdom subsequently agreed to the establishment of a US military base on Diego Garcia.

In 1968, Mauritius achieved independence from the United Kingdom. Section 111(1) of the Constitution of Mauritius states that ""Mauritius" includes –
(a)...the Chagos Archipelago, including Diego Garcia..."

Section 20 of the Constitution further provides *inter alia* as follows:

> "(1) Every person who, having been born in Mauritius, was on 11 March 1968 a citizen of the United Kingdom and Colonies became a citizen of Mauritius on 12 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 8 November 1965 but were not so comprised immediately before 12 March 1968 unless either of his parents was born in the territories which were comprised in the Colony of Seychelles immediately before 8 November 1965."

In 1970, the United States gave notice that Diego Garcia would be required in July 1971. After receiving this notice, the Commissioner of the so-called "BIOT", using his powers of legislation under the "BIOT" Order, made the Immigration Ordinance 1971. It provided in section 4(1) that "[n]o person shall enter the Territory or, being in the Territory, shall be present or remain in the

Territory, unless he is in possession of a permit...[issued by an immigration officer]."

Between 1968 and 1973 the United Kingdom forcibly removed all Mauritians residing at the time in the Chagos Archipelago.

Subsequent Events

Since gaining its independence in 1968, Mauritius has consistently asserted its sovereignty over the Chagos Archipelago and its desire, as *parens patriae* of its citizens, to protect the rights of the former inhabitants of the Archipelago, including their right of return to their homes. It has asserted these rights in general statements, including at the United Nations,[1] and in bilateral communications with the United Kingdom.[2] The United Kingdom has persistently refused to recognise the sovereignty of Mauritius over the Chagos Archipelago and to allow the Chagossians to return to their homes on the Chagos Archipelago. Despite the discussions and negotiations between Mauritius and the United Kingdom on the right of return, including the two rounds of bilateral talks held in January and July 2009, the Chagossians remain unable to return to their homes.

At the same time, the United Kingdom has authorised others to reside in the Chagos Archipelago, including a significant number of personnel at the US base on Diego Garcia.

Most recently, by decision dated 1 April 2010, the United Kingdom purported to establish a "Marine Protected Area" ("MPA") covering the entire 200-mile zone which it has purported to declare around the Chagos Archipelago. The United Kingdom purported to bring the "MPA" into force on 1 November 2010. Among the effects of the "MPA" is the prevention of all fishing in the waters of the Chagos Archipelago, including artisanal fishery and fishery by the Chagossians and other Mauritians when they return to the Chagos Archipelago. It is understood by the United Kingdom that the "MPA" will have the effect of preventing the right of return (see reported comments of Mr. Colin Roberts, the Commissioner of the so-called "BIOT", that "establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents"[3]).

[1] For example, in statements to the General Assembly on 23 September 1998, 30 September 1999, 22 September 2000, 19 September 2005, and 26 September 2010.
[2] For example, letters from the Government of Mauritius to the Government of the United Kingdom on 9 January 1998, 5 July 2000, 6 November 2000, 30 December 2009, 19 February 2010, and 2 April 2010.
[3] See *The Guardian*, 3 December 2010. The legality of the "MPA" by reference to the 1982 United Nations Convention on the Law of the Sea is the subject of separate proceedings brought by Mauritius against the United Kingdom; those proceedings do not address the issue of discrimination or rights and obligations arising under the International Convention on the Elimination of all Forms of Racial Discrimination.

Dispute concerning the interpretation and application of CERD

The Government of Mauritius claims, in its own right and as *parens patriae* of its citizens, and without prejudice to the sovereignty of Mauritius over the Chagos Archipelago, that the United Kingdom is responsible for serious violations of its fundamental obligations under CERD, including, but not limited to Articles 2 and 5. The acts which constitute those violations include, but are not limited to:

(1) The forcible removal of all the Mauritian citizens who were former residents of the Chagos Archipelago;

(2) The ongoing denial of the fundamental rights of the Mauritian citizens who were former residents of the Chagos Archipelago, including their fundamental rights of residence and of return;

(3) The failure to take practical steps to facilitate the return of the Mauritian citizens who were former residents of the Chagos Archipelago to their homes, and the adoption of measures that are aimed at impeding their effective return to the Chagos Archipelago.

The Republic of Mauritius, on its own behalf and as *parens patriae* for its citizens, and without prejudice to its sovereignty over the Chagos Archipelago, respectfully requests the United Kingdom to recognise that it has violated its obligations under CERD by:

(1) Engaging in acts and practices of "racial discrimination against persons, groups of persons or institutions" and failing "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation", contrary to Article 2(1)(a) of CERD;

(2) Failing to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists", contrary to Article 2(1)(c) of CERD;

(3) Failing to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization", contrary to Article 2(1)(d) of CERD;

(4) Failing to take "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms", contrary to Article 2(2) of CERD;

(5) Undermining the enjoyment of the enumerated fundamental rights in Article 5 of CERD by the Mauritian citizens who were former residents of the Chagos Archipelago, including the right of return;

(6) Failing to provide "effective protection and remedies" against acts of racial discrimination, contrary to Article 6 of CERD.

The Republic of Mauritius, on its own behalf and as *parens patriae* for its citizens, and without prejudice to its sovereignty over the Chagos Archipelago, respectfully requests the United Kingdom to take all steps necessary to give effect to applicable CERD obligations with regard to the Chagos Archipelago, including:

(1) Taking all necessary measures to ensure the right of return of the Mauritian citizens who were former residents of the Chagos Archipelago, and their descendants, to their homes, including:

(a) repeal of the legal provisions barring them from return to the Archipelago; and

(b) the provision of appropriate practical and economic measures of support to enable them to rebuild their homes and communities and to ensure the reconstruction of a viable community on the Archipelago.

(2) Paying full compensation to Mauritius for all injuries resulting from the internationally wrongful acts of the United Kingdom, including the costs of resettlement in the Chagos Archipelago.

(3) Taking all necessary measures to ensure the right of entry of other Mauritian citizens to the Chagos Archipelago.

Negotiation within the meaning of Article 22 of CERD

The Republic of Mauritius notes the view set forth in the British High Commission's Note No. 69/2011 of 22 November 2011 that "there is no dispute between Mauritius and the United Kingdom concerning the interpretation or application of the CERD within the meaning of Article 22 thereof." For the reasons set out above, that view is plainly not sustainable. In this regard, we draw to your attention the concluding observations of the CERD Committee, adopted on 1 September 2011, which state *inter alia* at paragraph 12:

> "The Committee is deeply concerned at the State party's position that the Convention does not apply to the British Indian Ocean Territory (BIOT). The Committee further regrets that the BIOT (Immigration) Order 2004 not only bans Chagossians (Ilois) from entering Diego Garcia but also bans them from entering the outlying islands located

over 100 miles away, on the grounds of national security (arts. 2 and 5(d)(i)). [...]

The Committee recommends that all discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands on the BIOT be withdrawn."

The views of the CERD Committee confirm the view of Mauritius that there exists a dispute between Mauritius and the United Kingdom as to the interpretation and application of CERD, including but not limited to the application of Articles 2 and 5 to the Chagos Archipelago. Having regard to the passage of time over which this dispute has persisted, and the hardship caused to the former inhabitants of the Chagos Archipelago by the continuing violations of CERD by the United Kingdom, the Government of Mauritius renews its invitation to the Government of the United Kingdom to engage in negotiation within the meaning of Article 22 of CERD, with a view to an early resolution of the dispute.

I reiterate the proposal of the Government of Mauritius that negotiations commence on a mutually convenient date to be agreed, and that this should be no later than the end of April 2012 in either Port Louis or London.

Please accept, Excellency, the assurances of my highest consideration.

Dr the Hon. Arvin Boolell, GOSK
Minister

The Rt. Hon. William Hague MP
First Secretary of State,
Secretary of State for Foreign and Commonwealth Affairs
London
United Kingdom

ANNEX 73

Mauritius letter to the United Kingdom, 4 November 2016

REPUBLIC OF MAURITIUS

PRIME MINISTER'S OFFICE

Office of the Secretary to Cabinet
and
Head of the Civil Service

SEC/CHGOS/1 **4 November 2016**

Dear Dr Hayes,

I thank you for your letter dated 1 November 2016 suggesting, *inter alia,* that our agenda also include issues being discussed under the implementation of the UNCLOS Award.

While I appreciate your desire to make the best use of our time and maintain the momentum on these issues, I would like to point out that during the meeting which the Rt Hon Sir Anerood Jugnauth, GCSK, KCMG, QC, Prime Minister of the Republic of Mauritius, had with the Rt Hon Boris Johnson MP, Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, last September in New York, our Prime Minister emphasised that discussions between Mauritius and the UK should focus on issues relating to the completion of the decolonisation of the Republic of Mauritius and the exercise of full sovereignty by the Republic of Mauritius over the Chagos Archipelago.

In this regard, we are of the view that since the outcome of these discussions are likely to influence the discussions and eventual decision on issues relating to the implementation of the Award in the case of *Mauritius v United Kingdom*, it would be more appropriate to have the latter discussions at a later stage.

We note, however, that some issues proposed by the UK have a direct relevance to discussions on decolonisation and sovereignty. We have therefore revised the agenda for our meeting as at Annex.

While the meeting will be held without prejudice to all rights of either country under international law, including under the UN Charter, and to item 87 of the agenda of the 71st session of the UN General Assembly relating to the 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, it cannot take place under a sovereignty umbrella.

In addition, we take the second sentence of the second paragraph of your letter to mean that nothing offered or accepted in these talks should be seen as giving rise to obligations for either side beyond those which are already applicable, until such obligations are approved by our respective Governments.

We reiterate our position that the Chagos Archipelago has always formed and forms an integral part of the territory of Mauritius and that Mauritius does not recognise the so-called "British Indian Ocean Territory".

I look forward to seeing you in Mauritius next week.

Yours sincerely,

N.K. Ballah
Secretary to Cabinet
and Head of the Civil Service

Dr Peter Hayes
Director
Overseas Territories
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

ANNEX 74

United Kingdom letter to Mauritius, 4 November 2016

Foreign &
Commonwealth
Office

Director Overseas Territories
King Charles Street
London SW1A 2AH

Tel: 020 7008 2742
Email: peter.hayes@fco.gov.uk

Mr N K Ballah
Secretary to the Cabinet and Head of the Civil Service
Prime Minister's Office
Port Louis
Mauritius

4 November 2016

Dear Mr Ballah,

Thank you for your letter of 4 November about the agenda for our meeting on 9 November 2016. Let me reiterate our commitment to implementation of the UNCLOS arbitral tribunal Award. As such, I am very disappointed that you do not wish to discuss all the agenda items that we suggested in order to maintain the momentum and progress of those talks. We ask that you reconsider this, otherwise we will be delaying potentially for several months. We could if you wish treat this as a separate session, but held on the same day, from the talks on the other agenda items, which follow the agreement we reached at the UN in September.

We note with concern that you state in your letter that the talks cannot take place under a sovereignty umbrella, although you give no reasons for this. Our position is that we stand willing to discuss sovereignty and issues related to sovereignty with you, but that we cannot do so without the protection of a sovereignty umbrella. During the UNCLOS Award implementation talks, we have consistently said to you that we are willing to discuss all issues relating to the Chagos Archipelago, provided that this is without prejudice to either party's position on sovereignty. A discussion of sovereignty issues is no different.

Such protection is standard practice in talks of this nature, and is what we both agreed, for example in the joint communiqué of 9 November 2015 following our first

round of talks to implement the arbitral award in *Mauritius v United Kingdom*. You will recall that language:

"Both Governments agreed that nothing in the conduct or content of the present meeting shall be interpreted as:

(a) a change in the position of the United Kingdom with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago;

(b) a change in the position of the Republic of Mauritius with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(c) recognition of or support for the position of the United Kingdom or Republic of Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago.

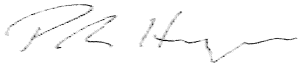
No act or activity carried out by the United Kingdom, the Republic of Mauritius or third parties as a consequence of and in implementing anything agreed to in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or the Republic of Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago. In this regard, each party reserves all its rights under international law, including under the UN Charter."

The intention behind this wording is to protect both parties' interests, at the same time allowing for free and frank discussion. As such, we do not understand how it can be in either party's interests to propose talks without that protection.

We are keen to meet with you on 9 November to take forward bilateral discussions and will therefore accept the revised agenda that you have proposed, although we hope that you will reconsider inclusion of the UNCLOS implementation talks as set out above. I hope you can accept that our request for these to take place under a sovereignty umbrella is reasonable.

I look forward to seeing you in Port Louis next week.

Yours sincerely,



Peter Hayes
Director, Overseas Territories,
Foreign and Commonwealth Office

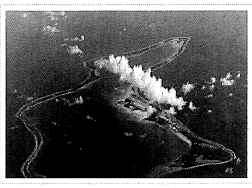
ANNEX 75

Mauritius press release, 31 October 2017

News

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

Average Rating



Date: October 31, 2017
Domain: Judiciary; International Relations; Foreign Affairs
Persona: Business; Citizen; Government; Non-Citizen

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

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

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

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

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

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

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ANNEX 76

African Union Resolution on Chagos Archipelago Ex. CL/994(XXX), 30-31 January 2017

AFRICAN UNION
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ASSEMBLY OF THE UNION
Twenty-Eighth Ordinary Session
30 - 31 January 2017
Addis Ababa, ETHIOPIA

Assembly/AU/Draft/Dec.1- 19(XXVIII)
Assembly/AU/Draft/Decl. 1-2(XXVIII)
Assembly/AU/Draft/Res.1-2(XXVIII)
Assembly/AU/Draft/Motion(XXVIII)

DRAFT DECISIONS, DECLARATIONS, RESOLUTION AND MOTION

DRAFT
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 June/July 2017.

ANNEX 77

Record of 17th Summit of Heads of State and Government of the Non-Aligned Movement, NAM 2016/CoB/DOC.1. Corr.1 (extracts), 17-18 September 2016, pp.104-105

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

DRAFT

FINAL DOCUMENT

TABLE OF CONTENTS

INTRODUCTION 5

CHAPTER I: GLOBAL ISSUES 6
Review of the International Situation 6
Non-Aligned Movement: Role and Methods of Work 8
International Law 12
Promotion and Preservation of Multilateralism 16
Peaceful Settlement of Disputes, and Non-Use or Threat of Use of Force 19
Culture of Peace, Dialogue among Civilizations, Religions and Cultures, and Cultural Diversity 21
Defamation of Religions 25
Right to Self-Determination and Decolonization 26
United Nations: Follow-up to the 2005 World Summit Outcome, the Millennium Declaration and the Outcomes of the Major United Nations Summits and Conferences 29
Post-2015 Development Agenda 33
United Nations: Institutional Reform 33
A. Reform of the United Nations 33
B. Relationship among the Principal Organs of the United Nations 37
C. Revitalization of the Work of the General Assembly 39
D. Selection and Appointment of the Secretary-General of the United Nations 41
E. Question of Equitable Representation on and Increase in the Membership of the Security Council, and other Matters Related to the Security Council 42
F. Strengthening of the Economic and Social Council (ECOSOC) 45
G. The Human Rights Council 45
H. Post-Conflict Peacebuilding Activities and the Peacebuilding Commission (PBC) 49
I. United Nations Secretariat and Management Reform 52
J. United Nations System-wide Coherence 54
United Nations: Financial Situation and Arrangement 55
United Nations: Peacekeeping Operations 57
Disarmament and International Security 63
Terrorism 79
Democracy 88
North-South Dialogue and Cooperation 89
Role of Regional Organizations 90

CHAPTER II: 91
REGIONAL AND SUB-REGIONAL POLITICAL ISSUES 91
Middle East 91
Peace Process 91
Occupied Palestinian Territory, including East Jerusalem 92
Occupied Syrian Golan 99
Lebanon, the Remaining Occupied Lebanese Lands, and the Consequences of the Israeli Aggression against Lebanon 100
Africa 102
Chagos Archipelago 102
Libya 103
Tunisia 103
Somalia 103
The Sudan 106
Central African Republic 107

The Great Lakes Region 108
Zimbabwe 109
Mali 109
Western Sahara 110
Comorian Island of Mayotte 111
Djibouti/ Eritrea 111
Gulf of Guinea 112
Asia **112**
Afghanistan 112
Iraq and Kuwait 116
Kuwait 116
Yemen 116
Southeast Asia 117
Syrian Arab Republic 119
Latin America and the Caribbean **120**
Community of Latin American and Caribbean States 120
South American Union of Nations (UNASUR) 122
ALBA – TCP – PETROCARIBE 122
Summits of Arab and South American countries 123
Summits of Africa-South American Countries 123
Central America: a Mine-Free Zone 123
Zone of Peace: Gulf of Fonseca 123
Belize and Guatemala 123
Colombia 124
Cuba 124
Panama 125
Venezuela 125
Bolivia 127
Ecuador 127
Europe **127**

CHAPTER III **127**
DEVELOPMENT, SOCIAL AND HUMAN RIGHTS ISSUES **127**
Introduction **127**
Current global crises, in particular the world financial and economic crisis **132**
Unemployment **135**
Africa **135**
Least Developed Countries, Landlocked Developing Countries, and Small Island Developing States **137**
Middle Income Countries **139**
Low Income Developing Countries **140**
Trade **140**
South-South Cooperation **143**
Food Security **148**
Housing and Sustainable Urban Development **152**
International Migration and Development **152**
Water **156**
Desertification **156**
Biological Diversity **157**
The Dead Sea **159**
The Caribbean Sea **159**
Illegal Fishing and Dumping of Toxic and Hazardous Waste **160**
Lake Chad and the River Niger **160**
Energy **160**
Disaster Risk Reduction **161**
Climate Change **162**
Human Rights and Fundamental Freedoms **165**
Racism, Racial Discrimination and Slavery **173**

International Humanitarian Law 175
Humanitarian Assistance 176
Information and Communication Technology 179
Advancement of Women 182
Indigenous Peoples 186
Illiteracy 187
Health, HIV/AIDS, Malaria, Tuberculosis and other communicable diseases 188
Transnational Organized Crime 191
Trafficking in Persons 194
Drug Trafficking 196
Corruption 197
Annex I: Member Countries of the Non–Aligned Movement (120) 199

Annex II: The Founding Principles of the Non-Aligned Movement 200

Annex III: The Principles enshrined in the Declaration on the Purposes and Principles and the Role of the Non-Aligned Movement in the Present International Juncture adopted in the 14th NAM Summit in Havana 201

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 78

Mauritius Note Verbale No.210/2017(MMG/CD/5/SEC) to Member States of the United Nations Human Rights Council, 21 June 2017

EMBASSY OF THE REPUBLIC OF MAURITIUS & PERMANENT MISSION TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS

AMBASSADE DE LA REPUBLIQUE DE MAURICE ET MISSION PERMANENTE AUPRES DES NATIONS UNIES ET DES AUTRES ORGANISATIONS INTERNATIONALES

No. 210/2017(MMG/CD/5/SEC) **21 June 2017**

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 Missions of the Member States of the United Nations Human Rights Council and, further to a paper circulated on 21 June 2017 by the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland in connection with the Universal Periodic Review of the United Kingdom held on 4 May 2017 and in which comments on the draft UN General Assembly resolution to be debated on 22 June 2017 have been made, has the honour to bring to their attention the following matters –

(a) The United Kingdom has consistently refused, at each and every bilateral meeting with the Republic of Mauritius, including the informal meeting of 19 June 2017 in New York, to engage in discussions on the completion of decolonization of the Republic of Mauritius despite the clear understanding reached in September 2016 in New York between the then Mauritian Prime Minister and the British Foreign Secretary Boris Johnson; instead, the United Kingdom has proposed bilateral talks on subjects totally unrelated to the subject matter of the draft General Assembly resolution and has thereby continuously frustrated the good faith engagement of the Republic of Mauritius in bilateral talks meant to discuss decolonization and the effective exercise of the Republic of Mauritius' sovereignty over the Chagos Archipelago;

(b) The United Kingdom misleadingly attempts to dissuade UN Member States from voting for the draft resolution by raising the alarm that damage would be caused to both the United Kingdom and the Republic of Mauritius and to the International Court of Justice (ICJ) if the General Assembly initiative is pursued. The Republic of Mauritius wishes to

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clarify that the draft General Assembly resolution is being presented by the Republic of Congo on behalf of the States Members of the United Nations that are members of the Group of African States. The draft resolution concerns a request for guidance from the ICJ to the General Assembly on an important matter of decolonization. Bilateral talks seeking to address this matter are not a basis for denying multilateral interest in this matter and bilateral talks that focus on matters irrelevant to decolonization are pointless. During meetings with the Republic of Mauritius, including on 19 June 2017, the United Kingdom has carefully avoided to discuss decolonization by making proposals completely irrelevant to that subject.

(c) The United Kingdom takes a narrow view of the UNCLOS Tribunal Award. The Award clearly states that the United Kingdom has a legally binding obligation to return the Chagos Archipelago to the Republic of Mauritius when no longer needed for defence purposes. But, in any event, the draft General Assembly resolution which focuses on decolonization is completely unrelated to the UNCLOS Award and relates to breaches of the United Nations Charter and of fundamental principles of international law. Nonetheless, it is not without significance that two of the members of the UNCLOS Arbitral Tribunal opined that the detachment of the Chagos Archipelago was in breach of the principle of self-determination. The three other members of the Arbitral Tribunal did not contradict these two members, but simply opined that they had no jurisdiction to rule on the legality of the detachment.

(d) The Republic of Mauritius is of the view that bilateral talks on the implementation of the UNCLOS Award can take place independently of the outcome of the request for an Advisory Opinion, and is not opposed to the resumption of such talks at a later stage. Following the understanding of September 2016, facilitated by the President of the General Assembly, the Republic of Mauritius considered that since talks relating to decolonization would have a direct bearing on issues arising from the Award, both sides needed to focus on the former issue.

(e) The request to the ICJ for an Advisory Opinion does not pose any risk of a dangerous precedent being created by way of the advisory jurisdiction of the ICJ being abusively invoked, in future, to resolve bilateral disputes as UK alleges in an attempt to frighten States. The facts underlying the request for an Advisory Opinion, namely the

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dismemberment of the territory of the Republic of Mauritius, contrary to international law and General Assembly Resolutions, prior to the granting of independence to the Republic of Mauritius by the United Kingdom, are unique. An Advisory Opinion to assist the General Assembly to complete its work on decolonization in the case of the Republic of Mauritius will not create any dangerous precedent. Decolonization is a matter of multilateral interest, not of a bilateral nature, as the United Kingdom alleges in the case of the dismemberment of the Republic of Mauritius.

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 Missions of the Member States of the United Nations Human Rights Council the assurances of its highest consideration.

Permanent Missions of the Member States
of the United Nations Human Rights Council

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ANNEX 79

Treitel, *The Law of Contract,* 2nd Ed., 1966 (extracts) p.286

THE LAW OF CONTRACT

SECOND EDITION

By

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All Souls Reader in English Law

LONDON
STEVENS & SONS
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CHAPTER 10

DURESS AND UNDUE INFLUENCE [1]

THE consent of one of the parties to a contract may have been obtained by some form of pressure which the law regards as improper. This problem is dealt with by the common law of duress, the equitable rules of undue influence, and by some specific statutory provisions.

SECTION 1. *DURESS AT COMMON LAW*

At common law a contract can be avoided [2] if it was made under duress. Duress here means actual or threatened physical violence to, or unlawful constraint of, the person of the contracting party.[3] In *Latter* v. *Bradell* [4] the plaintiff, a housemaid, was ordered by her mistress to submit to a medical examination, on a suspicion of pregnancy which turned out to be unfounded. She cried and protested but submitted. Her claim for damages for assault failed as she had consented to the examination. The case was not one of duress as no physical violence was threatened or inflicted.

The effect of this narrow definition of duress can be seen in two types of case.

First, a threat to prosecute the other contracting party (or his close relative) for a criminal offence does not amount to duress.[5] We shall see that equity gives relief in such cases.[6]

[1] Winder, 3 M.L.R. 97; 4 Conv.(N.S.) 274.

[2] In *Parojcic* v. *Parojcic* [1958] 1 W.L.R. 1280, 1283, Davies J. said that he was "inclined to think that the effect of duress on a marriage was the same as if it is upon a contract, *viz.*, to render it not void but voidable." As to marriage, contrast *H.* v. *H.* [1954] P. 258. There is no good modern English authority on the question whether a contract procured by duress is void or voidable. *Cf. Depury* v. *Staplelord*, 19 Cal. 302 (1861), where a contract procured by flogging, etc., was held voidable.

[3] *Cumming* v. *Ince* (1847) 11 Q.B. 112, 120; what is threatened must be unlawful: *Biffin* v. *Bignell* (1862) 7 H. & N. 877; *Smith* v. *Monteith* (1844) 13 M. & W. 427.

[4] (1880) 50 L.J.C.P. 166; (1881) 50 L.J.Q.B. 448.

[5] *Flower* v. *Sadler* (1882) 10 Q.B.D. 572.

[6] *Post*, pp. 287 *et seq.*

Secondly, a contract is not invalidated by "duress of goods." Thus an agreement to pay money for the release of goods unlawfully detained, or to prevent their unlawful seizure, is valid.[7] But money which is actually paid for such a purpose can be recovered back.[8] Parke B. in several cases states this strange distinction with apparent complacency.[9] Its effect is not wholly clear. It can hardly mean that a person who is successfully sued for money which he agreed to pay for the release of his goods can then recover back what he was compelled to pay in the first action. It seems to mean that money which is simply paid for the release of the goods can be recovered back; but that money paid under an agreement for their release can be sued for and cannot be recovered back. The victim of a duress of goods should therefore make no promises, but should simply pay. There is no sign of equitable intervention in these cases.

The rule that money extorted by duress can be recovered back also applies where an unlawful charge is levied by unlawful threats, for example, if a carrier refuses to carry goods unless he is paid more than he is legally entitled to charge.[10] But it does not apply where the demand for the money is not backed by any threat[11] or where it is only backed by a threat to take legal proceedings[12]; if such a payment could be recovered back, no compromise would be secure.

SECTION 2. UNDUE INFLUENCE IN EQUITY

The narrow scope of the common law rules of duress led to equitable intervention in three types of case.

[7] *Skeate* v. *Beale* (1841) 11 A. & E. 983. It is assumed in these cases that the seizure is not known to be unlawful; if it were, there would be no consideration for the promise to pay: *ante*, p. 59; and see *Atlee* v. *Backhouse* (1836) 3 M. & W. 633, 650.

[8] *Astley* v. *Reynolds* (1731) 2 Str. 915; *Valpy* v. *Manley* (1845) 1 C.B. 594; *Green* v. *Duckett* (1883) 11 Q.B.D. 275; *Maskell* v. *Horner* [1915] 3 K.B. 106; *T. D. Keegan Ltd.* v. *Palmer* [1961] 2 Lloyd's Rep. 449, 457.

[9] *Atlee* v. *Backhouse* (1836) 3 M. & W. 633, 650; *Oates* v. *Hudson* (1851) 6 Ex. 346; *Parker* v. *Bristol & Exeter Ry.* (1851) 6 Ex. 702, 705.

[10] *Parker* v. *Bristol & Exeter Ry.*, *supra*; *Great Western Ry.* v. *Sutton* (1869) L.R. 4 H.L. 226; Winfield, 60 L.Q.R. 341.

[11] *Twyford* v. *Manchester Corpn.* [1946] Ch. 236; discussed by Marsh, 62 L.Q.R. 333.

[12] *Brown* v. *M'Kinally* (1799) 1 Esp. 279; *William Whiteley Ltd.* v. *R.* (1910) 103 L.T. 741.

ANNEX 80

Chitty, *Chitty on Contracts*, 23rd Ed. (1968) (extracts) 312, 351

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NUMBER 1

CHITTY ON CONTRACTS

TWENTY-THIRD EDITION

VOLUME I

General Principles

SWEET & MAXWELL
1968

of the goods within section 35 of the Sale of Goods Act, and so bars the right to reject the goods for breach of condition, would doubtless also constitute an affirmation of the contract and would also bar the right to rescind. But there may be some cases in which this is not so, because a person can "accept" goods within section 35 without knowing of his right to reject them,[xx] whereas there can be no affirmation without knowledge of the facts.

312 **Lapse of time.** Lapse of time may be evidence of affirmation.[yy] In *Clough* v. *L. & N.W. Ry.*[zz] it was said that "when the lapse of time is great it probably would be treated in practice as conclusive evidence" of a decision to proceed with the contract. This is especially true of contracts for the sale or allotment of shares in companies, where the utmost promptness is required.[aaa] In such a case a delay of even a few weeks after discovery of the misrepresentation is usually fatal, and there cannot, in any event, be rescission of an allotment after the company has gone into liquidation.[1]

But there can normally be no affirmation where the representee is ignorant of the truth and therefore of his right to rescind,[2] and the inference of affirmation from lapse of time should therefore be rebuttable by proof of lack of knowledge of the untruth. Yet in *Leaf* v. *International Galleries*[3] the right to rescind was held barred by five years' delay despite the fact that the representee only discovered the truth shortly before the proceedings. It seems, therefore, that mere lapse of time may itself bar rescission in cases of completely innocent misrepresentation, but this will not be so in cases of fraud, nor where there has been breach of a fiduciary duty.[4]

In considering whether the representee has lost his right to rescind by lapse of time, it may be important to inquire if the representor has been adversely affected by the delay.[5] Thus in *Morrison* v. *Universal Marine Insurance Co.*[6] it was said that rescission of a

[xx] *e.g.*, *Leaf* v. *International Galleries*, *supra*.
[yy] *Lindsay Petroleum Co.* v. *Hurd* (1874) L.R. 5 P.C. 221; *Erlanger* v. *New Sombrero Phosphate Co.* (1878) 3 App.Cas. 1218; *Clough* v. *L. & N.W. Ry.* (1871) L.R. 7 Ex. 26, 35; *Oelkers* v. *Ellis* [1914] 2 K.B. 139; *Armstrong* v. *Jackson* [1917] 2 K.B. 822; *Leaf* v. *International Galleries* [1950] 2 K.B. 86.
[zz] (1871) L.R. 7 Ex. 26, 34, 35.
[aaa] *Tulk's Case* (1867) L.R. 3 Eq. 795; *Shrapley* v. *Leeds and East Coast Ry.* (1870) 5 Ch.D. 663; *Re Scottish Petroleum Co.* (1883) 23 Ch.D. 413; *Aaron's Reefs Ltd.* v. *Twiss* [1896] A.C. 273, 294; *Taylor* v. *Oil and Oakeley Co.* (1913) 29 T.L.R. 515; *First National Reinsurance Co. Ltd.* v. *Greenfield* [1921] 2 K.B. 260.
[1] *Oakes* v. *Turquand* (1867) L.R. 2 H.L. 325.
[2] *Aaron's Reefs Ltd.* v. *Twiss* [1896] A.C. 273, 287; *Armstrong* v. *Jackson* [1917] 2 K.B. 822. But see *Re L. G. Clarke* [1967] Ch. 1121.
[3] *Supra*.
[4] *Armstrong* v. *Jackson*, *supra*.
[5] See *Clough* v. *L. & N.W. Ry.* (1871) L.R. 7 Ex. 26, 34, 35; *Morrison* v. *Universal Marine Insurance Co.* (1873) L.R. 8 Ex. 197, 205; *Erlanger* v. *New Sombrero Phosphate Co.* (1878) 3 App.Cas. 1218, 1278. See also *Re Cape Breton Co.* (1885) 29 Ch.D. 795; and *Ladywell Mining Co.* v. *Brookes* (1887) 35 Ch.D. 400.
[6] (1873) L.R. 8 Ex. 197.

contract of marine insurance, the policy of which was voidable for non-disclosure of a material fact, would have been refused if there had been any evidence that the failure of the underwriters to avoid the contract after they had become aware of the defect, had led the insured party to refrain from insuring elsewhere. But the fact that the representor has changed his position is not by itself a bar to rescission, so, *e.g.*, a contract of guarantee can be rescinded by the guarantor notwithstanding that money has been lent by the representor in reliance on the guarantee.[7] But prompt action would doubtless be required once the representee knows the truth in a case of this nature.

313 **Third party rights.** The intervention of a third party may prevent rescission. This is one of the risks run by the injured party if he delays in taking action, for if a third party acquires an interest in the subject-matter of the contract before the contract has been avoided, a claim for rescission will not lie,[8] provided that the third party acted in good faith and gave consideration.[9] Thus, although there may be no duty to act within a prescribed time, it is in the representee's interest to act promptly, for the longer the delay, the greater the possibility of a third party acquiring rights in the subject-matter of the contract.

This rule does not apply to void contracts, for in such cases the transferee has no title to pass to the third party[10]; it does apply to voidable contracts, for here the transferee has a good title until the contract is avoided.[11] Thus the rule may operate in all cases of misrepresentation (whether innocent, negligent or fraudulent) unless the effect of the misrepresentation is to make the contract void for mistake.[12]

But this principle only applies to a transfer of goods and not to an assignment of contractual rights. If A is induced to sell goods to B by the fraud of B, and B resells the goods to C who takes in good faith and for value, C acquires a good title to the goods. But if A is induced to buy goods from B by the fraud of B, and B assigns the right to receive the purchase price to C, the rule that assignments are "subject to equities"[13] means that C gets no better right than B.

If a contract is induced by an innocent misrepresentation and the same innocent misrepresentation is passed on to a sub-buyer and in turn induces a subcontract, the sub-buyer may rescind the subcontract if he does so, there is nothing to prevent the first representee from rescinding the original contract.[14]

[7] *Mackenzie* v. *Royal Bank of Canada* [1934] A.C. 468.
[8] *White* v. *Garden* (1851) 10 C.B. 919; *Babcock* v. *Lawson* (1880) 5 Q.B.D. 28; *Re L. G. Clarke* [1967] Ch. 1121.
[9] *Scholefield* v. *Templer* (1859) 4 De G. & J. 429, 433–434.
[10] *Hardman* v. *Booth* (1863) 1 H. & C. 803; *Cundy* v. *Lindsay* (1878) 3 App.Cas. 4; *Ingram* v. *Little* [1961] 1 Q.B. 31.
[11] Sale of Goods Act 1893, s. 23.
[12] As, for example, in *Cundy* v. *Lindsay*, *supra*, and *Ingram* v. *Little*, *supra*.
[13] *Post*, § 1047.
[14] *Abram S.S. Co.* v. *Westville Shipping Co.* [1923] A.C. 773.

tolls were levied on the plaintiff under a threat of seizure of goods, the tolls were in fact unlawfully demanded. Their payment was [illegible] recoverable as it had been made to avoid seizure of the goods and the plaintiff was entitled to recover the payments he had made under the illegal demand. Lord Reading C.J. said, "If a person pays money which he is not bound to pay, under the compulsion of urgent and pressing necessity or of seizure, actual or threatened, of his goods, he can recover it as money had and received."[33] It is nevertheless somewhat difficult to reconcile this rule with the rule that duress of goods will not avoid a contract. A possible solution may be that money paid in this way can only be recovered if it has been paid under protest without any binding agreement[34]; otherwise the result must [illegible] although an agreement to pay money under duress of goods can be enforced, any money so paid will be recoverable by the person paying it as money had and received to his use.

(c) *Threat to Exercise Legal Rights*

349 **Effect of threats.** It is sometimes said to be a principle of law that "No threat to exercise one's legal rights can amount to a cause of action, even if made for the purpose of intimidation or coercion, and even if inspired by malicious motives."[35] But such a principle seems to be too widely stated. There are, for example, many cases where a man who has a "right," in the sense of a liberty or capacity of doing an act which is not unlawful, but which is calculated seriously to injure another, will be liable to a charge of blackmail if he demands money from the other as the price of abstaining, *e.g.*, from disclosing discreditable incidents in the victim's life.[36] Although it is, in general, true to say that a contract is not rendered voidable by reason of the fact that coercion has been lawfully applied so as to compel the promisor to accept its terms,[37] it is unlikely that a court would refuse to entertain an action at the suit of one who had paid money under a threat amounting to blackmail, or to set aside any agreement entered into as the result of such a threat.[38]

350 It is also important to note in this connection the decision of the House of Lords in *Rookes* v. *Barnard*[39] where the defendants conspired

[33] *Ibid.* at p. 118.

[34] *Atlee* v. *Backhouse*, *supra*, at p. 650; *Parker* v. *Bristol & Exeter Ry.* (1851) 6 Exch. 702, 705.

[35] Salmond, *Law of Torts*, 14th ed., p. 528; *Allen* v. *Flood* [1898] A.C. 1; *Ware and De Freville* v. *Motor Trade Association* [1921] 3 K.B. 40; *Hardie and Lane Ltd.* v. *Chilton* [1928] 2 K.B. 306; *Chapman* v. *Honig* [1963] 2 Q.B. 502. *Cf. Quinn* v. *Leathem* [1901] A.C. 495.

[36] *Thorne* v. *Motor Trade Association* [1937] A.C. 797, 822.

[37] *Hardie and Lane Ltd.* v. *Chilton*, *supra*; *Eric Gnapp Ltd.* v. *Petroleum Board* [1949] 1 All E.R. 980.

[38] *Norress* v. *Zeffert* [1939] 2 All E.R. 187; *United Australia Ltd.* v. *Barclays Bank Ltd.* [1941] A.C. 1, 29.

[39] [1964] A.C. 1129.

together to threaten to break their contracts of employment with the plaintiff's employer if he did not terminate the plaintiff's contract of employment. They were held liable to the plaintiff on the ground that a threat to break a contract was a sufficient unlawful act for the purposes of the tort of intimidation. It might seem reasonable to conclude from this decision that an agreement, even if supported by fresh consideration,[40] entered into in response to a threat to break an existing contract with the promisor might be liable to be set aside as having been procured by intimidation. But there is no necessary identity between the situation where A inflicts loss on C by threatening to break his contract with B and the situation where A's threat to B compels B to act to his own detriment. As Lord Reid observed in *Stratford (J. T.) & Son Ltd. v. Lindley*[41]: "... a case where a defendant presents to the plaintiff the alternative of doing what the defendant wants him to do or suffering loss which the defendant can cause him to incur is not necessarily *in pari casu* and may involve questions which cannot arise where there is intimidation of a third person." These remarks were, however, made in the context of a discussion on the scope and effect of a tortious remedy. The possibility of enforcing an agreement procured by the threat to break an existing contract with the promisor, or of recovering money paid in pursuance of such a threat, must therefore be regarded as open questions.[42]

(d) *General Effect of Duress*

351 **Contract under duress is voidable.** A contract entered into under duress is voidable and not void[43]; consequently a person who has entered into a contract under duress may either affirm or avoid such contract after the duress has ceased[44]; and if he has so voluntarily acted under it with a full knowledge of all the circumstances he may be held bound on the ground of ratification,[45] or if, after escaping from the duress, he takes no steps to set aside the transaction, he may be found to have affirmed it.[46]

352 **Duress exercised by third party.** Where it is sought to avoid a contract on the ground of duress exercised, not by the party seeking to enforce the agreement, but by some third person, the party seeking to avoid the contract must prove that the other party knew of the duress.[47]

[40] *See ante*, § 129.
[41] [1965] A.C. 269, 325.
[42] See *Morgan* v. *Ker* (1670) 12 Mod.R. 358; *D. & C. Builders Ltd. v. Rees* [1966] 2 Q.B. 617; Hoffmann, 81 L.Q.R. 116, 127 (1965).
[43] For a different view, see Lanham, 29 M.L.R. 615 (1966).
[44] Coke 2 Inst. 483; *Whitchdale's Case* (1605) 5 Co.Rep. 119b.
[45] *Cromer* v. *Beadel* (1869) 2 De G.F. & J. 333.
[46] *See post*, § 366.
[47] *Lancashire Data* v. *Yallourne Chemist (N.F.C.) s/o Nagarsa Chemist Pharmacist s/o Lanchman Das* v. *Yallourne Chemist (N.F.C.) s/o Nagarsa Chemist Pharmacist s/o Lanchman Das* [1965] 1 W.L.R. 500. In the case of a bill of exchange, the onus of proof is altered by s. 30 (2) of the Bills of Exchange Act 1882, but this has been held not to apply

ANNEX 81

I. Hendry, S. Dickson, *British Overseas Territory Law* (2011) p.280

British Overseas Territories Law

Ian Hendry
and
Susan Dickson

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Nor has the question of independence been strongly advocated or publicly tested in the Cayman Islands, St Helena or the Virgin Islands.[3]

This chapter considers the law and practice, in the light of numerous precedents, relating to the termination of United Kingdom sovereignty over an overseas territory.

INDEPENDENCE

The consistent practice in the post-Second World War decolonisation process was to ensure that independence had the support of the people of a territory either by referendum or by means of a general election at which independence formed part of the winning party's mandate. In this way the principle of self-determination was regarded as satisfied.

In post-war practice, once a decision to move to independence had been thus taken, a target date for independence was agreed between the Government of the United Kingdom and the Government of the territory concerned. In the lead-up to that date all the necessary preparations had to be made. This frequently involved a final, pre-independence stage of constitutional advancement, sometimes called 'full internal self-government'. While the United Kingdom's ultimate legislative powers, as well as some controls on local legislative power, remained, the reserved executive powers of the Governor (and, indirectly, of the United Kingdom) were reduced to the minimum of external affairs, defence and internal security. This was regarded as politically and legally acceptable by the United Kingdom for a relatively short interim period.

The key legal steps in the granting of independence consisted of the passage of the necessary United Kingdom legislation and the negotiation and formal making of the independence constitution of the territory concerned. But there were other consequences of a move to independence, especially in the external field.

A. Independence Legislation

In the great majority of cases the necessary United Kingdom legislation consisted of an Act of Parliament.[4] In the case of the independence of the six associated states, the legislation granting independence consisted of an Order in Council made in exercise of powers conferred by the West Indies Act 1967, read in conjunction with certain provisions of that Act.[5]

[3] For a summary of the interest in independence in Bermuda, Montserrat and the Turks and Caicos Islands, and the contrasting lack of interest in Anguilla, the Cayman Islands, St Helena and the Virgin Islands, see R Aldrich and J Connell, *The Last Colonies* (Cambridge, Cambridge University Press, 1998) 125–31, 138–40 and 141–43.

[4] Starting with the Statute of Westminster 1931 (1931 c 4), which formally confirmed the independence of the 'Dominions' of Australia, Canada, New Zealand, South Africa, the Irish Free State and Newfoundland. The latest independence Act was the Belize Act 1981 (1981 c 52).

[5] 1967 c 4. s 10(2) provided for termination of the status of association by Order in Council, s 11 provided for the effects of termination by divesting the United Kingdom Government of responsibility, and the United Kingdom Parliament of power, in respect of the associated State, and ss 13 to 15

ANNEX 82

United Nations General Assembly, Fifteenth Session Official Record, 869th Plenary Meeting, UN Doc. A/PV.869, 23 September 1960

United Nations

GENERAL ASSEMBLY

FIFTEENTH SESSION

Official Records

869th PLENARY MEETING

Friday, 23 September 1960, at 10.30 a.m.

NEW YORK

CONTENTS

	Page
Agenda item 9:	
General debate (continued):	
Speech by Mr. Nkrumah, President of the Republic of Ghana	61
Speech by Mr. Khrushchev, Chairman of the Council of Ministers of the Union of Soviet Socialist Republics	68
Statement by the representative of Belgium	85

President: Mr. Frederick H. BOLAND (Ireland).

AGENDA ITEM 9

General debate (continued)

1. Mr. NKRUMAH, President of the Republic of Ghana: The great tide of history flows, and as it flows it carries to the shores of reality the stubborn facts of life and men's relations one with another. One cardinal fact of our time is the momentous impact of Africa's awakening upon the modern world. The flowing tide of African nationalism sweeps everything before it and constitutes a challenge to the colonial Powers to make just restitution for the years of injustice and crime committed against our continent.

2. But Africa does not seek vengeance. It is against her very nature to harbour malice. Over 200 millions of our people cry out with one voice of tremendous power—and what do we say? We do not ask for death for our oppressors; we do not pronounce wishes of ill-fate for our slave-masters; we make an assertion of a just and positive demand; our voice booms across the oceans and mountains, over the hills and valleys, in the desert places and through the vast expanse of mankind's habitation, and it calls out for the freedom of Africa; Africa wants her freedom; Africa must be free. It is a simple call, but it is also a signal, a red light of warning to those who would tend to ignore it.

3. For years and years, Africa has been the foot-stool of colonialism and imperialism, exploitation and degradation. From the North to the South, from the East to the West, her sons languished in the chains of slavery and humiliation, and Africa's exploiters and self-appointed controllers of her destiny strode across our land with incredible inhumanity—without mercy, without shame, and without honour. But those days are gone, and gone forever, and now I, an African, stand before the General Assembly of the United Nations and speak with the voice of peace and freedom, proclaiming to the world the dawn of a new era.

4. I wish to thank the General Assembly sincerely for this opportunity of addressing it. Let me say here and now that our tribulations and sufferings harden and steel us, making us a bastion of indomitable courage, and fortifying our iron determination to smash our chains.

5. I look upon the United Nations as the only organization that holds out any hope for the future of mankind. Cast your eyes across Africa: the colonialists and imperialists are still there. In this twentieth century of enlightenment, some nations still extol the vain glories of colonialism and imperialism. As long as a single foot of African soil remains under foreign domination, the world will know no peace. The United Nations must therefore face its responsibilities, and ask those who would bury their heads like the proverbial ostrich in their imperialist sands, to pull their heads out and look at the blazing African sun now travelling across the sky of Africa's redemption. The United Nations must call upon all nations that have colonies in Africa to grant complete independence to the territories still under their control. In my view possession of colonies is now quite incompatible with membership in the United Nations. This is a new day in Africa, and as I speak now, thirteen new African nations have taken their seats this year in the General Assembly as independent sovereign States. The readiness of any people to assume responsibility for governing themselves can be determined only by themselves. I and the Government of Ghana, and I am sure the Governments and peoples of independent African States, share the joy of welcoming our sister States into the family of the United Nations. There are now twenty-two of us in this Assembly and there are yet more to come.

6. I would suggest that when the Charter of the United Nations comes to be revised, a permanent seat for an African nation should be created on the Security Council, in view not only of the growing number of African Members of the United Nations, but also of the increasing importance of the African continent in world affairs. This suggestion applies equally to Asia and to the Middle East.

7. Many questions come to my mind at the moment, all seeking to be dealt with at once: questions concerning the Congo, disarmament, peace, South Africa, South West Africa, China and Algeria. However, I would like to start with the question of the Congo and to take the others in their turn.

8. The Congo, as we all know, was a Belgian colony for nearly a century. In all those years Belgium applied a system of calculated political castration in the hope that it would be completely impossible for African nationalists to fight for their emancipation. But to the dismay of Belgium, and to the surprise of everyone outside the African continent, this dreaded nationalism appeared, and within a lightning space of time secured the independence of the Congo.

9. The policy of political frustration pursued by the Belgian colonial régime created a situation in which the Belgian administration was unable to continue, while at the same time, no Congolese had been trained to take over and run the State. The struggle for independence in the Congo is the shortest so far recorded,

and the Belgians were so overtaken by events that they pulled out, but fully expected to return in one way or another. The high positions in the army, the police and the public services have been the exclusive preserves of the Belgians. No African could hope to rise to the lowest commissioned rank in the army. The whole of the "Force publique" was subject to extremely harsh discipline and had very low rates of pay. This situation made it impossible to build up a cadre of indigenous personnel to man the services. As soon as an African became Minister of Defence, the incongruous position of the African in the "Force publique" became evident.

10. Great discontent resulted. Even so, the situation might not have erupted had the Belgian Commander of the "Force publique" adopted a realistic attitude towards the men, and made any attempt to redress the legitimate grievances of the Congolese soldiers.

11. Even a promise of future reform might have done some good. On the contrary, emphatic statements were indiscreetly made by Belgian officers that nothing had changed and that life would go on in much the same way as before independence; in short, the soldiers were told that independence was a sham and that Belgium still wielded the big stick. This produced the mutiny.

12. When the mutiny occurred, large numbers of Belgians began to leave the country. The President of the Republic, Mr. Kasavubu, and the Prime Minister, Mr. Lumumba, went to Matadi in order to appeal to the Belgians to remain. But instead, they were all taken on board a ship on the advice of the Belgian Consul, while the town was machine-gunned from the air by Belgian military aircraft and shelled from the sea. Despite the fact that there were no Belgian civilians whatever to protect, Belgian troops entered the town and shot in cold blood a number of unarmed police and civilians. It was following upon this incident that acts of organized violence by members of the "Force publique" began to occur. These incidents, in their turn, provided an occasion for Belgian military intervention.

13. Meanwhile, ostensibly on the grounds of safeguarding the lives of Belgians in the province, Belgian troops entered Katanga in considerable numbers and enabled the President of the Provincial Government, Moïse Tshombé, to set himself up as the head of a so-called "independent state". The whole of the administration of this so-called "state" was in Belgian hands and it was supported and maintained openly by Belgian troops. The situation was thus one of extreme danger. The Belgian army was virtually occupying the Congo, pleading as their excuse circumstances which were fundamentally all of Belgium's own making.

14. The Congolese Government called for aid. Congo asked Ghana for help and also wisely called in the United Nations. From this point, representatives are more than conversant with the story and there is no need for me to dwell in detail on the facts.

15. It is only necessary to say that something has happened in the Congo which has justified my constant warning to the African countries to be on their guard against what I call "clientele-sovereignty", or fake independence, granted by the metropolitan Power, with the concealed intention of making the liberated country a "client-state" and controlling it effectively by means other than political ones. What has happened in the Congo has more than justified my continuous outcry against the threat of Balkanization in Africa and my daily condemnation of neo-colonialism, the process of handing independence over to the African people with one hand only to take it away with the other.

16. The Congo question is a test case for Africa. What is happening in the Congo today may happen in any other part of Africa tomorrow, and what the United Nations does today must set a precedent or a pattern for what it may have to do tomorrow. The United Nations will be judged by the success or failure of its handling of this Congo situation.

17. Certain propositions seem to me to be self-evident. The first of these is that the United Nations need not go to the assistance of any country which invites its intervention, but that once it has done so, it owes an obligation to the Government and people of that country not to interfere in such a way as to prevent the legitimate Government which invited it to enter the country from fulfilling its mandate. In other words, it is impossible for the United Nations at one and the same time to preserve law and order and to be neutral between the legal authorities and the law breakers. That is, unfortunately, exactly what the United Nations has attempted to do in the case of the Congo, and that is the cause of all the present difficulties and disagreements.

18. My second proposition is that in any sovereign state there can only be one national army. If a soldier disobeys a superior officer and uses his arms to murder and to loot, he is a mutineer. There is, however, no difference between his position and that of a colonel who disregards the authority which appointed him and uses the troops under his command for his own purposes. The United Nations, in enforcing law and order, must deal equally sternly with either of these two types of mutineer.

19. This failure by the United Nations to distinguish between legal and illegal authorities led to the most ludicrous results, embarrassing both to the Ghanaian forces who were called upon to carry them out, and to the United Nations itself which was exhibited in a ridiculous light. For instance, the very troops which Ghana sent to help the legitimate Lumumba Government, at the request of Mr. Lumumba, were employed by the United Nations in preventing Mr. Lumumba, the legitimate Prime Minister of the legal Government of the Congo Republic, from performing the most obvious of his duties—for instance, using his own radio station.

20. These difficulties are in essence growing pains of the United Nations, and it would be entirely wrong to blame either the Security Council or any senior officials of the United Nations for what has taken place. However, a new approach is clearly required. I believe that it is not difficult to devise methods by which the issue can be appropriately dealt with.

21. Let us get down to realities. The United Nations was invited to enter the Congo in a message from the Head of State, Mr. Kasavubu, and the Prime Minister, Mr. Lumumba. Both these gentlemen were appointed to their respective offices in accordance with the Constitution and with the will of the Congolese people expressed through elections. Here then is the legal Government which should be supported and behind which the United Nations should throw its weight and authority.

22. I am sure that the independent African States will agree with me that the problem in the Congo is an acute African problem which can be solved by Africans only. I have on more than one occasion suggested that the United Nations should delegate its functions in the Congo to the independent African States, especially those African States whose contributions in men and materials make the United Nations effort in the Congo possible. The forces of these African States should be under a united African command responsible [S/4387] to the Security Council, in accordance with the first resolution of the Council under which the United Nations troops entered the Congo Republic.

23. I suggest that the General Assembly should make it absolutely clear that the United Nations contingents in the Congo Republic have an overriding responsibility to preserve law and order, which can only be done by supporting, safeguarding and maintaining the legal and existing parliamentary framework of the State.

24. In order to prevent illegal actions of all kinds it is necessary that, in co-operation with the legitimate Government of the Republic, the National Army should be re-trained, regrouped and reorganized so that there is finally established one army responsible only to the Central Government.

25. These proposals, if accepted, would result in the withdrawal of all non-African troops from the Congo and make it easy to identify and eliminate the Belgian troops who have been infiltrating into the territory in defiance of the Security Council resolutions.

26. In this connexion one must mention Katanga, which brings to mind the regrettable and most vicious attempts being made by vested interests to bolster up a puppet régime there, using poor Moïse Tshombé against his own Government in an effort to break up the Congo Republic by secessionist activities. I am sure that no African State would lend support to any secessionist move in the Congo. The Congo is the heart of Africa and we shall do our utmost to prevent any injuries being inflicted upon it by imperialist and colonialist intrigue. The Congo, including Katanga and Kasai, is one and indivisible. Any other approach is mere wishful thinking, for not all the mineral wealth in that integral part of the Congo can create Katanga as a separate State.

27. The crisis in the Congo must be arrested now before it sparks off another world conflagration. But some Powers do not appear to realize the gravity of the situation and are playing with fire by attempting to use the United Nations as a cloak for their own aims.

28. I, personally, and my Government have done everything possible to assist and advise the leaders of the Congo to settle their differences and place their country's and Africa's interests first. Both of them, President Kasavubu and Prime Minister Lumumba, speak the same language of peace and unity. Both of them are anxious to see stability achieved in their country. Both of them agree to reconciliation. What, then, prevents them from coming together? What has led to the fake Mobutu episode? I can assure the General Assembly that but for the intrigues of the colonialists a document of reconciliation which was drafted in the presence of my Ambassador in Leopoldville and approved by both Mr. Kasavubu and Mr. Lumumba would have been signed by them. Imperialist intrigue, naked and undisguised, was desperately at work to prevent this being signed. The policy of divide and rule is still being practised energetically by the opponents of African independence and unity.

29. It is quite clear that a desperate attempt is being made to create confusion in the Congo, extend the cold war to Africa, and involve Africa in the suicidal quarrels of foreign Powers. The United Nations must not allow this to happen. We, for our part, will not allow it to happen. That is why we are anxious that the United Nations, having reached a point where intervention on the side of the legitimate Government of the Congo appears to be the obvious and only answer to this crisis, should act boldly through the medium of the independent African States.

30. Let these African States act under the aegis of the United Nations and produce the effective result. In these particular circumstances the Congo crisis should be handed over to the independent African States for solution. I am sure that if it is left to them an effective solution can be found. It is negative to believe and hesitate until the situation becomes irredeemable and develops into another Korea.

31. I would go further and suggest that all financial aid or technical assistance to the Republic of the Congo should be arranged only with the legitimate Government of that Republic channelled through the United Nations and guaranteed and supervised by a committee of the independent African States, appointed by the Security Council, which should be accountable to the United Nations.

32. Having dwelt at length on the Congo situation, which is only natural in view of its gravity, I now wish to turn to other matters. But before I do so, it is pertinent here to sound a strong note of warning, namely, that if some people are now thinking in terms of trusteeship over the Congo, with a view to exploitation of its resources and wealth, let those people for ever discard that idea, for any such suggestion would be resisted. There can be no question of trusteeship in the Congo. The Congo is independent and sovereign. The colonialists and imperialists must remember this fact and remember it for all time.

33. I would now like to turn to the question of South West Africa. Although opinions delivered by the International Court of Justice show that South West Africa is not in fact a Trust Territory, there can be no doubt whatever that the United Nations, as the successor of the League of Nations, has a particular responsibility towards South West Africa.

34. I consider also that Ghana has a particular responsibility in regard to what is taking place in South West Africa. The justification for depriving Germany of this colony and for vesting its Government in South Africa was based upon a United Kingdom document entitled "Report on the Natives of South West Africa and their Treatment by Germany".[1] Explaining the attitude of Imperial Germany towards Africans, this United Kingdom publication exposed the acts of brutal suppression perpetrated against the Africans of this Territory by the Germans.

35. In fact, however, the policy laid down by the old German Imperial Colonial Office exactly reproduces the policy now being pursued in South West Africa

[1] London, His Majesty's Stationery Office, 1918, Cd. 9146.

by the Union of South Africa. In his 1957 report 2/ to the Committee on South West Africa, the Secretary-General quoted a speech by a Senator nominated by the Union Government to represent South West Africa in the Union Senate. This Senator, Dr. Vedder, actually delivered a long and detailed speech to the Senate pointing out that in every respect the Union Government was merely carrying on the traditional methods for ruling Africans devised by Imperial Germany and enforced in South West Africa by Dr. Goering, the father of the notorious fascist, Hermann Goering.

36. The United Kingdom document which made the case against Germany in regard to South West Africa was, in reality, a Commonwealth document. At the signing of the Peace Treaty of Versailles the Commonwealth was collectively represented by the United Kingdom, which acted on behalf of what was then the British Empire. Therefore, what was done at Versailles was done in the name not only of the United Kingdom, but of Canada, Australia, New Zealand, South Africa and—though they were not yet independent and therefore not members of the Commonwealth—of India, Ceylon, Pakistan and Ghana.

37. In a report 3/ made to the General Assembly in 1959 by the Committee on South West Africa, and approved by the General Assembly, the Committee stated that the policy of "apartheid" as practised in South West Africa "is a flagrant violation of the sacred trust which permeates the mandate and the Charter of the United Nations and the Universal Declaration of Human Rights".

38. For thirteen years now the Union of South Africa has consistently disregarded the requests of the United Nations in regard to South West Africa. The Union imposes the most harsh and degrading régime upon the inhabitants, which is not in any way in accord with the provisions of the Mandate. It is the duty of the United Nations to enforce the Mandate and the United Nations must not fail in this duty.

39. In this connexion, I wish to make the following positive proposal. The Union of South Africa should be asked to surrender the Mandate to the United Nations and a committee of all the independent African States should be set up to administer the Territory on behalf of the United Nations. If the Union of South Africa is unable to agree to this, then the next session of the General Assembly of the United Nations should take steps to terminate the Mandate, make the Territory a Trust Territory, and appoint the independent African States as Administering Authority.

40. I now turn to the Union of South Africa itself. The Union Government, against all moral considerations and against every concept of human dignity, self respect and decency, has established a policy of racial discrimination and persecution which in its essential inhumanity surpasses even the brutality of the Nazis against the Jews.

41. The interest of humanity compels every nation to take steps against such an inhuman policy and to act in concert to eliminate it from the world. To this end Ghana has taken the following action. We have, as from 1 August 1960, instituted a total boycott of South African goods, closed all Ghanaian ports—sea as well as air—to South African shipping and aircraft, except in cases of distress, and have required South African citizens entering Ghana to have in their possession travel documents issued by the Government of Ghana or passports with valid Ghanaian transit visas.

42. This action is in implementation of the unanimous resolution adopted by the Second Conference of Independent African States in Addis Ababa last June. Indeed, the hollow social basis of "apartheid" and the grievous practical harm it causes can be judged by the gruesome massacre of defenceless men, women and children at Sharpville, in March of this year, by the Union police. The untenable claim of a minority in South Africa is steadily building a wall of intense hate which will result in the most violent and regrettable consequences in the future unless this minority abandons the iniquitous racial policy which it pursues.

43. I now turn to the question of the Portuguese colonies in Africa. Portugal, a member of the North Atlantic Treaty Organization has by her metropolitan law claimed the territories she has colonized in Africa as an integral part of Portugal. I have always emphasized that Africa is not, and can never be, an extension of Europe, and this Portuguese arrangement is repugnant to any concept of African freedom.

44. The North Atlantic Treaty states in the preamble that member States "are determined to safeguard the freedom, common heritage and civilization of their peoples founded on the principles of democracy, individual liberty and the rule of law". 4/

45. May I ask all members of NATO who are Members of the United Nations to point out, when they come to speak in this debate, any single instance in which Portugal has observed the NATO principles in regard to her colonies in Africa.

46. In Portuguese Africa there exists forced labour which is akin to slavery, all political freedom is denied, and, though it is difficult to believe, the condition of the ordinary African is worse even than it is in the Union of South Africa. If the situation in the Portuguese territories has not yet become, as has the situation in South Africa, a threat to world peace, this is merely because the inevitable explosion has not as yet taken place.

47. In regard to Portugal, my view is that a particular responsibility rests on the NATO members who are also Members of the United Nations. They can bring pressure to bear on Portugal to accord the same independence to her colonies in Africa as other NATO Powers have granted to their former colonial possessions.

48. As I have said elsewhere, the wind blowing in Africa is not an ordinary wind. It is a raging hurricane, and it is impossible for Portugal, or, for that matter, any other colonial Power to prevent the raging hurricane of African nationalism from blowing through oppressed and down-trodden colonies.

49. May I turn now to the most regrettable question of the war in Algeria. For the past six years or more this war has remained a big problem for us all. For more than six years the sands of Algeria have been stained red with blood, and French and Algerian youth in their thousands have marched to death. The flow-

2/ See "Information and Documentation in respect of the Territory of South West Africa" (A/AC.73/L.10), paras. 86-89.

3/ See Official Records of the General Assembly, Fourteenth Session, Supplement No. 12, para. 83.

4/ See United Nations, Treaty Series, vol. 34 (1949), No. 541.

er of French youth is being wasted in an attempt to maintain the impossible fiction that Algeria is part of France, while at the same time the young men of Algeria are forced to give their lives in a conflict which could be settled tomorrow by the application of the principles of the United Nations.

50. This utter waste of the flower of the youth of France and Algeria as a result of a senseless war must now stop, and the responsibility for stopping it should rest squarely on the United Nations. No argument about its being an internal problem of France can solve the issue for, in fact, the subject of a shooting war can never be the internal problem of any Power, since a spark in the wrong direction could spread the fire and cause a world conflagration.

51. France cannot win a military victory in Algeria. If she hopes to do so, then her hopes are false and unrelated to the realities of the situation. Indeed, any person who thinks that France can win a military victory in Algeria lives in a world of utter illusion, and time will prove that I am right.

52. The only way out of this tragic impasse is the way of negotiation. There was indeed a bright ray of hope a year ago, when the President of France made his declaration 5/ accepting the principle of the right of self-determination for the Algerian people. It is sad that the purpose of this declaration was later treated with contempt by France herself, thereby defeating this fine gesture of good will for the solution of the Algerian problem.

53. I feel strongly that, whatever has happened in Algeria, France and the Algerian nationalist Government are still able to sit face to face on equal terms at the negotiating table and produce workable results, which would bring peace to both sides and put an end to this catastrophe. But, from whatever angle you view this problem, you cannot escape from the fact that Algeria is African and will always remain so, in the same way that France is French. No accident of history, such as has occurred in Algeria, can ever succeed in turning an inch of African soil into an extension of any other continent. Colonialism and imperialism cannot change this basic geographical fact. If colonialism and imperialism attempt to do this, we shall have nothing but the strife and confusion that we are witnessing in the world today. Let France and the other colonial powers face this fact and be guided accordingly.

54. The problem of Africa, looked at as a whole, is a wide and diversified one. But its true solution lies in the application of one principle, namely, the right of a people to rule themselves. No compromise can affect this cardinal and fundamental principle, and the idea that when a handful of settlers acquire a living space on our continent the indigenous inhabitants must lose this right, is not only a serious travesty of justice but also a woeful contradiction of the very dictates of history.

55. Out of a total African population of over 230 million people, some 3 per cent are of non-African origin. To suppose that such a small minority could in any other continent produce acute political difficulties would be unthinkable. Yet such is the subconscious feeling of certain European settlers in Africa that to them the paramount issue in Africa is not the welfare of the 97 per cent but rather the entrenchment of the rights of the 3 per cent, of these European settler minorities in Africa.

56. To these minority settlers a solution seems impossible unless what they describe as "justice" is done to the foreign 3 per cent. Justice, they say, must be done to this group irrespective of whether it means that injustice continues bo be done to the remaining inhabitants. I believe that a reasonable solution can be found to the African problem which would not prejudice the minorities on the continent. No effective solution, however, can be found if political thinking in regard to a solution begins with the rights of the 3 per cent and considers the rights of the 97 per cent only within the framework which is acceptable to the rest.

57. The world must begin at last to look at African problems in the light of the needs of the African people and not only of the needs of minority settlers. Colonialism, imperialism and racialism are doomed in Africa, and the sooner the colonial Powers recognize this fact the better it will be for them and the world.

58. I have spoken at length on African questions and I must now turn my attention to other matters. I will accordingly make a few observations on disarmament.

59. In my view, we are passing through another scientific and industrial revolution which should make unnecessary the division of the world into developed and less-developed areas. We must therefore avoid economic thinking based upon the conditions of the past. Above all, we must avoid an attitude of mind which applies, in an era of abundance, the economic theories worked out to serve an age of scarcity.

60. Fundamentally, the argument in favour of disarmament must be looked at in two ways. First, it is ridiculous to pile up arms which must destroy the contestants in a future war impartially and equally. Secondly, it is tragic that preoccupation with armaments prevents the big Powers from perceiving what are the real forces in the world today. If the world population continues to grow, and if inequality between the so-called developed and under-developed countries is allowed to remain, in conditions where it is no longer technically or scientifically justified, then however great the armaments piled up, an international explosion cannot, in my view, be averted. While the means exist for providing world prosperity, the great majority of mankind will not agree for ever to remain in a position of inferiority.

61. Armaments, therefore, not only threaten the future of mankind, but provide no answer to the major problems of our age.

62. Possibly the cause of disarmament has suffered because it is looked upon in a negative way. In some countries, at any rate, industrial prosperity is associated with rearmament and military preparations, and a recession with a slowing down of military effort. This is because disarmament is looked at in a vacuum. It should be looked upon as a means for the re-deployment of the capital resources and the technical skills now being used for military purposes. What is required in the United Nations is some fundamental thinking and planning about the re-deployment of the armament capacity of the countries which disarm. Side by side with technical discussions as to how nuclear weapons can be controlled, there should be further discussions as to how resources released by the control of these weapons could be used in the service of mankind.

5/ Statement of 16 September 1959.

63. No such planning is at present being undertaken by the United Nations. I propose, for your consideration, that some such study should be undertaken immediately and that an international team of scientists, technicians and administrators should be formed under United Nations auspices to produce a plan to show what could in fact be done with the resources which are at present being wasted in armaments.

64. In the meantime, of course, it is essential that we on the African continent take positive steps to isolate ourselves as far as is possible from the effects of nuclear warfare. One of the first and most practical steps which could be taken in this regard is to prevent any State having nuclear weapons from possessing military bases on the African continent.

65. This is one of the main reasons why the Government of Ghana believes that no African State should enter into an alliance of a military nature with any outside Power. Any such alliance not only involves the State concerned in the risk of being drawn into nuclear warfare; it also endangers the security of the neighbouring African States.

66. "Fall-out" is no respecter of frontiers, and a declaration of neutrality cannot save the people of any African State from nuclear poisoning once atomic war is introduced into the African continent. A military alliance with any atomic Power is therefore, in the view of the Government of Ghana, a threat to the security of Africa and world peace.

67. The Government of Ghana therefore feels that it is its duty to support all measures taken within the framework of the United Nations Charter and in collaboration with like-minded African States to prevent the establishment or maintenance of military bases on the African continent.

68. In order to ensure that such bases are not established in Africa, I suggest that an arrangement should be made by the United Nations whereby new States admitted to this Organization should register with it any treaties they may have entered into with their former colonial Powers.

69. I hope that the great Powers who possess atomic weapons will appreciate our feelings in this regard and will voluntarily relinquish any bases that they may at present possess in Africa. I believe that it is the duty of the United Nations to encourage the growth of zones free from nuclear warfare. A start in this policy must be made somewhere and I therefore make the positive proposal that whatever other steps may be taken to effect nuclear disarmament, a start should be made by all nuclear Powers agreeing to keep Africa out of their nuclear warfare plans.

70. Looking at the problem of nuclear disarmament generally, the small nations of the world can make a useful contribution. Since the great Powers suspect each other so much, and since inspection on the spot appears to me to be one of the most effective means of obtaining concrete results, these great Powers should agree to a system of inspection where the inspection teams are only composed of certain members of the small uncommitted nations. This would eliminate all suspicion, create confidence in the inspection method and help to solve this crucial and vital issue.

71. And here I must refer in particular to the question of French atomic tests in the Sahara. The element of French intimidation contained in the tests was a positive provocation to Africa and a threat to world peace. We have no doubt that France chose the Sahara to demonstrate to African States their political weakness. This nuclear blackmail brings home forcibly to the independent African States the importance of creating and maintaining their solidarity against any attacks upon the peace and security of the African continent.

72. We cannot overlook the fact that France is militarily allied to certain other Powers and that in fact France is only able to carry out these nuclear tests through the support which it receives militarily from other nations. We believe that the allies of France could do more than they have done hitherto to dissuade the French Government from resuming atomic tests in the Sahara. The very least they could do would be to offer France the use of their own testing grounds. I hope that when the representatives of the military allies of France come to deal with this particular matter, they will make it perfectly clear that they are opposed to the French atomic tests in the Sahara and have done everything possible to stop France from carrying out any further tests.

73. In Africa we judge the great Powers not by their words but by their deeds. We have a right to know which of the great Powers support atomic tests on African soil, which of them oppose these tests, and, perhaps more important than everything else in assessing the situation, which of the great Powers hold African opinion in so little regard that, though in their hearts they oppose the French action, they are prepared to sacrifice African friendship in the interests of appeasing French pride and ambition.

74. One of the most interesting facts of political evolution in Asia is that the old relationship between East and West is gone. Whatever this relationship was, whether it was exploitation or paternalism, it is no longer consistent with the new sense of dominant nationalism in Asia. This is an important standpoint from which to consider the problem of pacification, unification and containment which have emerged in Korea and Viet-Nam. In the case of Korea, it is now of great interest to recall the Indian Prime Minister's plea against advancing the United Nations forces beyond the dividing line of the 38th parallel after the North Koreans had been driven back to their own domain. The Indian Prime Minister was extremely critical of the unfortunate disposition of the Western Powers to make decisions affecting Asia without a full understanding of the mind and sentiment of its peoples. Recent events have demonstrated how right he was.

75. It is possible even now to settle this intractable problem by having general elections in Korea.

76. The situation in Viet-Nam is too well known to need recapitulation here. I wish, however, to invite attention to a crucial obligation that remains unfulfilled in regard to the question of reunifying the two Viet-Nams. As a result of the agreements signed at the 1954 Geneva Conference, it was agreed that elections were to be held within two years with the object of recreating a unified Government for Viet-Nam. When, however, the two co-Chairmen of the Geneva Conference, namely, the Foreign Ministers of the United Kingdom and the Union of Soviet Socialist Republics, met in 1956, the elections were postponed. They have not yet been held. These countries will no

longer submit to political subjection in any form, and in the interests of world peace, we ask that elections should be held as soon as possible.

77. While I am speaking on Asian problems, I feel constrained to pass a few remarks on the continued existence of the People's Republic of China outside the framework of the United Nations. The Government of Ghana has always supported the view that the People's Republic of China should be admitted to the United Nations so that the representation of China in this Assembly will be more realistic and more effective and useful.

78. We believe that the People's Republic of China, representing some 630 million people, and with the vast economic, scientific, and technological resources that it is rapidly developing, can make a useful and constructive contribution towards the maintenance of peace and the advancement of civilization in our time.

79. The issue of whether the People's Republic of China should be admitted to the United Nations or not should, I submit, be determined on the basis of principle rather than of expediency. It would be unfortunate to underestimate the force of the socialist revolution that has taken place in China, and Ghana is convinced anyhow that any attempt to impose a form of tactical isolation on the People's Republic of China is bound to prove abortive in the long run.

80. Let me now turn to the Middle East. I do so because we in Africa have a vested interest in international peace and security and we view with considerable concern problems in any part of the world likely to affect such peace and security.

81. The Middle East covers an area of a little over three and a half million square miles and possesses vast oil resources which make that region both economically important and politically vulnerable.

82. From the foundation of the Roman Empire, the Middle East has been of great commercial significance and persistent efforts have been made by various countries to control and profit from the petroleum deposits in the area. However, the real danger to international peace is the attempt made by vested interests to prevent the inhabitants and others from profiting by the natural wealth of the region. It is the view of the Government of Ghana, therefore, that the Western Powers, which are the principal consumers of oil from the Middle East, have a vital obligation to safeguard the peace and political equilibrium of the area. As long as these Powers continue to exploit the oil resources of the Middle East on a competitive basis, the friction resulting from a clash of their economic and commercial interests is bound to endanger the peace of mankind.

83. It is my view that the time has come for a supreme effort to be made at the international level to reduce the fever and heat of tension in this part of the world, and I would propose that the United Nations should consider as a matter of urgency inviting the various States in the Middle East to provide a just and permanent solution to these problems.

84. It seems to me that the most vital question would be to find out how best the petroleum deposits of the regions could be exploited on a non-competitive basis in order to develop the Middle East and to increase the productive capacity of industrialized countries for the benefit of mankind. If this were done the existing tensions between East and West would be significantly reduced. For there is no doubt that with the invention of long-range ballistic missiles and other forms of nuclear weapons, the importance of the Middle East as a base for any struggle for the mastery of the world has been greatly diminished.

85. Nevertheless, even when this conflict of economic interests has been removed, there will still remain the burning issue of Arab-Israel relations in the Middle East. This is one of the thorniest problems facing this world Organization, and unless a permanent and realistic solution is found, the danger of its development into an armed conflict still remains. The solution of the Middle East question lies in the recognition of the political realities there. In the light of this, I submit that the United Nations should set up a committee to study and evolve a machinery in which it will be impossible either for Israel to attack any of the Arab States or for the Arab States to attack Israel, and to make some sort of arrangement to keep the cold war out of the Middle East.

86. I must crave your indulgence to make a few concluding observations by way of emphasis on the African question.

87. For a long time, Africa has been subjected to a harsh form of colonialism. In consequence there is now a most strong, powerful and positive rebellion in Africa against this system. I think that the upheaval in the Congo is a manifestation of that rebellion.

88. The responsibility for keeping the cold war out of the Congo and, for that matter, out of Africa, rests equally on the United Nations. This responsibility, as far as the Congo is concerned, can only be discharged if the United Nations acts promptly and realistically in the present situation there. It is impossible to ignore the realities of continued Belgian intervention in the Congo in defiance of the Security Council resolutions. Unless such intervention is promptly and effectively checked, and the private armies of all sorts now operating in the Congo are eliminated by the United Nations, there will be no end to the chaos and confusion which now reigns in the new State. It is no more possible for a saint to be neutral on the issue of good and evil than for the United Nations to be neutral on the issue of legality and illegality. The United Nations must determine what is lawful and what is right and then see that this is enforced; otherwise the United Nations will betray the principles which were proclaimed in the first resolution of the Security Council [S/4387], on the basis of which the legitimate Government invited it to enter the Congo Republic.

89. Knowing the situation in the Congo as I do, and in order to save the Congo from chaos and confusion, from strife and political and economic instability, to drive the cold war out of Africa, to save the reputation of the United Nations itself and to safeguard the legitimate Government which invited the United Nations to the Congo, I strongly recommend to the United Nations the adoption of certain measures which I am sure will definitely provide the only solution to the present impasse in the Congo.

90. In making these recommendations, I wish to take this opportunity of expressing my personal appreciation of the way the Secretary-General has handled a most difficult task, and my own personal belief in the ideals of the United Nations Charter which constitutes in our time the strongest bulwark for international peace and security.

91. The following are the recommendations of the Government of Ghana: (1) The United Nations Command in the Congo should be changed forthwith and a firm strong Command established with clear, positive directions to support the legitimate Government with Mr. Kasavubu as President and Mr. Lumumba as Prime Minister, whose jurisdiction should be recognized throughout the whole Congo Republic. In other words, the present composition of the United Nations Command should be changed and the composition of the United Nations Force, its military command and administration, altered so that it is drawn entirely from contingents of the forces of the independent African States serving in the Congo. (2) Every support should be given to the Central Government, as the legitimate Government of the Congo, with the full backing of the United Nations. (3) All private armies, including the Belgian-officered forces in Katanga, should be disarmed forthwith and the Congolese National Army be regrouped and reorganized for the purpose of training so that ultimately it can play its proper role as a national army of the Congo Republic as soon as the Central Government considers it possible to dispense with the services of the United Nations forces. This new Command of the United Nations forces should support the Central Government to restore law and order in the Congo in accordance with the first resolution of the Security Council, in reliance on which Ghana and other independent African States placed their contingents under United Nations Command. (5) The United Nations should guarantee the territorial integrity of the Republic of the Congo in accordance with the provisional Constitution agreed at the time of independence. (6) All financial aid and technical assistance to the Republic of the Congo should be arranged only with the legitimate Government of that Republic, should be channelled through the United Nations and guaranteed and supervised by a committee of independent African States appointed by the Security Council and accountable to the United Nations.

92. I must now thank the members of the General Assembly for the patience with which they have listened to me and also for the honour of this opportunity of addressing them.

93. The PRESIDENT: The representative of Belgium has asked for the floor in exercise of his right of reply, and I propose to call on him, in accordance with his request, after the Assembly has heard the next speaker.

94. Mr. KHRUSHCHEV, Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, (translated from Russian): Anybody who ascends this rostrum and looks around this hall must, I think, appreciate what an eminent and responsible gathering he is addressing.

95. This should be the most responsible meeting of State representatives in the world. It is not for nothing that it is known as the General Assembly of the United Nations. I need not go into the meaning of that title at this juncture; I would merely like to stress these two words—United Nations. Many nations are represented in this hall, and these nations should be united not only by the walls of this building but by the highest common interests of mankind.

96. The representatives of almost 100 States have met here today to consider major international problems. The representatives of new Members of the United Nations will soon be with us; then the walls of this hall will, so to speak, recede to accommodate a still greater number of lands and countries. We should all wholeheartedly welcome this development, because we are anxious that all States in the world should be represented in the United Nations.

97. Naturally, our thoughts are now focused on the matters which most trouble and disturb mankind. Perhaps it is precisely here in this Assembly that the world is seen in all its diversity and, of course, in all its contradictions. It has fallen to our lot to live in the stormiest and yet the most splendid period in the history of mankind; future generations will envy us.

98. Many of the things some people considered, not so long ago, to be immovable and eternal have outlived their time and have ceased to exist. A new, more progressive and more equitable order has become established. Our epoch has brought swift changes in the way of life of human societies, an unprecedented growth in our power over the forces of nature and an unparalleled advance towards a more progressive social order. Yet although we live in the twentieth century, traces of past centuries and, indeed, remnants of barbarism, are still in evidence. However, one of the important features, indeed the salient feature, of this epoch is the awakening of formerly backward, downtrodden and oppressed peoples.

99. Our century is the century of the struggle for freedom, the century in which nations are liberating themselves from foreign domination. The peoples desire a worthwhile life and are fighting to secure it.

100. Victory has already been won in many countries and lands. But we cannot rest on our laurels, for we know that tens of millions of human beings are still languishing in colonial slavery and are suffering grave hardships.

101. They are doing so in a period which we call one of great and promising scientific discoveries. With his brain and hands, man has created space ships which circle the earth. He is already able to send men far beyond the limits of our planet. We have split the atom and are penetrating the mysteries of protein structure. We travel on and above the earth at astounding speed; the extent of our knowledge is a source of amazement even to ourselves.

102. It might seem that all was well with the world. Yet can it be said that the world is well ordered in every respect, or that it is free from poverty and deprivation? We should again reflect on the fact that, according to United Nations statistics, hundreds of millions of men and women on different continents drag out an existence at starvation or near-starvation level. Our world is not free from fear for the future; it realizes the dangers of the division into military alliances and of the continuously accelerating nuclear arms race. The great achievements of man's genius may be used either for man's benefit or to his detriment. This is the difficult choice confronting us.

103. Every intelligent individual gives some thought to what scientific progress, what this great twentieth century, is bringing mankind. Some rightly say that the world has been given new horizons, unlimited opportunities for the creation of abundant material wealth and for the ample satisfaction of human needs. With no less justification, others point to the great danger of scientific and technical achievements being used, not for these beneficial purposes, but primarily for the

production of appalling means of destruction. These means of destruction are not being used at the present time. But, in the last analysis, they are produced to be used.

104. This argument between optimists and pessimists reflects the facts of our times. The most important of these facts is the conflict between two trends or lines of policy in international relations. I am not, of course, referring here to differences in social systems, since this is a domestic issue, which can and must be settled only by nations and States themselves.

105. This development in international relations, which is fraught with conflict and complications, has not arisen overnight. Even in the early post-war years there were two clearly antagonistic schools of thought on world affairs. One stood for the reduction of international tension, the halting of the arms race, the development of international co-operation and the elimination of war from the life of society—a fine and laudable approach. It is, indeed, for the triumph of justice that man lives on earth.

106. There is, however, a second school of thought, but which we have no right to remain silent. This school stands for fanning the flames of the cold war, for the unrestricted accumulation of armaments and for the destruction of every basis for international co-operation, with all the dangerous consequences which this entails.

107. These two lines of policy in international relations have long been in opposition. Although parallel lines never meet in elementary geometry they may come into collision in international affairs. That would be a fearful moment indeed. Only ten or fifteen years ago, few could predict the outcome of the struggle between these two lines of international policy. In the year 1960, however, only the blind can fail to see how the majority of peoples are becoming more and more positively and plainly convinced of the need to maintain peace.

108. The peoples of all countries—workers, peasants, intellectuals and the bourgeoisie, excluding a small handful of militarists and monopolists—want not war but peace, and peace alone. And if, therefore, the peoples actively fight to tie the hands of the militarist and monopolist circles, peace can be ensured.

109. Indeed it cannot be otherwise, since life cannot be reduced to simple geometrical rules, for life itself depends on the effective power of the peace-loving States and on the ardent sympathy and support of the overwhelming majority of the human race.

110. The United Nations was established in the name of the victory of peace and tranquillity, in the service of peace and the security of nations. We trust that the decisions reached by the present session of the General Assembly will bring us closer to the realization of peace and justice—the goal of all mankind.

111. There are no higher tasks than those confronting the United Nations. It is in a position to take vital decisions with regard to averting the threat of a new war and protecting the lawful rights and security of all peoples; it can help to institute productive international co-operation.

112. The fact that a number of States are represented here by statesmen occupying key positions in their own countries demonstrates the gravity and urgency of the problems submitted for consideration at this session.

113. We have embarked on the consideration of the problems which are troubling all peoples today. The capacities of the United Nations have now been reinforced, thus increasing the responsibility it bears. I have already referred to the fact that a large group of young independent African States has joined the United Nations. I am happy to have this opportunity, on behalf of the Soviet people, to extend a warm, sincere and heartfelt welcome to the States recently admitted to membership in the United Nations and to wish them prosperity and success.

114. The road the representatives of these States have travelled to the United Nations has not been easy. The peoples of these countries have endured oppression, deprivations and suffering. They have reached here after a stubborn struggle for their independence and freedom and our welcome today is all the more cordial on that account. We should like to tell them that they have taken their rightful places as full and equal Members of the United Nations.

115. The countries which have cast off the burden of colonialism are an immense and active force for peace. From now on, the young States of Africa and the Mediterranean will make their distinguished contribution to the solution of the important and complex issues before the United Nations.

116. A year ago, I had the honour of making a statement from this high rostrum [799th meeting]. At that time, promising prospects of normalizing the international situation were opening up before mankind. Contacts between responsible statesmen in the various countries were increasing. The General Assembly adopted a resolution [1378 (XIV)] on general and complete disarmament. The Ten-Nation Committee on Disarmament began its work. Agreement was reached on holding a summit conference. Definite progress was being made in the negotiations on the discontinuance of nuclear and thermo-nuclear tests. All this raised high hopes in the hearts of the people of all countries.

117. No one can dispute the fact that the Soviet Union has been unsparing in its efforts to ensure the continuation of this welcome trend in the development of international relations. But the sinister forces which profit from the maintenance of international tension are clinging tenaciously to their positions. Though only a handful of individuals is involved, they are quite powerful and exert a strong influence on the policy of their respective States. A major effort is therefore required to break their resistance. As soon as the policy of easing international tension begins to yield tangible results, they immediately resort to extreme measures in order to ensure that the peoples should feel no relief; they strain every nerve to plunge the world back again and again into an atmosphere of gloom and to exacerbate international tension.

118. We saw a dangerous manifestation of the work of these forces last spring when the aircraft of one of the largest States Members of the United Nations, the United States of America, treacherously invaded the air space of the Soviet Union and that of other States. What is more, the United States has elevated such violations of international law into a principle of deliberate State policy.

119. The aggressive intrusion into our country by a United States aircraft and the whole course of the

United States Government's subsequent behaviour showed the peoples that they were dealing with a calculated policy on the part of the United States Government, which was trying to substitute brigandage for international law and treachery for honest negotiations between sovereign and equal States.

120. The entire world knows what a heavy blow this policy dealt to the cause of easing international tension. In particular, it was responsible for the breakdown of the Summit Conference in Paris, at which the most important current problems were to have been discussed. Under different circumstances, the Conference might have laid the foundations for healthier co-operation among States.

121. There are some confirmed fanciers of other people's property who will never take a lesson to heart. If they get a good hiding, they attribute their misfortune entirely to their own carelessness or the use of the wrong tools. So they make a fresh attempt to break into the house, this time through another entrance and with a different set of tools.

122. The situation with regard to the organizers of spy flights by the United States Air Force is somewhat similar. I do not know what lesson they learnt from the U-2 incident, but exactly two months later, on 1 July 1960, they sent another military aircraft, an RB-47, to our country. It was equipped with guns and special reconnaissance instruments. It flew in to our territory from the direction of the Kola Peninsula. What was its purpose? What was it seeking to achieve? I think that every one with any common sense realizes that the aircraft was not bringing us anything for our good.

123. Incidentally, Mr. Eisenhower, the President of the United States, said in his statement yesterday [868th meeting] that the Soviet forces had shot down a United States RB-47. I do not propose to enter into an argument on this question because we have already given a detailed exposition of the facts of the case and of our attitude.

124. Surprisingly, however, though I listened to the President's statement carefully, I did not hear a single word about the U-2, which was also shot down over Soviet territory. What is the explanation? Has the President perhaps forgotten about that aircraft?

125. What, in fact, is the objective of the United States in dispatching its aircraft into the air space of the USSR? Does it want to create an incident that would be followed by rockets going into action? One aircraft, then another and such an incident has virtually been staged. Or is the United States for the time being merely pursuing a policy of feeling out the strength of the other side?

126. Whatever the explanation, one thing remains perfectly obvious: the operations of those responsible for organizing the acts of provocation are designed to create an atmosphere in which the peoples would live in constant fear. Even if such an atmosphere suits the Government of the United States, it certainly does not suit the Soviet Union or the overwhelming majority of other States. We have striven and shall strive to banish all forms of lawlessness from international relations.

127. The Soviet Union is not making any exorbitant demands. We are merely striving to ensure adherence to the most elementary rules of intercourse among States. Our only objective is strict observance of the United Nations Charter which rules out methods of violence, brigandange and aggression and demands respect for the sovereign rights of all States as the basis for lasting peace on earth. Is that asking too much? Is that not the wish of all honest men and women on this earth, who care for the fate of the world and for the sovereignty and independence of their own countries?

128. The allies of the United States sometimes reproach us for criticizing the United States Government too harshly. But if we were to assume an air of benevolence and to give those who organize acts of international provocation, an indulgent pat on the back, we should be doing a disservice to the cause of peace. Fighting for peace means boldly exposing all actions fraught with the danger of war, no matter with whom they originate. This is a good method of clearing the international atmosphere. Experience shows that, if we pander to and indulge those who organize provocation, the ultimate result is the outbreak of war. This has happened many times in the course of history, with dire consequences for the fate of peoples.

129. The flights by the United States spy aircraft are also instructive in another respect. They have shown up the danger to peace presented by the network of United States bases in which dozens of States in Europe, Asia, Africa and Latin America are enmeshed.

130. Like a deep-seated form of acute infection in a living organism, these bases disrupt the normal political and economic life of the States upon which they have been foisted. They hinder the establishment of normal relations between those States and their neighbours. How, indeed, can there be any question of normal relations if the people of these neighbouring countries cannot sleep peacefully, if they have to live with the threat of being subjected to an annihilating blow whenever the United States militarists take it into their heads to embark on fresh acts of provocation?

131. The United Nations cannot fail to heed the increasingly insistent demands of the peoples who are alarmed by the machinations of the enemies of peace. The popular movement for peace and international co-operation assumes different forms and achieves different results from one country to another, but its significance, causes and aims remain identical: it is a movement of protest against the policy of war and provocation, against the debilitating arms race and against the imposition upon peoples of an alien and hostile will.

132. Fewer and fewer people are prepared to accept the present state of affairs in which any manifestation of the free will of the peoples, any tendency to pursue an independent policy, be it on the part of Indonesia, Iraq or Guinea, of neutral Austria or of little Iceland, acting to defend its economic interests, encounters fierce opposition and brings down thunder and lightning from the Powers grouped together in NATO—this Holy Alliance of our day, which has assumed the ungrateful mission of exorcizing the spirit of freedom in whatever part of the globe it may appear.

133. The courageous Republic of Cuba has become a target for all kinds of attacks, intrigues, subversive activities, economic aggression and, finally, ill disguised threats of intervention.

134. United States relations with Cuba are illuminating. As you know, before the victory of the popular

revolution, all branches of the Cuban economy were wholly dominated by United States monopolies which earned vast profits from exploiting the working people of Cuba and the wealth of their fertile soil.

135. Some people in the United States occasionally like to boast that the standard of living in their country is higher than that in other countries. There is no gainsaying the fact that the standard of living in the United States is now higher than in Cuba, but why is that so? Is it because the Cuban people are less industrious or because the Cuban soil is less fertile? No, this of course is not the reason. The Cuban people are well known for their industry and for their attachment to their country and to their soil. The explanation is entirely different. For many years the fruits of the Cuban people's toil were enjoyed not by the Cuban people but by United States monopolies. Is it therefore surprising that in 1958, for example, the per caput income in Cuba was 6.5 times lower than in the United States? This telling fact speaks for itself.

136. A new chapter has now begun in Cuba. After expelling the dictator Batista, the Cuban people freed itself from foreign exploitation, took its destiny into its own hands, firmly telling the United States monopolists that they had been robbing the country long enough and that the people themselves would enjoy the fruits of their labour and their soil.

137. Thus, Cuba's alleged offence consists merely in the fact that the freedom-loving and fearless Cuban people have decided to lead an independent life. The United Nations must do everything in its power to remove the threat of interference from abroad that is hanging over Cuba. To allow Cuba to become a second Guatemala would be to unleash developments whose consequences it is now hardly possible to foresee.

138. Stormy developments have been taking place on the continent of Africa. The young Republic of the Congo fell a victim to aggression the third day after the proclamation of its independence. Before the eyes of the entire world, the Belgian Government tried to deprive the country of its freedom and take away what the Congolese people had been selflessly struggling to obtain for decades. An international crisis arose which took us all back to anxious days of the autumn of 1956, the days of the Suez crisis. As at that time, an independent African State was subjected to unprovoked aggression, the generally recognized principles of international relations were disregarded and a situation was created that was fraught with serious danger to peace and not to peace in Africa alone.

139. How ludicrous and absurd are the arguments with which the aggressors attempted to justify their actions! They asserted that there would have been chaos in the Congo if the Belgian troops had not entered the country and that the Congolese people were not yet sufficiently mature for an independent existence. Such assertions could fool no one. The Africans have a proverb which runs: "Misleading the people is like trying to wrap up fire in a piece of paper". The armed aggression against the Congo has been condemned by the whole of Africa and by public opinion throughout the world.

140. It was, of course, not concern for the lives of Belgian citizens in the Congo, but the much more tangible interests of the powerful monopolies which had established themselves on Congolese soil that impelled the Belgian Government to make the senseless attempt to bring the people of this young State to its knees and to detach by force its richest province, Katanga. Raw materials for nuclear weapons such as uranium, cobalt and titanium as well as cheap labour —that is what the monopolists are afraid of losing in the Congo. That is the true motive behind the plot against the Congo, the threads of which lead from Brussels to the capitals of the other major NATO Powers.

141. When the colonialists realized that the Government of the Republic of the Congo, which had been legally elected and had received a vote of confidence from Parliament, had firmly embarked on an independent policy and was resolved to be guided solely by the interests of the Congolese people, they immediately resorted to every possible means of overthrowing that Government. They set out to secure the establishment of a puppet government, a government which, though ostensibly "independent", would in fact carry out the wishes of the colonialists.

142. The colonialists tried to bring this about by crude methods and direct interference, as they always do. It is deplorable that they have been doing their dirty work in the Congo through the Secretary-General of the United Nations, and his staff.

143. That is a disgraceful state of affairs. The United Nations troops which were sent to assist the lawful Government at its request, occupied the airfields, took over the radio station, disorganized the life of the State and paralyzed the work of the lawful Government. These troops paved the way for the treacherous acts of the puppets in Katanga, where forces were assembled and mobilized against the Government of Patrice Lumumba, which had been elected in accordance with all the rules of democratic procedure.

144. The colonialists and their servile supporters say that Mr. Lumumba is a communist. Mr. Lumumba is, of course, no communist; he is a patriot and is honestly serving his people in its struggle for freedom from the colonial yoke. But, by putting out this story that he is a communist, the colonialists are actually helping the colonial peoples to tear off the veil which is being used to obscure their vision. Those peoples will soon see that the communist party is the only party which genuinely reflects the will of the peoples struggling for the triumph of justice, the aspirations of all peoples striving for freedom.

145. Some organs of the United States and United Kingdom Press, encouraged by certain forces, are making much of an alleged set-back which the Soviet Union has suffered in the Congo. What can one say of such absurd assertions? In the first place, we have suffered no set-back in the Congo, nor was any set-back possible, since there neither were nor could have been any of our troops in the Congo or any interference by us in that country's domestic affairs.

146. We have stood, we stand, and always will stand, for the right of the peoples of Africa, just as those of other continents, to establish whatever régime they please in their countries, on attaining their freedom from colonial oppression.

147. Second, we have always been and always will be against any interference by imperialists in the domestic affairs of countries which are emancipating themselves from colonial dependence, against discreditable methods such as those used in the Congo.

148. The colonialists' aim is to drive out the lawful Government and Parliament with the help of the countries which style themselves the "free world", and they are anxious to celebrate their victory. But their rejoicing is premature, because theirs is a Pyrrhic victory. This spurious victory of the colonialists is helping to lift the veil from the eyes of the colonial peoples, to whom it is becoming increasingly evident that, while granting formal independence, the colonialists are doing everything in their power to maintain the colonial yoke.

149. The people will not stop halfway. They are mobilizing their forces and they will act with still greater foresight and in the knowledge that the struggle for independence is a hard one, that there are many obstacles to be overcome on the way to genuine freedom and that it is necessary to learn to distinguish between true friends and enemies.

150. The struggle which has been taken up by the Congolese people cannot be halted; it can only be slowed down or checked. But it will break out again with even greater force, and the people, having overcome all difficulties, will then achieve complete emancipation.

151. The Soviet State and its Government welcomed and welcomes the struggle of the colonial peoples for independence and is doing all it can to give them moral and material assistance in their just fight.

152. The United Nations should call for the restoration of order in the Congo so that the Parliament lawfully elected by the Congolese people may discharge its duties and that conditions may be created for the normal functioning of the lawful Government of the Congo, led by Mr. Lumumba, which has enjoyed and still enjoys the confidence of the Congolese people.

153. The Soviet Government has requested [see A/4495] the inclusion of an item entitled "Threat to the political independence and territorial integrity of the Republic of the Congo" on the agenda of the General Assembly at its fifteenth session. The Assembly should administer a rebuff to the colonialists and their followers; it should call Mr. Hammarskjold to order and ensure that he does not misuse the position of Secretary-General but carries out his functions in strict accordance with the provisions of the United Nations Charter and the decisions of the Security Council.

154. In the opinion of the Soviet Government, we should adopt a resolution providing that only troops from African and Asian countries should be left in the Congo, that such troops should be stationed in Congolese territory only with the consent of the lawfully elected Congolese Government of Mr. Lumumba and should only be used at the discretion of that Government for the purpose of ensuring the normal functioning of the lawful Government and Parliament of the Republic of the Congo.

155. All States which wish to see the Congo free and independent in practice and not merely in theory should refrain from any act which might impair the territorial integrity and independence of the Republic of the Congo. We are certain that the Congolese people themselves will be able to deal with the difficulties which have arisen and will succeed in restoring order in their country.

156. We are all witnesses to the fact that many peoples are being continually subjected to hostile acts and crude pressure by a certain group of States which seek to set at naught the legitimate interests and rights of other countries. This is why the international situation is fraught with acute conflicts, the danger of which is intensified by the mounting arms race.

157. It is quite evident that international relations cannot continue on such a basis, as that would mean a headlong descent to the abyss. It is the sacred duty of the United Nations to uphold the sovereign rights of States, and to press for the re-establishment of international relations on a sound legal basis and for the ending of the arms race.

158. Unfortunately, the policy of violating the inalienable rights of peoples is still in evidence in the United Nations itself.

159. Take, for instance, the question of the representation in the United Nations of the Chinese people. To impede the reinstatement of the People's Republic of China in its legitimate rights in the United Nations, simply because the socialist régime of that State is not to the taste of the leading circles of certain Western countries, and in particular of the United States, is to disregard the facts; it betokens the absence of any desire for a relaxation of international tension; it means that the interests of strengthening world peace and of developing international co-operation are being sacrificed to the narrow political calculations of a small group of States. This situation is inimical to peace and is degrading to the United Nations.

160. This point is also illustrated by the history of the question of the admission of the Mongolian People's Republic to membership in the United Nations. As we know, this question has been discussed repeatedly over a number of years, but the Mongolian People's Republic has not yet been admitted to membership in the United Nations. We consider that it is high time to settle this question and to admit the Mongolian People's Republic to membership in the United Nations, so that it may participate on an equal footing with other sovereign States in the discussion and solution of vital international problems.

161. By reason of its nature and its purpose, the United Nations should have the status of a universal, world-wide organization. The existence of the United Nations would cease to serve any useful purpose, if it became a one-sided organization and its function was reduced to that of the servant of a particular military alignment.

162. Our time is characterized by the emancipation and national rebirth of peoples who for centuries were kept apart by the colonialists from the mainstream of human development, a process which is taking place before all our eyes. In a mere fifteen years, about 1,500 million people, or half the population of the earth, have cast off the shackles of colonialist oppression. Dozens of new national States have arisen from the ruins of the old colonial empires.

163. A new period has begun in the history of mankind, in which the peoples of Asia, Africa, and Latin America have begun to take an active part in determining the destiny of the whole world side by side with the peoples of Europe and North America. Unless this unalterable fact is recognized, there can be no realistic foreign policy in harmony with the needs of the times and corresponding to the peace-loving aspirations of the peoples.

164. Is the solution of major international problems really conceivable today without the participation of the People's Republic of China? Is it possible to solve these problems without the participation of India, Indonesia, Burma, Ceylon, the United Arab Republic, Iraq, Ghana, Guinea and the other States? If anyone has this idea, let him try to disregard the opinion and the votes of the representatives of the Asian, African and Latin American States here in the United Nations. It is true that the appearance of the new Asian and African States in the United Nations is giving rise to apprehension in certain Western countries. More than that, people are beginning to discuss ways of limiting the further influx of newly-emerging States into the United Nations.

165. As regards the Soviet Union, I can say frankly that we are glad to see a great number of new States making their appearance in the United Nations. We have always opposed and we shall continue to oppose any curtailment of the rights of peoples who have won their national independence. We share with these States the desire to preserve and strengthen peace, to create on our planet conditions for the peaceful coexistence and co-operation of countries regardless of their political and social structure, in accordance with the peaceful principles proclaimed at the Conference of African and Asia States at Bandung. The facts show that the liberation of nations and peoples under colonial domination leads to an improvement in international relations, an increase in international co-operation and the reinforcement of world peace.

166. The peoples of the new States have convincingly shown, not only that they are capable of dispensing with the control and tutelage of the colonial Powers, and can govern themselves, but also that they are actively forging a new life and that they administer and manage their resources, their countries' wealth, incomparably more skilfully and prudently than the colonial authorities.

167. Early this year I had the opportunity of visiting India, Indonesia, Burma and Afghanistan. I must say that I was very deeply impressed by their great achievements in raising the level of their national economies and culture. We saw large new construction projects in these countries—dams, roads, and new universities and institutes.

168. Would the picture be the same in the colonies? There neither is nor could be anything of the kind there. In the colonies arbitrary rule by foreigners prevails. The peoples of the colonial countries are not only deprived of the right to independence and self-government; in addition, their national and human feelings and their self-respect are scorned and outraged at every turn. Through ruthless exploitation and robbery, the foreign monopolists wring everything of value from the colonies, plundering their wealth like barbarians.

169. As a result of colonialist control, the colonial economies have remained extremely backward and the working people lead a miserable existence. It is precisely in the colonies that you will find the longest working day, together with the lowest national income, the lowest wages, the highest illiteracy rate, the shortest life expectancy and the highest mortality rate among the population.

170. I need not elaborate here on the miserable plight of the more than 100 million people who still languish in colonial bondage and who are deprived of all their rights. The archives of the United Nations contain more than enough reports from various United Nations bodies, more than enough petitions and complaints, revealing the situation of the populations of those countries and territories where, under various guises, the colonial system of government is still preserved. These documents are an indictment of the shameful colonial system. What is going on in these countries and regions justly arouses the anger and indignation of all right-thinking individuals on earth. But the days of untroubled domination by the alien oppressors are drawing to a close, even in the colonies they still retain. Although the old order may persist in the colonies, the people there are changing. They are growing increasingly conscious of their position and are firmly refusing to bear the colonial yoke. And when the peoples rise to fight for their freedom, for a better life, then no force in the world can stop this mighty movement.

171. Look at what is happening now in the colonies. Africa is seething and bubbling like a volcano. For some six years now the Algerian people have been waging a heroic and selfless struggle for their national liberation. The peoples of Kenya, Tanganyika, Uganda, Ruanda-Urundi, Angola, Mozambique, Northern Rhodesia, Sierra Leone, South West Africa, Zanzibar and also West Irian, Puerto Rico and many other colonies are fighting an increasingly stubborn battle for their rights.

172. It should be clear to everyone that there is no means and no force which can halt this struggle of the peoples for their liberation, for it is a great historic process, one of ever-growing and invincible power. It may be possible to prolong the dominion of one State over another for a year or two, but just as in the past the bourgeois order of things came to replace feudalism and as, now, socialism is replacing capitalism, so colonial slavery is giving place to freedom. Such are the rules of human development, and only adventurers can believe that mountains of corpses and millions of victims will delay the advent of a radiant future.

173. We must have done with colonialism, for it brings misfortunes and suffering not only to the peoples of the enslaved countries—misfortunes and suffering, tears and deprivation are the lot of the peoples of the metropolitan countries too. Who can say that the mothers of France, whose children are dying on the fields of Algeria, are less unfortunate than the Algerian mothers who are burying their sons in their own land?

174. Today, when the blood of the colonial peoples is flowing, we cannot turn away, we cannot close our eyes to this bloodshed and pretend that peace reigns. What kind of a peace is it when cruel wars are raging —unequal wars, too, in terms of the conditions under which the opposing sides are fighting. The troops of the colonial Powers are armed to the teeth with all the most modern means of mass destruction. In the hands of the peoples battling heroically for their freedom are nothing but obsolete and primitive weapons. But however destructive the wars waged by the colonialists, victory will be on the side of the peoples fighting for their freedom.

175. There are some countries which, despite great sympathy and fellow-felling for the oppressed peoples in their struggle, nevertheless have misgivings about

spoiling their relations with the colonial Powers; they do not, therefore, raise their voices against these destructive wars but keep peace with the colonialists. Others are colonialists themselves and from them nothing can be expected. The allies of the colonial Powers in aggressive military blocs support the colonialist policy, with all its evil concomitants. But the overwhelming majority of mankind has long since passed final judgement on the colonial system.

176. The Soviet Union, faithful to the policy of peace and support for the struggle of oppressed peoples for their national independence, the policy proclaimed by Vladimir Ilyich Lenin, founder of the Soviet State, calls upon the United Nations to raise its voice in defence of the just liberation of the colonies and to take immediate steps towards the complete abolition of the colonial system of government.

177. The need for the complete and final abolition of the colonial system in all its forms and manifestations is demonstrated by the entire course of the history of the world in recent decades. This system is doomed and its end is simply a matter of time. To all intents and purposes the only question now is ether the colonial system can be buried quietly or whether its burial will be accompanied by risky ventures on the part of the adherents of colonialism, resorting to extreme measures. Events in the Congo are a fresh reminder of the dangers that exist.

178. It is the duty of the United Nations, which is called upon to promote the strengthening of the peace and security of the peoples, to do all in its power to prevent fresh outbreaks of military conflict in Asia, Africa, and Latin America as a result of friction between the colonial Powers and the peoples fighting for their freedom and independence. It is hardly necessary to point out that the great Powers may be drawn into the orbit of any such conflict and then, inevitably, a war which has begun by being local would develop into a general war, a world war. It is not enough, however, merely to defend ourselves against the intrigues of the colonialists, to survive one international crisis after another. It is necessary permanently to protect mankind against these intrigues, to safeguard the world om colonialists' military adventures. It is necessary o put an end to colonialism once and for all, to throw it on to the dust-heap of history.

179. Who if not the United Nations should speak out in favour of the abolition of the colonial system of government seeing that, according to the Charter, it is the Organization's duty to reaffirm faith in human rights, in the dignity and worth of the human person, in the equal rights of nations large and small. How is it possible to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, which is the purpose of the United Nations, and at the same time to tolerate a situation in which, as a result of the predatory policy of the Powers that are strong militarily and economically, many Asian and African peoples can win their right to determine their own fate only at the price of incredible suffering and sacrifices, only through an armed struggle against the oppressors? How is it possible to "achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"—you have probably noticed that I am quoting from paragraph 3 of Article 1, of the United Nations Charter, entitled "Purposes and Principles"—and at the same time to close our eyes to so shameful a feature of present-day society as the colonial system?

180. It is time for us to undertake the final assault on colonialism just as, a century or a century and a half ago, civilized mankind took the offensive against the slave trade and slave ownership, and put an end to them, thus throwing the door wide open for both the political and the economic development of society.

181. The Soviet Government believes that the time has come to pose the question of the full and final abolition of the colonial system of government in all its forms and varieties in order to make an end of this infamy, this barbarism, this savagery.

182. Not everyone here—and I realized this when I was preparing my statement—not everyone here will welcome these proposals because representatives of colonial Powers are sitting here side by side with people who are free. These representatives are hardly likely to welcome our freedom-inspired proposals!

183. Firmly adhering to the principle that the United Nations should be a centre for harmonizing the actions of nations in the attainment of the common ends proclaimed in the Charter, the Soviet Government submits for the consideration of the General Assembly at this session a draft declaration on the grant of independence to colonial countries and peoples, solemnly proclaiming the following demands:

"1. All colonial countries and Trust and Non-Self-Governing Territories must be granted forthwith complete independence and freedom to build their own national States in accordance with the freely-expressed will and desire of their peoples. The colonial system and colonial administration in all these forms must be completely abolished in order to afford the peoples of the territories concerned an opportunity to determine their own destiny and form of government.

"2. Similarly, and strongholds of colonialism in the form of possessions and leased areas in the territory of other States must be eliminated.

"3. The Governments of all countries are urged to observe strictly and steadfastly the provisions of the United Nations Charter and of this Declaration concerning the equality and respect for the sovereign rights and territorial integrity of all States without exception, allowing no manifestations of colonialism or any special rights or advantages for some States to the detriment of other States."

184. Convinced that the complete abolition of the colonial system of government will be a fine and genuinely humanitarian act, and a major advance along the path of civilization and progress, we fervently appeal to all States represented in the United Nations to support the provisions of this Declaration.

185. The draft declaration prepared by the Soviet Government and submitted for your consideration sets out in detail the considerations which prompted us to bring this matter before the General Assembly. We would ask that this draft declaration should be distributed as an official document of the United Nations General Assembly [6].

186. I should like to make the following further points in my statement in the general debate.

[6] Subsequently circulated as document A/4502 and Corr.1.

187. The adoption by the United Nations of measures for the final abolition of the colonial system would not only create favourable conditions for localizing and eliminating the threat of war which now exists in areas where a military conflict is in progress between the colonialists and the peoples fighting for their independence; it would also, in many instances, reduce the possibilities of the outbreak of further military conflicts between the States in these parts of the world. The peoples of the countries now suffering from the humiliations bred by foreign domination would gain a clear and immediate prospect of peaceful liberation from the foreign yoke and States clinging to their colonial possessions would be responsible before the United Nations and before the world for the fulfilment of the provisions of the proposed Declaration. This prospect will, of course, only become a reality if the colonial Powers do not evade compliance with United Nations decisions.

188. We must also remember the great changes the abolition of the colonial system of government would bring about in the lives of the peoples of the enslaved countries. It would be not merely a victory for elementary human justice and international law, which United Nations is in duty bound to strive for, not in theory but in fact; it would also bring to the peoples who are backward after so many centuries of oppression the benefits of modern science, technology, culture and social progress.

189. It would be difficult to exaggerate the vast significance which the abolition of the colonial system would have for the entire world. Everyone knows that the economies of the colonies and the Trust Territories are at present subordinated to the mercenary interests of foreign monopolies, and the industrialization of these countries is being deliberately impeded. Imagine that the situation has changed and that these countries and territories, having become independent, are in a position to make ample use of their rich natural resources and to proceed with their industrialization, and that a better life has begun for their peoples. This would lead to a tremendous growth in the capacity of the world market, which would no doubt have a beneficial effect, not only on the economic development of the countries of the East but also on the economies of the industrially-developed countries of the West.

190. A positive role in overcoming the age-old backwardness of the countries that are being liberated would be played by economic and technical assistance through the United Nations and on a bilateral basis. Of course, this will require considerable funds. Where can they be obtained without overburdening the population of the industrially developed countries? Once again from this rostrum I draw your attention to the source which could be provided by disarmament. The allocation of only one-tenth of the funds which the great Powers are now spending for military purposes would increase the amount of assistance to under-developed countries by $10,000 million a year. Yet the cost of constructing all the units of one of the world's largest power systems, in the Inga region of the Congo, by which a tremendous area in Africa could be made to blossom, is estimated at $5,000 million.

191. It is also pertinent to recall that it is the moral duty of the States which possessed colonies in the past to return to the liberated peoples of those countries at least a part of the riches taken from them through cruel exploitation of the people and the plundering of their natural resources.

192. It may be said that it is easy for the Soviet Union to advocate the liquidation of the colonial system, since the Soviet Union has no colonies. Yes, that is so. We have no colonies and no capital in other countries. But there was a time when many of the nationalities inhabiting our country suffered the bitter oppression of Tsarism, of the landlord-bourgeois system. Conditions in remote areas of the Tsarist empire hardly differed from those of colonies because their populations were cruelly exploited by the autocracy, by capitalism. Whereas the autocracy looked upon the peoples of Central Asia and Transcaucasia, and other nationalities inhabiting the Russian Empire, as a source of profit, after the October revolution, when these peoples obtained complete freedom, they quickly improved their economic, cultural and social condition.

193. Let us take, for example, the Soviet Republics of Central Asia. Today Kazakhstan, Uzbekistan, Kirghizia, Turkmenistan, Tadzhikistan—all the sister republics of Central Asia—have been transformed from backward colonies of Tsarist Russia into advanced, industrially developed socialist republics. During the period from 1913 to 1960, large-scale industrial production in the republics just referred to increased by more than sixty times. The industrial production per caput of Kazakhstan, a once backward country, is equal to that of Italy, and its per caput electric power output, for example, is higher than that of Italy and equal to that of Japan.

194. Before the revolution, only 7 million kilowatt-hours of electricity was produced in the territory of Central Asia and Kazakhstan—300 times less than in the whole of the Russian Empire. Today the annual output of electric power is 19,000 million kilowatt-hours, which is nine times more than that of all pre-revolutionary Russia.

195. The peoples of the Soviet Union are engaged in peaceful constructive labour to achieve the targets of the seven-year plan for the development of the national economy. As a result of the fulfilment of this plan, the total industrial production of the USSR will approximately double during the seven-year period. The output of electric power will be more than doubled, and in Central Asia almost tripled.

196. The per caput output of electric power in the Central Asian republics is already about 800 kilowatt-hours a year, i.e. considerably more than in any of the Latin American republics, for example. The Soviet Central Asian republics and Kazakhstan produce many times more power than such neighbouring countries as Turkey, which produces ninety-five kilowatt-hours per caput, Iran, which produces thirty-six, and Pakistan, which produces eleven.

197. Enormous economic and cultural progress has also been made by other relatively small nationalities of the Soviet Union, united in autonomous republics. Thus, for example, during the period from 1913 to 1959, large-scale industrial production in the Yakut ASSR increased by 53 times, in the Komy ASSR by 109 times, in the Tatar ASSR by 147 times and in the Bashkir ASSR by 163 times.

198. In the family of equal socialist republics, the former borderlands of pre-revolutionary Russia,

which were threatened with depopulation as a result of malnutrition and disease, have been transformed into flourishing territories where living standards have risen as they have throughout the whole Soviet Union. The wages and salaries of workers and employees there do not differ from those in other republics of the Soviet Union. Like all the citizens of the USSR, they receive pensions, health insurance benefits and other social benefits.

199. The progress in cultural development achieved by the Soviet Union's national republics is still more striking. It is known, for example, that before the revolution the peoples of Kazakhstan and the Central Asian republics were almost entirely illiterate. There were almost no people with secondary or higher education. The Soviet Power has made education and culture widely accessible to all peoples. Illiteracy has been eliminated in Kazakhstan and the Central Asian republics, as it has in the other republics of the Soviet Union, and they, like the whole of the USSR, have achieved universal literacy.

200. Before the revolution there were no institutions of higher education in Kazakhstan, Uzbekistan, Kirghizia, Tadzhikistan and Turkmenistan, and not even any technical schools in Kirghizia, Tadzhikistan and Turkmenistan, whereas in the last academic year there were 211,000 students attending institutions of higher education in those republics, and 176,000 students attending the technical schools and other specialized secondary institutions. For every 10,000 citizens of those republics there are, on the average, 88 students at institutions of higher education and 73 students at technical schools, without counting the large number of young people who have gone to study beyond the borders of their republics, in Moscow, Leningrad, Kiev, Kharkov, Saratov, Novosibirsk, Tomsk and other cultural centres. I might note that in France there are only 40 students at institutions of higher education for every 10,000 inhabitants, in Italy, 34, and in West Germany 31—which is almost three times less than in Soviet Central Asia.

201. A decisive factor guaranteeing the successful economic and cultural development of the national republics is the growth in the number of skilled cadres of workers and intellectuals.

202. I should like to cite a few figures taken from the results of the latest census and to compare them with those of the census of 1926, the year in which our economy completed its recovery to the pre-revolutionary level. During that period the total number of manual and clerical workers in the national economy increased six-fold in the Soviet Union as a whole and ten-fold in Central Asia and Kazakhstan.

203. The increase in the number of skilled workers and specialists was even greater. I shall not cite all the figures because a table containing them has been distributed, but I should like to call attention to some of them.

204. From 1926 to 1959, the number of metal-workers, one of the most highly skilled of working-class occupational groups, increased nine-fold in the Soviet Union as a whole and eighteen-fold in Central Asia. There were nine times as many chemical workers in the whole country and seventy-two times as many in Central Asia. The number of mechanics grew by fifteen and forty-two times respectively. The number of drivers and tractor and combine operators grew by 260 times in the country as a whole and 943 times in Central Asia. The number of engineers, technicians and agronomists in the USSR as a whole increased by eighteen times and in Central Asia by thirty-eight times. The number of teachers and other cultural and educational workers increased by seven times in the country as a whole and by nineteen times in Central Asia. Medical personnel increased by 8.5 times and twenty-four times respectively. The number of scientific workers increased from 14,000 to 316,000, or twenty-three times, in the Soviet Union as a whole. In 1926 there were only 360 scientific workers in the Central Asian republics and Kazakhstan, while in 1959 there were 26,500, or seventy-four times as many.

205. Tremendous advances in economic, cultural and scientific development were, of course, achieved not only in the Central Asian republics, which were particularly backward in the pre-revolutionary period, but in all the other Soviet republics. Thus, for example, academies of science have been established in all the Union Republics, and there are a large number of scientific research institutes and institutions of higher education. In all the republics, during the years of Soviet rule, skilled working-class personnel have been trained and the number of intellectuals has vastly increased.

206. After the great October socialist revolution, the bourgeoisie of the whole world harped incessantly on the inevitability of the collapse of Soviet power because Russia was an ill-educated country and the working class had no experts capable of running the State machinery and the economy of the country. Life has proved the truth of Lenin's statement that the revolution would awaken the initiative of the people, that the Soviet power would produce leaders and organizers from among the masses and that, having taken power, common workers and peasants would learn to govern the State and would master all the achievements of modern science and technology.

207. The Tsarist Government pursued in the borderlands of Russia an essentially colonialist policy which differed little from what can be observed today in colonial countries. Uzbeks, Kazakhs, Tadzhiks and other non-Russian nationalities were scornfully called "aliens". They were not considered human beings and were ruthlessly exploited. National differences, hatred and dissension were fomented between these nationalities, and the Tsarist Empire was held together only by bayonets and oppression. When the peoples of Central Asia and Transcaucasia were given their national freedom and equal rights with the other peoples of Russia, they showed their capabilities in the development of their national economy and culture.

208. Did the development of our country suffer by the granting to the peoples of the right of independence and self-determination? Is there strife and enmity between nationalities in our multi-national country or a disintegration of the State? No, there is nothing of the sort, nor can there be.

209. Under the Constitution, each of our fifteen Union Republics has the right to remain in the Union or to leave it, if it so desires. The existence of nineteen autonomous republics, nine autonomous regions and ten national territories makes it possible to preserve the national characteristics and cultural originality and individuality of each people and nationality.

210. Harmony and unprecedented unity between all nationalities have been achieved in the Soviet Union. A genuine friendship between nationalities was brought into being, which all the trials of the Second World War could not shake. These great changes benefited not only the national minorities but the Russians, Ukrainians and Byelorussians—the nations comprising a majority of the Soviet Union's population.

211. We are proud that the experience of the former borderlands of Russia has proved that it is perfectly possible for the countries of the East to do away with backwardness, poverty, disease and ignorance within the lifetime of one generation and to rise to the level of economically advanced countries.

212. And now I should like to turn to other examples which illustrate how the colonialists in fact carry out their "civilizing mission" in the colonies.

213. On the attainment of independence by the former colonies, the annual per caput national income, according to official United Nations statistics, was only $US25 in Indonesia, while in Holland it was twenty times greater. In Burma that income was $US36, in India, $US57, or ten times less than in the United Kingdom. The per caput national income in Belgium at the time when the Congolese people won their independence was thirteen times higher than the income of a Congolese. Moreover, in the Congo, as in other colonial countries, the lion's share of this extremely low income was taken by the colonizers.

214. Let us take such an important index of a country's economic development as the output of electric power. On the attainment of independence, per caput output of electric power in Burma was 4 kilowatt-hours a year; in India, about 15 kilowatt-hours, in Pakistan, 2 kilowatt-hours and in Egypt, about 50 kilowatt-hours, while in the United Kingdom per caput production in 1947 was over 1,100 kilowatt-hours.

215. The colonizers kept the enslaved peoples in ignorance and darkness. In 1950 the number of literate persons in Indonesia did not exceed 15 to 20 per cent of the population. In India, even a few years after independence had been won, when steps had already been taken to expand the national educational system, the level of literacy stood at 16 per cent; in Pakistan it was 14 per cent. At the time when the countries of French Indo-China attained independence, there were 330 students in France for every 100,000 inhabitants and 4 for every 100,000 in Cambodia. In 1948 there was one doctor for 67,000 inhabitants in Indonesia. It is not surprising that, as a result of the poor living standards and the lack of proper medical assistance, the average life span in all former colonies is appallingly low in comparison with the metropolitan countries. In a number of these countries a man lives on the average not more than 35 years, which is barely half the average lifetime in the countries that held them in colonial enslavement. This is a legacy of the colonial system that has not yet been eliminated.

216. If, instead of plundering and exploiting, the metropolitan States had really been guided by the interests of the colonial peoples, if they had really given them the assistance of which they like to talk, the peoples of the colonies and the metropolitan countries would have developed uniformly instead of presenting such striking differences in the development of their national economy, culture and prosperity. How can one speak of co-operation, when the level of living in the Western countries is not even comparable to that in the colonies? That is no co-operation, but the domination of one group by the other, a situation in which the latter utilize the labour and wealth of the former, exploit and plunder them and pump their national resources into the metropolitan countries. The colonial peoples have but one road of escape from want and arbitrary rule—the liquidation of the colonial system of government.

217. The supporters of the colonial system are frightening the populations of the metropolitan countries by asserting that the abolition of the system will inevitably be followed by a drastic deterioration in the mode of life of the people of the industrialized countries. These assertions are clearly groundless.

218. In the first place, they betray their authors, who involuntarily admit that the metropolitan countries are continuing to plunder the colonies and dependent countries from which they derive fabulous profits. That is indeed a fact, but it is equally true that the super-profits go not to the metropolitan peoples at large but, mainly, into the pockets of the monopolists. It is not the peoples of the metropolitan countries but the millionaires and billionaires who cling to the colonial system.

219. In the second place, the course of development of many countries that have attained their national independence shows convincingly that with the rapid growth of their national economy, their home markets expand beyond comparison, and they can consume incomparably greater quantities of industrial goods from the more highly developed countries while, at the same time, because of the growth of their own productive forces, they are able to supply more of the raw materials and the various products and goods needed by the economies of the industrialized countries. This is a more progressive and sensible system of relations among countries, that increases the prosperity of the peoples both in the erstwhile economically backward colonial and dependent countries and in the more highly developed ones.

220. The entire march of events and the course of economic and political development pass the inexorable judgement of history on the obsolete and shameful colonial system.

221. We cannot, of course, expect that our proposals for the liquidation of the colonial system, consistent though they are with mankind's vital interests, will meet with sympathy on the part of those who are still clinging to the colonial order of things. I can hear in advance the criticism of those who defend the colonial system. But to those accustomed to build their prosperity at the expense of the oppressed peoples of the colonies we say this: Think, look carefully at what is happening around you. If not today, then soon, very soon, will come the final collapse of the colonial order, and if you do not get out of the way in time, you will be swept away just the same. The life of the doomed colonial system of government cannot be lengthened either by plots or even by force of arms. Such efforts will merely intensify and embitter the struggle of the peoples against this utterly decayed system.

222. But the number of supporters of the colonial system, even in the colonial Powers themselves, is steadily dwindling and, in the final analysis, they will not have the last word. For this reason, we are appealing to the good sense and the foresight of the peo-

ples of the Western countries, to their Governments and representatives at this Assembly of the United Nations: let us agree on steps to liquidate the colonial system of government and so speed up this natural historical process; let us do everything to ensure that the peoples of the colonial and dependent countries attain equality of rights and become able to decide their own fate.

223. We welcome the sacred struggle of the colonial peoples for their liberation. If the colonial Powers, instead of heeding the voice of reason, persist in their old colonialist policy of keeping the colonial countries in subjection, the peoples which stand for the liquidation of the colonial régimes will have to give all possible help to those fighting for their independence against the colonialists and against colonial slavery. Moral, material and other assistance must be given so that the sacred and just struggle of the peoples for their independence can be brought to its conclusion.

224. The Soviet Union, for its part, has been giving assistance to economically under-developed countries and will continue to do so in ever-increasing volume. We are genuinely helping the peoples of these countries to establish their independent economies and to develop their own industry, which is the mainstay of true independence and of increasing prosperity for the people.

225. Peoples which oppress others cannt be free. Every free people must help those who are still oppressed to gain their freedom and independence.

226. Allow me to express the hope that the present session of the General Assembly will be an historic landmark on the road to the complete and final elimination of colonial systems on our planet. This would be an act of great historic importance, in keeping with the aspirations of all peoples struggling to secure national independence for progressive mankind as a whole.

227. In September 1959, on the Soviet Government's instructions, I submitted at the fourteenth session of the United Nations General Assembly [799th meeting] the Soviet Union's proposals for general and complete disarmament. The appalling destructive force of modern weapons, the unprecedented pace of the arms race, the accumulation by States of vast stockpiles of weapons of mass destruction, all create a threat to the future of mankind and necessitate a search for an essentially new approach to the problem of disarmament. Our proposals were the practical expression of such an approach.

228. We could only feel gratified at the fact that the ideas we had put forward won unanimous approval in the United Nations and received widespread support from the peoples of the whole world. Guided by the resolution [1378 (XIV)] adopted by the General Assembly at its last session, the Soviet Union, jointly with other States, took a most active part in the negotiations in the Ten-Nation Committee on Disarmament and strove for the preparation of a treaty on general and complete disarmament. Without waiting for an international agreement on disarmament, the Soviet Union is unilaterally carrying out a reduction of its armed forces by 1.2 million men, i.e., by one third, which is generally recognized as having helped to improve the atmosphere for the disarmament talks.

229. The Soviet Government, which is consistently and resolutely pursuing a peaceful policy, solemnly declares at the present session of the United Nations General Assembly that the Soviet Union maintains armed forces for the sole purpose of defending our country and fulfilling our commitments to our allies and friends in the event of aggression against them. The use of our armed forces for other purposes is precluded because that would be alien to the very nature of our State and to the fundamental principles of our peaceful foreign policy.

230. Our country is compelled to maintain armed forces solely because our proposals for general and complete disarmament have not yet been accepted. We shall do everything in our power to ensure that general and complete disarmament becomes a reality and that mankind is liberated from the arms race and from the threat of a new war of extermination.

231. A year has elapsed since the General Assembly adopted the resolution on general and complete disarmament. Having regard to the present pace of life, that is a comparatively long period of time and we need have no doubt that those engaged in the production of weapons and in the perfection and invention of new lethal means have not let it go to waste.

232. But in the sphere of disarmament not the slightest progress has been made in the past year. What are the reasons for this state of affairs to which we are forced to refer with great regret and serious concern? Who is preventing the implementation of the General Assembly resolution on general and complete disarmament, perhaps the most important and outstanding decision in the history of the United Nations? Who is making it impossible to break the deadlock on the problem of disarmament?

233. The facts show that the absence of any progress towards the solution of the disarmament problem is the consequence of the position taken by the United States and by certain other States linked with it through NATO.

234. Throughout the work of the Ten-Nation Committee on Disarmament, the Western Powers refused to start working out a treaty on general and complete disarmament and in every way avoided discussion of the substance of the Soviet programme of general and complete disarmament [A/4219] which the General Assembly had referred to the Committee for detailed consideration. For their part, they made proposals which provided for neither general nor complete disarmament, nor any disarmament at all, but only for measures of control over armaments, i.e. control without disarmament. However, one cannot but see that the establishment of control without disarmament would be tantamount to setting up an international espionage system which, far from contributing to the consolidation of peace, could, on the contrary, make it easier for a potential aggressor to realize his plans which pose a threat to the peoples.

235. The danger lies in the fact that the establishment of control over armaments, if armaments were retained, would mean, in effect, that each side would know the quantity, quality and deployment of the armaments possessed by the opposing side. Consequently an aggressor could increase his armaments to a superior level in order to choose the opportune moment and launch an attack. We will never agree to control over armaments without disarmament, because that would mean conniving at aggression. Our goal is to secure a stable peace, which can be achieved only

through the elimination of armaments and armed forces under strict international control.

236. Acting directly contrary to the General Assembly resolution, the Western Powers engaged in meaningless talk on disarmament in the Ten-Nation Committee on Disarmament, trying to impede all progress in the matter and to discredit the idea of general and complete disarmament in the eyes of the world.

237. The Soviet Government, together with the Governments of a number of other States, was compelled to suspend its participation in the work of the Ten-Nation Committee which the Western Powers had turned into a screen for concealing the arms race. It was not easy for the Soviet Government to take this decision, because it was precisely our country that had first raised the issue of general and complete disarmament, and had been doing its utmost to achieve in the Committee a constructive solution to the problem, in strict conformity with the General Assembly resolution. In the circumstances, however, staying on in the Committee would only have meant helping the opponents of disarmament. It was impossible to tolerate attempts to make the great cause of disarmament an object of speculation for purposes inimical to the interests of universal peace.

238. That is why the Soviet Government has placed the question of disarmament before the United Nations General Assembly, a considerable majority of whose members have no interest whatever in the arms race and sincerely wish to see it brought to an end.

239. Bearing in mind the tremendous significance of the disarmament problem and the need to effect a radical change in the course of the negotiations, the Soviet Government expressed the idea that Heads of State and of Government vested with the necessary plenary powers, should participate directly in the discussion of this question in the General Assembly. We note with satisfaction that this approach was duly understood by the Governments of a number of States, whose delegations to the General Assembly are headed by the most responsible statesmen of their respective countries.

240. In submitting the question of disarmament to the General Assembly for consideration in plenary meeting, our basic premise is that a full-scale discussion of this question should finally lead to its solution or, at least, give a more practical direction to the disarmament talks, in which States adhering to a neutral course should now participate, in addition to States belonging to the opposing military groups.

241. In an attempt to facilitate the General Assembly's work and to give reality to the disarmament discussions, the Soviet Government submits to the General Assembly for consideration a proposal, "Basic provisions of a treaty on general and complete disarmament" [A/4505]. We request the President of the General Assembly and the United Nations Secretariat to have circulated to delegations, as official General Assembly documents, this proposal and our explanatory statement in which the Soviet Union's position on the question of disarmament is set out in greater detail.

242. The new Soviet proposal on the question of general and complete disarmament, which is based on the provisions of the proposal dated 2 June 1960 [A/4374], submitted by the Soviet Government to all the Governments of the world for consideration, has been drafted with due regard for all the useful ideas expressed in the past year in the course of the discussions on this question in political and public circles in various countries. This proposal goes a long way towards meeting the position of the Western Powers and this we hope will make for early agreement on disarmament.

243. We now provide, in particular, that all means of delivering nuclear weapons to their targets should be eliminated in the very first stage of general and complete disarmament; we have worked out detailed measures for effective international control at all stages; and we have taken into account the wish of certain Western Powers that, from the outset, there should be provision for reduction in the strength of armed forces and in conventional armaments. We have also introduced quite a number of other amendments to and modifications of our programme. In our view all these amendments render the programme of general and complete disarmament more concrete and even more realistic and practicable.

244. Detailed preparation of a treaty on general and complete disarmament is, of course, a complex task which will demand no little effort and labour from all those taking part in the negotiations. In the course of this work various problems may arise whose solution will demand flexibility and a realistic appraisal of the international situation.

245. But we must all soberly realize that no amount of flexibility will help in the solution of the disarmament problem and that all the efforts and labour devoted to that end will go to waste as before unless all the participants in the negotiations are guided by a desire to make mankind's age-old dream of disarmament a reality.

246. However, in the Ten-Nation Committee on Disarmament, the United States and its NATO partners clearly lacked this desire. So far there is no sign that they have the desire now. In this connexion it is impossible to disregard the new attempts which the United States made shortly before the General Assembly began its work to sidetrack the issue. Is it not clear to everyone that that was precisely the aim pursued by the United States in seeking a meeting of the United Nations Disarmament Commission a few weeks before the opening of the General Assembly's fifteenth session? As the work of the Ten-Nation Committee has shown in practice, difficulties arose in the negotiations on practical disarmament problems in that Committee as a result of the Western Powers' unwillingness to solve the disarmament problem. The Soviet Union proposals submitted to the Ten-Nation Committee for consideration are widely known and were appraised by international public opinion as perfectly clear and entirely realistic. It should be emphasized that they took into account some of the Western Powers' wishes and proposals. Nevertheless, Mr. Lodge, the United States representative to the United Nations on the question of disarmament, asserted that the Soviet Union was selling "a pig in a poke". In that case the question is whether Mr. Lodge, like the hero in oriental fairy tales, has not put himself in to a "poke" which prevents him from seeing what everyone else can see and understand perfectly well.

247. We were also surprised by another statement made by Mr. Lodge, opposing submission of the dis-

armament question to the General Assembly for consideration at the present session.

He said:

"We ... think that world opinion ought to hear it and ought to hear it in a forum like this which is devoted exclusively to disarmament, and not merely hear it in the General Assembly where it is only one of more than eighty other issues."[7]

248. I know Mr. Lodge personally, and I am surprised that he has such a low opinion of his own work; after all, he represented the interests of the United States in the United Nations for many years. Perhaps it is precisely because he is so familiar with all the questions under discussion in the General Assembly that he counts them by the dozen and would rather try to transfer them to an auxiliary body in order to hide them "in a poke" away from public opinion.

249. We have the greatest respect for all the Commissions of the United Nations, but for us the highest, most representative and authoritative forum of the peoples is the General Assembly of the United Nations. We hope that the representatives of States from all continents who are gathered here do not share Mr. Lodge's point of view and will not regard the question of disarmament merely as one of more than eighty agenda items. This is the vital question which is agitating the whole of mankind, and it is strange that the representatives of the United States in the United Nations do not understand this.

250. Still more brazen attempts were made in the United Nations Disarmament Commission to direct the disarmament negotiations onto a path that could not possibly lead to a solution of the problem. How else can we regard the proposals[8] which the United States put forward in the United Nations Disarmament Commission, to the effect that the United States and the Soviet Union should each place, under international supervision, 30,000 kilogrammes of fissionable materials intended for nuclear weapons—a proposal, incidentally, repeated yesterday [868th meeting] by the President of the United States—or that these countries should start shutting down one by one the plants producing such materials for military purposes?

251. Only an ill-informed person can believe that these proposals are aimed at reducing the threat of nuclear war. Indeed, the American proposals do not provide either for the elimination of nuclear weapons or for the destruction of stockpiles of such weapons, or even for the prohibition of their use. They provide for the removal of a certain quantity of fissionable materials from the stockpiles of these materials which have been accumulated by States for military purposes. It is well known, however, that the existing stockpiles of fissionable materials are so huge as to be more than sufficient to annihilate whole countries and peoples. It is significant that the United States, in putting forward its proposals, said nothing about the quantity of nuclear weapons and of fissionable materials for their future manufacture which would remain at its disposal after the allocation of the 30,000 kilogrammes. If the United States had mentioned that, it would have been still more obvious that such a step would by no means alleviate substantially the threat of nuclear war.

252. The Soviet Government is deeply convinced that only a radical solution of the problem of disarmament, providing for the complete prohibition of nuclear weapons together with the cessation of their manufacture and testing and the destruction of all accumulated stockpiles of these weapons, can accomplish the task of delivering mankind from the threat of nuclear war which hangs over it. This is precisely the aim which the Soviet Union is pursuing in consistently and resolutely advocating general and complete disarmament.

253. All this, in our view, leads to one important conclusion. In order finally to break the deadlock on the disarmament problem, the General Assembly should call to order those who are hindering its solution and are trying to replace businesss-like negotiations on disarmament by empty beating about the bush.

254. Soberly appraising the situation and the correlation of forces in the world, the Soviet Government is profoundly convinced that disarmament in our time is not only necessary but possible. The struggle for peace has now become a great watchword mobilizing the peoples. This is a fact to be reckoned with even by those Governments which are still infected with an unhealthy attraction towards the policy of cold war and the armaments race.

255. The United Nations has no more important or more urgent task than that of helping to ensure that disarmament becomes a reality and that practical steps—the return of soldiers to their homes and the destruction of weapons, including nuclear weapons, and the means of their delivery, are at last begun.

256. A great aim is worthy of great effort. The Soviet Government expresses the hope that all States concerned with the strengthening of peace will exert their energy and spare no effort to solve the disarmament problem, the most important problem of today. There can be no doubt that the peoples of the whole world will be deeply grateful for a decision by the United Nations General Assembly on disarmament questions.

257. The peoples of the Soviet Union and the Soviet Government are striving unremittingly to have the principles of peaceful coexistence firmly established in relations between States, and to ensure that these principles become the fundamental law of life for the whole of modern society. There is no communist-devised "trick" behind these principles, but simple truths dictated by life itself, such as that relations between all States should develop peacefully, without the use of force, without war and without interference in each other's internal affairs.

258. I am revealing no secret when I say that we have no liking for capitalism. But we do not want to impose our system on other peoples by force. Let those, then, who determine the policy of States with a different social system from ours, renounce their fruitless and dangerous attempts to dictate their will. It is time they also recognized that the choice of a particular way of life is the domestic concern of every people. Let us build up our relations having regard to actual realities. That is true peaceful coexistence.

259. We cannot disregard the fact that a much greater force than the desire, the will or the decision of any Government is acting in favour of the policy of peaceful coexistence. That force is the natural desire, common to all mankind, to avert the calamities of a

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7/ Official Records of the Disarmament Commission, 66th meeting.
8/ DC/154.

war in which all the unprecedented means of mass destruction accumulated in recent years would be used.

260. Adoption of the principles of peaceful coexistence does not, of course, mean that we have somehow to begin to rebuild relations between States on a completely new basis. Peaceful coexistence is in fact already a reality and has received international recognition. Proof of this is the fact that the General Assembly has twice in recent times adopted resolutions confirming the need for peaceful coexistence. Whether they want it or not, even those States whose Governments still do not wish to declare their agreement with the idea of peaceful coexistence are forced in practice to follow it in many respects.

261. The problem now, in fact, is how to make peaceful coexistence safe, how to avoid the departures from it which very often give rise to dangerous international conflicts. In other words, as I have already once said, we have not much choice: it is either peaceful coexistence, which would promote the highest human ideals, or else coexistence "at daggers drawn".

262. Anyone wishing to describe how peaceful coexistence looks in practice might point to the relations maintained by the socialist countries with the new States of Asia, Africa, and Latin America which have freed themselves from colonial oppression and have started to follow an independent policy. These relations are marked by true friendship, great mutual sympathy and esteem, and the granting of economic and technical assistance to the less developed countries without any political or military strings attached. Another good example might be the relations maintained between the countries of the socialist camp and neutral capitalist States such as, for instance, Finland, Austria, Afghanistan, Sweden and others.

263. I feel that the ideas of peaceful coexistence may triumph even in those countries whose Governments have not yet abandoned their hostile acts against socialist States or their crude pressure on uncommitted States which pursue an independent policy. Even in those countries there is a growing realization of the danger of the cold war policy and of a reckless ancing on the brink of the precipice.

264. On my last visit to the United States I met statesmen, businessmen, workers and farmers, scientists and trade union leaders. These meetings had great importance for me, and also, I think, for the people I met. My conviction has grown that the American people do not want war, that in the highest strata of American society there are people who are profoundly aware of the need to live in peace and to exclude war from the life of mankind, people capable of going against deeply-rooted prejudices.

265. I left the United States feeling that there were real possibilities of dispelling the gloomy shadows of suspicion, fear and distrust from the relations between our States and that the Soviet Union and the United States could go hand in hand in the name of consolidating peace and establishing effective international co-operation among all States. I must say that this conviction has not been shaken in spite of all that has happened between the United States and the Soviet Union in recent months. In our time it would be the height of absurdity if the two most powerful States could not agree between themselves. This must be done, if only because of the enormous importance of the relations between the USSR and the United States for the fate of the world. The Soviet Government is ready to continue doing everything possible to improve relations between our country and the United States.

266. The policy of peaceful coexistence assumes a readiness to solve all outstanding issues without resort to force, by means of negotiations and reasonable compromises. We all know that during the cold war years such questions for the most part did not find a solution, and that led to the creation of dangerous foci of tension in Europe, Asia and other parts of the world.

267. We have not yet unravelled the international tangles which are the legacy of the Second World War. Foremost among these is the conclusion of a peace treaty with Germany and the solution on that basis of the urgent question of West Berlin. The fact that no peace treaty has yet been concluded with Germany is entirely the responsibility of the Governments of the Western Powers which, to speak plainly, have been sabotaging the settlement of this problem for many years. These Governments have made it a practice to reject peremptorily all the Soviet Union's proposals for the conclusion of a German peace treaty, while they themselves have put forward no proposals of their own on the subject throughout the fifteen post-war years.

268. As a result of this, the situation in Europe remains unstable, fraught with the danger of acute conflicts. The absence of a peace treaty is particularly pleasing to the revanchist and militarist forces in West Germany. They are taking advantage of this in order to advance step by step towards the fulfilment of their purposes, which are dangerous to the cause of peace. At the time of the war in Korea, when relations between the Great Powers were greatly strained, they brought up the question of creating the Bundeswehr and succeeded in doing this. Today we see the ruling circles in the Federal Republic of Germany becoming active, hoping that the present tension will enable them to obtain possession of nuclear weapons and rockets.

269. Although the Summit Conference, which among other things was to have considered the question of a peace treaty with Germany, was disrupted, we consider that there exist objective conditions for an agreed solution of the problems remaining at issue after the last war. As we have already stated, the Soviet Government is prepared to wait a while with the solution of the problem of a German peace treaty in order to try and reach agreement on that treaty at the summit conference which the Soviet Union has proposed convening in a few months' time. We should like to hope that the Soviet Union's efforts in this direction will be supported by the Governments of the United States, the United Kingdom and France.

270. The Soviet Union considers that, in order to strengthen peace in the Far East and throughout the world, it is most essential to settle the Korean question.

271. Only madmen could think of settling the Korean question by armed force. The only correct proposal, namely to leave the solution of the question of the peaceful reunification of Korea to the Koreans themselves with no interference from outside, is finding ever wider acceptance. An essential condition for this is the immediate and complete withdrawal of all United States troops from South Korea, for their presence poisons the atmosphere not only in Korea but through-

out the Far East and has made possible such shameful facts as the rigging of elections in South Korea. The proposal of the Government of the Democratic People's Republic of Korea to establish a confederation of North and South Korea is just as reasonable as the proposal of the Government of the German Democratic Republic to set up a confederation of the two German States. It is the only way to lay a sound foundation for the reunification of these States.

272. In recent years, at critical moments in the course of international life, the peace-loving States have more than once had to speak out in defence of the just cause and to take effective measures to ensure that events were directed into a peaceful channel. The United Nations helped to rebuff the aggressors who encroached on the freedom and rights of Egypt, and it helped to call to order those who were intervening in Lebanon and Jordan. We should like to hope that the United Nations will successfully accomplish the responsible tasks imposed on it by the still alarming situation in the world.

273. Experience of the work of the United Nations has shown that this body is useful and necessary, because in it are represented all the States which are called upon to solve, through negotiation and discussion, the pressing issues of international relations so as to prevent them from reaching a point where conflicts and wars might break out. That is the positive aspect of the work of the United Nations. That, indeed, constitutes the main purpose of the creation of the United Nations.

274. However, in the course of the Organization's activities, its negative aspects have also come to light. These negative aspects found expression in the fact that certain countries have hitherto been able to impose their will and their policy in the settlement of particular questions in the United Nations to the detriment of other States. This does not further the principal purpose of the United Nations, it does not promote the adoption of decisions which would reflect the interests of all the countries in the United Nations.

275. The executive machinery of the Organization is also constructed in a one-sided manner. It often approaches the solution of questions from the standpoint of a particular group of countries. This is particularly true of the activities of the United Nations Secretary-General. The Western countries which are members of the military blocs of the Western Powers usually exploit that office in their own interests by nominating for the post of United Nations Secretary-General a candidate acceptable to them. The result is that in many cases the practical, routine work of the United Nations and of its Secretariat is carried out in a one-sided manner. The staffing of the Organization is also one-sided.

276. The bias in the implementation of practical measures on the part of the United Nations Secretariat was particularly glaring in the case of the events which have taken place in the Congo. In implementing the Security Council's decisions, the Secretary-General in effect adopted the position of the colonialists and of the countries that support the colonialists. That is a very dangerous thing.

277. We are now firmly convinced that the time has come to take steps to create conditions for an improved functioning both of the United Nations as a whole and of the Organization's executive, working organ. I repeat, the matter relates primarily to the Secretary-General and his staff. We must particularly bear in mind the necessity for certain changes and improvements, with a view to the immediate future.

278. For instance, we are now conducting negotiations on disarmament. For the present the United States and its allies are making every effort to resist general and complete disarmament and are finding all sorts of pettifogging reasons to thwart or at least stave off indefinitely a settlement of the disarmament question. But we believe that good sense will prevail and that sooner or later all States will bring pressure to bear on those who resist a sensible solution of the disarmament problem. The United Nations Secretariat must therefore be adapted even now to the conditions which will come into being as disarmament decisions are implemented.

279. An identical point of view has emerged in our proposals and in those of the countries making up the NATO military alliance regarding the necessity of following up an agreement on disarmament with the establishment of armed forces of all countries, under international control, to be used by the United Nations in accordance with the decision of the Security Council.

280. The Soviet Government considers that if a correct approach is taken to the utilization of these international armed forces, they may indeed be useful. But the experience of the Congo puts us on our guard. That experience indicates that the United Nations forces are being used exactly in the way against which we warned, a way we emphatically oppose. Mr. Hammarskjold, the Secretary-General, has taken a position of purely formal condemnation of the colonialists. In actual practice, however, he is following the colonialists' line, opposing the lawful Government of the Congo and the Congolese people and supporting the renegades who, under the guise of fighting for the independence of the Republic of the Congo, are actually continuing the policy of the colonialists and are evidently receiving some reward from them for their treachery.

281. What is to be done in this case? If this is how the international armed forces are to be used in practice, to suppress liberation movements, it will naturally be difficult to reach agreement on their establishment, since there will be no guarantee that they will not be used for reactionary purposes that are alien to the interests of peace. Provision must be made to ensure that no State falls into the predicament in which the Republic of the Congo now finds itself. We are convinced that other States also realize this danger. Solutions must therefore be sought which would preclude similar occurrences in the future.

282. The Soviet Government has come to a definite conclusion on this matter and wishes to expound its point of view before the United Nations General Assembly. Conditions have clearly matured to the point where the post of Secretary-General, who alone directs the staff and alone interprets and executes the decisions of the Security Council and the sessions of the General Assembly, should be abolished. It would be expedient to abandon the system under which all practical work in the intervals between General Assembly sessions and Security Council meetings is determined by the Secretary-General alone.

283. The executive organ of the United Nations should reflect the real situation that obtains in the world today. The United Nations includes States which are

members of the military blocs of the Western Powers, socialist States and neutralist countries. It would therefore be completely justified to take that situation into account, and we would be better safeguarded against the negative developments which have come to light in the work of the United Nations, especially during the recent events in the Congo.

284. We consider it reasonable and just for the executive organ of the United Nations to consist not of a single person—the Secretary-General—but of three persons invested with the highest trust of the United Nations, persons representing the States belonging to the three basic groups I have mentioned. The point at issue is not the title of the organ but that this executive organ should represent the States belonging to the military block of the Western Powers, the socialist States and the neutralist States. This composition of the United Nations executive organ would create conditions for a more correct implementation of the decisions taken.

285. In brief, we consider it advisable to set up, in the place of a Secretary-General who is at present interpreter and executor of the decisions of the General Assembly and the Security Council, a collective executive organ of the United Nations consisting of three persons each of whom would represent a certain group of States. That would provide a definite guarantee that the work of the United Nations executive organ would not be carried on to the detriment of any one of these groups of States. The United Nations executive organ would then be a genuinely democratic organ; it would really guard the interests of all States Members of the United Nations irrespective of the social and political system of any particular Member State. This is particularly necessary at the present time, and it will be even more so in the future.

286. There are also other difficulties which Members of the United Nations are now experiencing. These difficulties are due to the location of United Nations Headquarters. One would think that the United States, which calls itself a free democratic country, would do everything it could to facilitate the work of the United ions and provide all the necessary facilities for the representatives of States belonging to the Organization. Practice shows, however, that the United States restricts and infringes upon the rights of the representatives of various States. There have been cases, for instance, where the representatives of young African and Asian States have been subjected to racial discrimination in the United States and even to attacks by thugs.

287. The representatives of the United States authorities explain the various restrictions on the rights of representatives of States Members of the United Nations by saying that it is difficult to ensure their security. I wish to emphasize that we have a better opinion of the hospitality of the American people than the one that might be formed in the light of such statements and restrictive measures. But these statements cannot be disregarded, nor can we fail to take into account the difficulties which are created for the work of the United Nations in such circumstances.

288. The question arises whether thought should not be given to selecting another place for United Nations Headquarters, a place which would better facilitate the fruitful work of the international body. Either Switzerland or Austria for instance might well be chosen. I can state with full authority that, should it be considered expedient to move the Headquarters of the United Nations to the Soviet Union, we would guarantee the best possible conditions for its work and complete freedom and security for the representatives of all States, irrespective of their political or religious convictions or the colour of their skin, for in our country the sovereign rights of all States and the equality of all nations, big and small, receive the highest respect.

289. You are all aware that the Soviet Government supported, at the time, the proposal that the United States of America should be selected as the seat of the United Nations. But recent developments indicate that the United States apparently feels this to be a burden. Should we not give thought, then, to freeing the United States of this burden?

290. The Soviet Government, in placing before the representatives in the General Assembly its proposals on the vitally important questions of the day, would like to stress their special and extraordinary importance for the fate of the world.

291. The importance of the disarmament problem needs no special demonstration. This problem is of such cardinal significance that it must assuredly be discussed at the plenary meetings of the General Assembly.

292. The question of the abolition of the colonial régime is also of such great importance that the necessity for its consideration at the plenary meetings of the General Assembly will clearly meet with the full understanding of all delegations.

293. We consider that the question of the aggressive actions of the United States of America against the Soviet Union, as manifested by the dispatch of United States aircraft inside the borders of the USSR, has acquired exceptionally great importance. This is in itself a deed which oversteps the limits of relations admissible between States in time of peace. But the question assumes particular importance for the reason that Mr. Eisenhower, the President of the United States, himself declared the aggressive flights of United States aircraft to be a normal matter allegedly necessary for the security of the United States. At the same time the United States Government arrogated to itself the right to dispatch such aircraft in the future as well. This is why, since the issue involves the violation of the sovereign rights not only of the Soviet Union but of other States as well, the question of the aggressive actions of the United States should be dealt with by the General Assembly in plenary session.

294. A continuation of such actions, and especially their interpretation by the President of the United States as a matter of State policy, may at any moment plunge mankind into a third world war. I repeat, therefore, that in the opinion of the Soviet Government this question, too, like the questions of disarmament and the liquidation of colonialism, must be discussed by the United Nations General Assembly in plenary session rather than in committee.

295. What we have in mind is that at this session of the General Assembly the representatives of the overwhelming majority of States of the world should express their views on the cardinal problems which today agitate public opinion and all the people in the world who are interested in the further development of free-

dom and democracy and yearn for peace for themselves and their children.

296. The Soviet Government hopes that the proposals it has raised for questions to be considered at the present session of the General Assembly will meet with support and understanding, since they are prompted by a sincere desire to secure a better life and tranquillity on our planet.

297. Indeed, man lives and works in order to make the fullest possible use of his powers, his talents and his potentialities. The world of our time is diversified but at the same time it is one. We live on the same planet and it will depend on us how we arrange our affairs on it.

298. Man's mind is working wonders today. Tomorrow even vaster prospects will be opened in the realm of science and technology. The important thing is to ensure that the great scientific achievements of our age serve the good of the people.

299. I think you will agree with me that the attention of hundreds of millons of people is focused these days on the General Assembly hall. What do the peoples of these many countries of the world expect of us? They expect a just and honest settlement of the crucial problems of our time. The peoples may err in their choice of governments. One or another historical situation may lead to injustices in any country. But however complicated the internal relationships in States may be, people naturally hope and trust in better things to come. People want to live and prosper and, above all, they want their children to have more and live better.

300. For this reason we must all—and I say this on behalf of the Soviet people—be deeply aware of our high and special mission. Mankind has advanced so far that it cannot tolerate in its life the remnants of the grim reactionary past. Mankind has advanced so far that it comprehends the deep and grave danger of abusing and misusing scientific achievements for the sake of an arms race.

301. So let us leave to our successors, our children, our grandchildren and great-grandchildren, good memories of our time. Let them hold up the people of our time as an example and say: once the inhabitants of the earth faced difficult and extremely complex problems, but, gathering together in the United Nations General Assembly, they succeeded in settling them in order to ensure a better future.

302. So let us act in such a way as to make the fifteenth session of the General Assembly not only an Assembly of hopes but also an Assembly of the realization of hopes.

303. The Soviet Government is ready to do its utmost in order that colonial servitude may be destroyed here and now, that here and now the problems of disarmament may find their concrete and effective solution.

304. The Soviet Government is ready to do its utmost in order that the testing of nuclear weapons may be prohibited here and now, that this means of mass destruction may be prohibited and destroyed.

305. It could be said that these are complicated problems and that they cannot be solved at one stroke. But these are problems posed by life itself and they must be solved before it is too late. Their solution cannot be evaded.

306. In concluding my statement I wish to emphasize once again that the Soviet Government, guided by the interests of the Soviet people, by the interests of the citizens of a free socialist State, once again proposes to all: let us talk, let us argue, but let us settle the questions of general and complete disarmament and let us bury colonialism that is accursed of all mankind.

307. There must be no further procrastination or delay. The peoples of all States, whatever their social systems, expect the United Nations General Assembly at last to adopt decisions according with the aspirations of the peoples.

308. The PRESIDENT: I now call on the representative of Belgium, in exercise of his right of reply.

309. Mr. WIGNY (Belgium) (translated from French): I thank the President for allowing me to exercise my right of reply with respect to two speakers, and I shall confine myself at present ...

310. The PRESIDENT: I must ask the representative of Belgium to bear with the Chair. A point of order has been raised from the floor and the Chair must deal with it. Perhaps the representative of Belgium would be good enough to stand away while I hear the point of order which has been raised from the floor by the representative of Guinea.

311. Mr. TOURE Ismaël (Guinea) (translated from French): My delegation fully understands and respects the desire for fairness which led the President to give the floor to the Belgian representative so that he might exercise his right of reply. However, my delegation wishes to point out that the statements made by the delegations of Ghana and the Soviet Union were made by Heads of State. We know that our Assembly has always shown ...

312. The PRESIDENT: I am sorry to interrupt the representative of Guinea; but he asked for the floor on a point of order. May I ask him to state what is the point of order which he wishes to submit for the decision of the Chair?

313. Mr. TOURE Ismaël (Guinea) (translated from French): I shall explain my point of order very briefly. I hope that the President will allow me to continue. We know that our Assembly has always shown and will continue to show strict and impartial courtesy to all Heads of State. My delegation wishes simply to point out the drawbacks of extending the right of reply to the level of the Heads of State who have consented to lend the weight of their presence to our debates. This precedent should be avoided at all costs because it seems to us to be full of danger to the orderliness of our meetings and incompatible with the very useful contribution made by Heads of State to the debates in the United Nations.

314. My delegation is therefore convinced that it is expressing a general feeling and that the other delegations will support me in rising to this practical point of order. In accordance with the courtesy usual in the United Nations, my delegation proposes that all delegations should voluntarily refrain from exercising their right of reply with respect to Heads of State.

315. The PRESIDENT: All delegations in the Assembly are equally entitled under the rules of procedure to exercise the right of reply. That right extends to the representative of Belgium, and I now give him the floor.

316. Mr. WIGNY (Belgium) (translated from French): I thank the President. I shall continue my statement. It will be short.

317. Belgium has been subjected this morning to two particularly unjust and slanderous attacks. I shall return to the substance of these attacks at the appropriate time and will confine myself now to making three observations.

318. The first is that, whatever may have been said not only by the Heads of State but by the representatives of Ghana and the Soviet Union, the ineradicable fact remains that it was Belgium which led the Congo to independence and which recognized its sovereignty on 30 June 1960, without conditions, time-limits or reservations of any kind. It did so after eighteen months of preparation and on the basis of a round table conference at which it held discussions on a footing of equality with the legitimate representatives of the Congo, and after free general elections with secret ballot. I can only wish that the Prime Minister of the Soviet Union might draw inspiration from this example and apply it in certain areas controlled by the Union of Soviet Socialist Republics.

319. My second observation is this. Since our position before 30 June was only too obvious, the attempt is being made to implicate us in what happened after 30 June in an independent State. The criticism is absurd because it would imply both naïveté and cruelty on our part. Naïveté because why, I would ask, should we have given immediate and unconditional independence to the Congo if we wished to take it back somewhat later in far more difficult circumstances. So much for naïveté. I appeal to this Assembly, however, to understand the cruelty implied by this criticism. We left in the Congo, after 30 June, more than 80,000 of our nationals, and of those 80,000 nationals more than half were women and children. This means that those who say we granted independence to the Congo out of a kind of Machiavellianism are also accusing us of having held cheap the honour of our women and the lives of our children.

320. At this moment we are still giving an example of non-interference in the Congo's affairs. Belgium has steadfastly refrained from taking any position with regard to the various groups which have successively attempted to seize power at Leopoldville, so that no one could suspect it of not respecting the independence it had granted by practising non-interference.

321. The two speakers who have preceded me expressed their choices, and their preferences immediately. On what grounds, and on the basis of what knowledge of the situation? Do they seek to ensure respect for the will of the Congolese people, or are they pursuing their own partisan policy in the centre of Africa? That is my second observation.

322. I come now to my third and last observation. Belgium has always been a faithful Member of the United Nations. We willingly admit that we went into the Congo to save the lives of men, women and children who were in danger of death. We did this, and I wonder who among you would not now despise us if we had not done it. Above and beyond all legal arguments, human feelings mean something, after all. But, having done this, we immediately withdrew our troops, and, subject to some objections on matters of detail, we did our best to carry out the decisions taken by the Security Council.

323. Precisely because they could no longer in good faith attack Belgium, the States whose representatives took the floor before me this morning are now attacking the Organization, the Secretary-General, you gentlemen, and the entire Assembly. That will end by creating the impression that some among us accept the United Nations only so far as the policy supported by all of you and worked out by all of you in a democratic manner is consonant with the policy they desire.

324. And here is my conclusion. I did not come to this rostrum to defend the interests of Belgium. We are no longer involved. We granted independence, or rather we recognized it, and we shall respect it. I came here to defend the interests of this international Organization. There are many peoples newly represented among us. How can they be expected to have confidence in this international Organization if they see that a medium-sized power like Belgium, which has done its best to apply the principles of the United Nations Charter, can be unjustly slandered in this way without being defended, without being supported by the majority among you? And how can they have confidence in the Organization they are entering, how can they believe in peaceful coexistence, how can they believe in the achievement of disarmament and world peace, if the policies advocated by some in no way reflect a desire for impartiality, justice and peace, but rather a partisan desire to advance certain special interests.

325. Subject to the additional arguments I shall advance later on the substance of the matter, this is the reply I wished to make at once; first—and that is only fair—in order to defend my country's honour, but also to defend your rights, the rights of all of you who constitute the United Nations and on whom the future of the Organization depends.

The meeting rose at 2.25 p.m.

Litho in U.N. 77001—January 1961—2,225

ANNEX 83

United Nations General Assembly, Fifteenth Session, Chairman of the Council of Ministers of the Union of Soviet Socialist Republics Letter to President of the General Assembly, UN Doc. A/4501, 23 September 1960

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
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23 September 1960
ENGLISH
ORIGINAL: RUSSIAN

Fifteenth session

REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM IN THE AGENDA OF THE FIFTEENTH REGULAR SESSION: ITEM PROPOSED BY THE UNION OF SOVIET SOCIALIST REPUBLICS

DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

Letter dated 23 September 1960 from the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics addressed to the President of the General Assembly

The Government of the Union of Soviet Socialist Republics requests the inclusion of the following item, as an important and urgent matter, in the agenda of the fifteenth session of the United Nations General Assembly:

"Declaration on the granting of independence to colonial countries and peoples".

In accordance with rule 20 of the rules of procedure of the General Assembly, I am attaching an explanatory memorandum.

(signed) N. KHRUSHCHEV
Chairman of the Council of Ministers of the Union of Soviet Socialist Republics

EXPLANATORY MEMORANDUM

Guided by the lofty Purposes and Principles of the United Nations Charter, by the noble, humane ideals of the equality and self-determination of nations and peoples, the Government of the Soviet Union is submitting for consideration by the United Nations General Assembly the item "Declaration on the granting of independence to colonial countries and peoples" and is presenting a draft Declaration on the subject.

The great process of our era, occurring before the eyes of all, is the emancipation and restoration to independent life of peoples which the colonialists for centuries kept off the high road of mankind's development. In the last fifteen years alone, some 1,500 million persons, i.e. more than half of the world's population, have cast off the chains of colonial oppression. Dozens of new national States have emerged from the ruins of the old colonial empires.

The time is at hand for the final and complete liberation of peoples languishing in colonial bondage.

The States Members of the United Nations cannot remain indifferent to the fact that more than 100 million human beings are to this day living in conditions of colonial oppression and exploitation.

The Soviet Union, true to its policy of peace and of supporting the struggle of the oppressed peoples for national independence, calls upon the United Nations to raise its voice in defence of the just cause of liberation of the colonies and to take measures forthwith for the complete elimination of colonial rule.

In keeping with the high principles proclaimed in the Charter, the United Nations must declare itself in favour of the immediate and complete elimination of the colonial system in all its forms and manifestations.

Such action will constitute an important foundation for the development of genuinely friendly relations among all States and all peoples and, at the same time, for the realization of the great task of ensuring a solid and lasting peace on earth.

Firmly adhering to the principle that the United Nations is the centre for co-ordinating the activities of nations in achieving the common goals proclaimed in its Charter, the Soviet Government is submitting for consideration by the General Assembly a draft Declaration in which the following demands are solemnly proclaimed:

/...

1. All colonial countries and Trust and Non-Self-Governing Territories must be granted forthwith complete independence and freedom to build their own national States in accordance with the freely expressed will and desire of their peoples. The colonial system and colonial administration in all its forms must be completely abolished in order to afford the peoples of the territories concerned an opportunity to determine their own destiny and form of government.

2. Similarly, all strongholds of colonialism in the form of possessions and leased areas in the territory of other countries must be eliminated.

3. The Governments of all countries are urged to observe strictly and steadfastly, in relations between States, the provisions of the United Nations Charter and of this Declaration concerning equality and respect for the sovereign rights and territorial integrity of all States without exception, allowing no manifestations of colonialism or any special rights or advantages for some States to the detriment of other States.

The text of the draft Declaration on the granting of independence to colonial countries and peoples is attached 1/ to this explanatory memorandum.

1/ Distributed as A/4502.

ANNEX 84

United Nations General Assembly, Fifteenth Session, Official Records, Annexes 1960-61, Part 2, Agenda Item 87, Guatemala Amendment to Document A/L.323, UN Doc. A/L.325, 7 December 1960

friendly relations among all States and among all peoples and thereby for the realization of the great objective of securing a strong and lasting peace on earth.

It is the sacred duty of each State and each Government to promote an early and full implementation of this Declaration.

DOCUMENT A/L.324/REV.2

Honduras: revised draft resolution

[*Original text: Spanish*]
[*7 December 1960*]

The General Assembly,

Considering that mankind cannot remain indifferent to the fact that some peoples do not yet enjoy self-determination and self-government,

Considering that the process of emancipation must be hastened so that those peoples may progress, as rapidly as possible, towards the creation of the political and social leadership necessary to enable them to assume the attributes of governmental authority and to exercise rights and contract obligations as subjects of public law,

1. *Proclaims* the elimination of colonialism throughout the world, in the Western hemisphere as elsewhere;

2. *Decides* to appoint a commission consisting of five members (one African, one Latin American, one Asian and two administering Powers) to examine, using all the means at its disposal, the situation in the Trust and Non-Self-Governing Territories, with a view to proposing to the General Assembly at its sixteenth session whatever concrete measures should be recommended or applied in each case in order to achieve, in the most expeditious, appropriate and effective way possible, the complete abolition of colonialism throughout the world and enable all peoples which are still under colonial administration to acquire the status of independent and sovereign States.

DOCUMENT A/L.325

Guatemala: amendment to document A/L.323

[*Original text: Spanish*]
[*7 December 1960*]

Insert the following paragraph after paragraph 6 of the operative part of the draft resolution contained in document A/L.323:

"7. The principle of the self-determination of peoples may in no case impair the right of territorial integrity of any State or its right to the recovery of territory."

Paragraph 7 of the operative part will thus become paragraph 8.

DOCUMENT A/L.328

Union of Soviet Socialist Republics: amendment to document A/L.323

[*Original text: Russian*]
[*13 December 1960*]

Add the following paragraphs after operative paragraph 7 of the draft resolution contained in document A/L.323:

"8. *Calls upon* the Powers concerned to ensure the transfer of full and sovereign power to the peoples of all dependent territories in accordance with the principles stated above and, for this purpose, to enter into negotiations with representatives of the colonial peoples elected on the basis of universal suffrage, if necessary under United Nations supervision, so that all colonial countries and peoples should attain independence not later than the end of 1961 and take their rightful place in the community of nations;

"9. *Decides* to consider the question of the implementation of this resolution at its sixteenth regular session."

ACTION TAKEN BY THE GENERAL ASSEMBLY

At its 947th plenary meeting, on 14 December 1960, the General Assembly adopted the draft resolution submitted by forty-three Powers (A/L.323 and Add.1-6). It rejected an amendment (A/L.328) to this draft submitted by the Union of Soviet Socialist Republics. For the final text, see resolution 1514 (XV) below.

At the same meeting, the General Assembly rejected the draft Declaration of the Union of Soviet Socialist Republics contained in document A/4502.

ANNEX 85

United Nations General Assembly, Twenty-fifth Session, Special Committee Report to Sixth Committee, UN Doc. A/8018, May 1970

REPORT OF THE SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FIFTH SESSION

SUPPLEMENT No. 18 (A/8018)

UNITED NATIONS

New York, 1970

II. COMPLETION OF THE SPECIAL COMMITTEE'S WORK, IN THE LIGHT OF THE DEBATE WHICH TOOK PLACE IN THE SIXTH COMMITTEE DURING THE TWENTY-FOURTH AND PREVIOUS SESSIONS OF THE GENERAL ASSEMBLY AND IN THE 1964, 1966, 1967, 1968 AND 1969 SESSIONS OF THE SPECIAL COMMITTEE, BY ENDEAVOURING TO RESOLVE, IN THE LIGHT OF GENERAL ASSEMBLY RESOLUTION 2327 (XXII), THE REMAINING QUESTIONS RELATING TO THE FORMULATION OF THE SEVEN PRINCIPLES

A. Preparation of a draft declaration on all of the seven principles.

1. Preamble of a draft declaration

Written proposals and amendments

49. The Special Committee had before it the proposals for a preamble contained in the draft declarations submitted in 1966 by Czechoslovakia (A/AC.125/L.16)[88] and in 1967 by the United Kingdom of Great Britain and Northern Ireland (A/AC.125/L.44)[89] and jointly by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48)[90]. In addition, a joint proposal by Argentina, Guatemala, Mexico and Venezuela (A/AC.125/L.82 and Corr.1, French only) and an amendment by Czechoslovakia and the Union of Soviet Socialist Republics (A/AC.125/L.85) were submitted to the Special Committee in 1970[91]. The texts of the foregoing joint proposal and amendment are given below.

50. Joint proposal submitted in 1970 by Argentina, Guatemala, Mexico and Venezuela (A/AC.125/L.82 and Corr.1 French only):

"Insert the following sentence in the preamble:

'The General Assembly ...

'Convinced that the principle of self-determination of peoples, as enunciated in resolution 1514 (XV), constitutes a significant contribution to contemporary international law,

.....'"

51. Amendment[92] submitted in 1970 by Czechoslovakia and the Union of Soviet Socialist Republics (A/AC.125/L.85):

"1. In the sixteenth paragraph, after the words "relevant resolutions", insert a comma followed by the words "and in particular of the Declaration on the granting of independence to colonial countries and peoples,".

88/ For the text, see Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 24, footnote 6.

89/ For the text, see ibid., Twenty-second Session, Annexes, agenda item 87, document A/6799, para. 454.

90/ For the text, see ibid., para. 455.

91/ See also the statement made by the representative of Romania at the 112th meeting of the Special Committee (A/AC.125/SR.112).

92/ Relating to the text of the preamble as reproduced in the report of the Drafting Committee (A/AC.125/L.86), see para.83 below.

6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

7. For the purpose of the present Declaration, the term "State" covers both individual States and groups of States.

8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII."

5. The duty of States to co-operate with one another in accordance with the Charter

Consensus text contained in the report of the Drafting Committee at the 1967 session of the Special Committee

60. The text expressing the consensus of the Drafting Committee on the principle concerning the duty of States to co-operate with one another in accordance with the Charter, contained in the report of the Drafting Committee which was taken note of by the Special Committee in 1967 (see paragraph 24 above), read as follows: 99/

"1. States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

2. To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for and observance of human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

99/ Official Records of the General Assembly, Twenty-second session, Annexes, agenda item 87, document A/6799.

"The subjection of peoples to alien subjugation, domination and exploitation as well as any other forms of colonialism, constitutes a violation of the principle of equal rights and self-determination of peoples in accordance with the Charter of the United Nations and, as such, is a violation of international law."

IV. Mode of implementation of self-determination

The possibility was discussed of including a sub-paragraph on the following lines:

"[In exercising their right of self-determination a people may decide upon] [The exercise by a people of their right of self-determination may take the form of] the establishment of a sovereign and independent State, their free association or integration with an independent State [or any other political status freely determined]."

V. The prohibition of armed action or repressive measures against colonial peoples

The possibility was discussed of including a sub-paragraph on the following lines:

"Every State [The administering authority] has the duty to refrain from [the threat or use of force] [any forcible action] which deprives [dependent peoples] [peoples under foreign domination] [peoples under foreign domination including colonial peoples] [peoples under foreign domination as well as under any other form of colonialism] [peoples under foreign domination or colonial peoples] of their right to self-determination and freedom and independence."

VI. Right of self-defence against colonial domination including the question of rights of peoples to request and to receive assistance in their struggle

There was no agreement on the inclusion of a statement under this heading. Nevertheless, the following formula was advanced as a basis for discussion:

"Peoples subjected to colonial oppression are entitled in their legitimate struggle to seek and to receive all support in accordance with the purposes and principles of the Charter and with the provisions of resolution 1514 (XV)."

VII. Status of dependent territories

The possibility was discussed of including a sub-paragraph on the following lines:

"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 exercising colonial rule over it [administering it], and its separate and distinct status as well as the responsibilities of the administering State concerned relating thereto shall continue so long as the colony or the non-self-governing territory has not exercised its right of self-determination [in the manner set out in resolution 1541 (XV)] [in accordance with the provisions of resolution 1514 (XV)]."

ANNEX 86

Report of Working Group of Officials on the Question of Ratification of the International Covenants on Human Rights, 1 August 1974

Report of the Working Group of Officials on the Question of the Ratification of the International Covenants on Human Rights

1 August 1974

Annex D: The substantive articles of the International Covenant on Civil and Political Rights (Articles 1-27)

Paragraphs 4-8

(re-typed for clarity)

Article 1

4. This provides that all peoples have the right of self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. It also provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources. States Parties are required to promote the realisation of the right of self-determination and to respect it in conformity with the Charter of the United Nations.

5. The United Kingdom strongly opposed the inclusion of this Article, holding that self-determination was a principle not a right. The essential objection from the United Kingdom point of view was that because of the vagueness of the Article, it could be interpreted as imposing on a colonial power greater obligations in respect of its dependent territories than the Charter itself. Most of our remaining territories are still not ready to choose their eventual status. On signature of the Covenant in 1968, therefore, we sought to establish that acceptance of the Covenant would commit us to no more in the colonial field than do our present obligations under the Charter (especially Articles 1, 2 and 73), by entering the following declaration:

> "The Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail".

6. In 1970, the General Assembly of the United Nations adopted the "Declaration" on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". This Declaration included an elaboration of the principle of self-determination, which the United Kingdom accepted subject to an interpretative statement made by our representative prior to its adoption. Nonetheless, in view of the sensitivity of colonial problems at the United Nations, the Working Group considers it essential to maintain the declaration entered on signature.

7. A potentially more serious problem in relation to the metropolitan territory of the United Kingdom arises in respect of nationalist movements. Although the Declaration on Friendly Relations referred to above contains language which makes it clear that the right of self-determination relates primarily to dependent territories and is not to be understood as authorising or encouraging action aimed at dismemberment of the metropolitan territory of a State, it is possible that nationalist movements within the United Kingdom could invoke Article 1 in justification of claims to political separatism and regional control over economic resources. Whether or not such claims were upheld by the United Nations, the existence of Article 1 could give rise to domestic embarrassment.

8. The Working Group therefore considers that the following interpretative statement might be entered on ratification:

> "The Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant and do not interpret this Article as conferring any right of action aimed at impairing the territorial integrity or political unity of the State."

However, the Working Group recognises that the latter part of such a statement might be difficult politically and it might be thought preferable therefore to stand on a simple confirmation of the declaration made by signature and rely on the Declaration on Friendly Relations for the rest.

ANNEX D

THE SUBSTANTIVE ARTICLES OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ARTICLES 1-27)

1. This Annex considers in detail the problems in relation to the United Kingdom (excluding the Channel Islands, the Isle of Man and other dependent territories) arising from individual Articles of the Covenant on Civil and Political Rights.

2. The Working Group considered that the following Articles require no comment in that they give rise to no issues of substance: Articles 5, 8 and 11.

3. Problems arising from the remaining Articles are discussed below.

ARTICLE 1

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5. The United Kingdom strongly opposed the inclusion of this Article, holding that self-determination was a principle not a right. The essential objection from the United Kingdom point of view was that because of the vagueness of the Article, it could be interpreted as imposing on a colonial power greater obligations in respect of its dependent territories than the Charter itself. Most of our remaining territories are still not ready to choose their eventual status. On signature of the Covenant in 1968, therefore, we sought to establish that acceptance of the Covenant would commit us to no more in the

/colonial

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/Article 1

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> "The Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant and do not interpret this Article as conferring any right of action aimed at impairing the territorial integrity or political unity of the State."

However, the Working Group recognises that the latter part of such a statement might be difficult politically and it might be thought preferable therefore to stand on a simple confirmation of the declaration made on signature and rely on the Declaration on Friendly Relations for the rest.

ARTICLE 2

9. Paragraph 1 provides that each State Party should respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Paragraph 2 provides that, where not already provided for by existing legislative or other measures, each State Party should take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant. Paragraph 3 provides that each State Party should ensure effective remedies for persons whose rights are violated.

10. The Working Group noted that paragraph 1 read in conjunction with paragraph 2, imposes obligations of a more immediate character than those under Article 2 of the Covenant on Economic, Social and Cultural Rights. The later articles of the Covenant

/must

ANNEX 87

United Nations General Assembly, Nineteenth Session, United Kingdom comments on the Friendly Relations Declaration, UN Doc. A/5725/Add. 4, 22 September 1964

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/5725/Add.4
22 September 1964

ORIGINAL. ENGLISH

Nineteenth session

CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

Comments received from Governments

CONTENTS

Page

Comments received from Governments of Member States

United Kingdom of Great Britain and Northern Ireland 2

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
18 September 1964

Her Majesty's Government submit the following comments on the principle of equal rights and self-determination of peoples referred to in paragraph 5 of resolution 1966 (XVIII); they reserve the right to present at an appropriate time additional comments on this principle as well as on the other two principles referred to in paragraph 5 of resolution 1966 (XVIII).

The principle of equal rights and self-determination of peoples

In the opinion of Her Majesty's Government the two elements in the principle of equal rights and self-determination of peoples are complementary to one another, and in so far as self-determination is a legal, and not merely a political concept, it is properly expressed as a principle and not as a right. The concept of self-determination has been invoked, or prayed in aid, in a number of different circumstances; its relevance, it is submitted, can only be determined in relation to the circumstances of each particular case, and in the light of other principles which are affirmed in the United Nations Charter.

Scope of the concept of self-determination

Self-determination was one of the basic concepts of the peace settlement which followed the First World War, and its application in that context considerably reduced the number and size of national minorities in Europe. The concept then meant, broadly, that the wishes of the peoples concerned should be taken into account before any territorial changes were made. It was clear that the concept of self-determination was considered in this context, as well as in the context of the aspirations of peoples who had not yet attained a full measure of self-government, by the framers of the United Nations Charter. Differing views were then expressed as to the scope of the concept. These are summarized as follows in the summary report of Committee 1/1 which contains the following passage:

"Concerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponded closely to the will and desires of people everywhere and should be clearly enunciated in the Charter; on the other side, it was stated that the principle conformed to the purposes of the Charter only in so far it implied the right of self-government of peoples and not the right of secession" (UNCIO, Vol. 6, p. 296).

Expression of the principle of equal rights and self-determination of peoples in the United Nations Charter

The principle now under examination is expressed in Article 1 of the United Nations Charter. In paragraph (2) of that Article one of the purposes of the United Nations is stated to be:

"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".

In recommending the adoption of this paragraph Committee 1/1 of the San Francisco Conference stated that it understood

"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 ....." (UNCIO, Vol. 6, p. 455).

It can therefore be seen that the principle of equal rights and self-determination of peoples is, and was intended by those who drew up the Charter to be, a principle of universal application. The Charter itself is expressed in its Preamble to have been made in the name of "the peoples of the United Nations", determined, inter alia, "to reaffirm faith in the equal rights .... of nations large and small"; but, as only States can be Members of the United Nations, it is apparent, that the reference to "peoples" in the context of the Charter is directed to those who are so organized as to constitute a State in the territory which they occupy. Therefore, the principle of equal rights and self-determination of peoples applies primarily to the equal rights and self-determination of independent States. Understood in this sense, the principle is clearly linked

to other concepts which are expressed and recognized in the United Nations Charter, such as the sovereign equality of States, territorial integrity and political independence, and the principle of non-intervention. Nevertheless, as a political principle, self-determination is not limited to States and in any event must be subject to the obligations of international law both customary and conventional. As pointed out above, after the First World War the principle of self-determination was applied mainly to minorities. This illustrates the flexibility of the application of the principle to particular circumstances, and emphasizes that it is not necessarily confined in its application to independent sovereign States.

Although the term "self-determination" is not used in Chapters XI and XII of the Charter, the concept itself is implicit in both chapters. One of the basic objectives of the trusteeship system is stated in Article 76 (b) to be "to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive 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 people concerned" Similarly, Article 73 of the Charter provides that States responsible for the administration of territories whose peoples have not yet attained a full measure of self-government should "promote to the utmost, within the system of international peace and security established by the ..... Charter the well-being of the inhabitants of these territories" and to this end should, inter alia,

> "develop self-government ..... take due account of the political aspirations of the peoples and ..... 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".

The development of self-government and the progressive development of free political institutions are both entirely compatible with the concept of self-determination. Indeed, the principle of self-determination has been of fundamental importance in British policy towards the non-self-governing territories and has played a cardinal part in their evolution to self-government and independence. It is, however, in the opinion of Her Majesty's Government to place an

unwarrantable gloss on the Charter to derive from the wording of either Article 1 (2) or of Articles 73 (b) and 76 (b) a "right" of self-determination. As is pointed out in Commentaries on the Charter (Goodrich and Hamboro (revised edition), pp. 95-96: Bentwick and Martin, p. 7) the language used in Article 1 (2) was not intended to form any basis on which a province, or other part, of a sovereign independent State could claim to secede from that State, or to form the basis for immediate demands for independence on the part of peoples who had not yet attained a full measure of self-government. Nor has Article 73 of the Charter created, as is sometimes alleged, a "right" of self-determination for territories which have not yet achieved a full measure of self-government, since although its provisions are entirely compatible with the concept of self-determination, it relates to the objectives to be pursued by States administering such territories and does not purport to create, in this or any other respect, any enforceable rights.

Conclusions

To speak of a "right" of self-determination implies that regardless of circumstances, any group of "peoples" may at any time assert their independence, and ignores the fact which, as has already been seen, was recognized by those who drew up the United Nations Charter, that the two concepts enshrined in the principle now under consideration are complementary parts of one standard of conduct. If a "right" of self-determination were held to exist it could be invoked in circumstances in which it would be in conflict with other concepts enshrined in the Charter. It could, for instance, be held to authorize the secession of a province or other part of the territory of a sovereign independent State, e.g. the secession of Wales from the United Kingdom, or the secession from the United States of America of one of its constituent States. It could also be held to authorize claims to independence by a particular racial or ethnic group in a particular territory, or to justify, on the basis of an alleged expression of the popular will, claims to annexation of a certain territory or territories.

In the opinion of Her Majesty's Government, although the principle of self-determination is a formative principle of great potency, it is not capable of sufficiently exact definition in relation to particular circumstances to amount to

a legal right, and it is not recognized as such either by the Charter of the United Nations or by customary international law.

It must also, as emphasized above, be considered in the context of other relevant provisions of the Charter and, in particular, as part of a wider principle which recognizes the concept of sovereign equality of States as well as the concept of self-determination.

ANNEX 88

Mauritius Letter from the Permanent Representative to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 24 December 2015

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

24 December 2015

Excellency,

Extended Continental Shelf in the Chagos Archipelago region

I have the honour to refer to the proposed submission of the Republic of Mauritius for an Extended Continental Shelf in the Chagos Archipelago Region, in respect of which a Preliminary Information Note was provided to the United Nations on 6 May 2009.

I wish to inform your Excellency that the Government of the Republic of Mauritius is currently undertaking consultations with the Government of the United Kingdom with a view to making a coordinated submission to the Commission on the Limits of the Continental Shelf.

It is expected that these consultations will be concluded in the course of next year, following which the submission will be made.

Please accept Excellency the assurances of my highest consideration.

Jagdish Koonjul
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

Secretary
Commission on the Limits of the Continental Shelf
Division for Ocean Affairs and Law of the Sea (DOALOS)
United Nations
New York

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ANNEX 89

Mauritius Prime Minister P Jugnauth Introductory Address at the Meeting of Legal Advisers on the Request for an ICJ Advisory Opinion Pursuant to the UN General Assembly Resolution 71/292 of 22 June 2017, The Hague, 27 November 2017

MEETING OF LEGAL ADVISERS ON THE REQUEST FOR AN ICJ ADVISORY OPINION PURSUANT TO UN GENERAL ASSEMBLY RESOLUTION 71/292 OF 22 JUNE 2017

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INTRODUCTORY ADDRESS BY

THE HON PRIME MINISTER

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MONDAY 27 NOVEMBER 2017

11 30 – 11 45 HRS

CARLTON AMBASSADOR HOTEL

THE HAGUE

Excellencies,
Distinguished Legal Advisers,
Members of the Mauritius Legal Team,
Ladies and Gentlemen,

Let me, first of all, thank you for responding positively to our invitation to attend this meeting.

Your participation in this meeting testifies to the continued support which your respective countries and organizations have been extending over several years to the long-standing struggle of Mauritius to complete the process of its decolonization so as to be able to effectively and fully exercise its sovereignty over the totality of its territory. This includes the Chagos Archipelago, which was illegally excised from the territory of Mauritius prior to our independence.

I would like to reiterate the deep gratitude of the Government of Mauritius to your countries for supporting the UN General Assembly resolution 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. This resolution was tabled by the Republic of Congo on behalf of the African Group of States Members of the African Union.

We were very pleased that the resolution was adopted by an overwhelming majority. This resounding vote is significant: it unequivocally demonstrates the great importance that countries from across the globe – not just Africa, but also Europe, Asia, Middle East 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. It also sends a signal to the Court about the importance of the issue. I must say that this vote has renewed the hope of the former inhabitants of the Chagos Archipelago – and for all Mauritians – that they might finally return to their place of birth.

Excellencies, Ladies and Gentlemen,

Next year in March, we will be celebrating the 50th anniversary of our Independence. It is a matter of great concern to us that, nearly fifty years after we have been granted independence by the United Kingdom, our decolonization process remains incomplete.

As you may be aware, the Chagos Archipelago has been part of the territory of Mauritius since at least the 18th century, at a time when Mauritius was a French colony. Throughout the period of French colonial rule, France governed the Chagos Archipelago as one of the Dependencies of Mauritius. All the islands forming part of Mauritius, including the Chagos Archipelago, were ceded by France to the United Kingdom in 1810.
The administration of the Chagos Archipelago as a constituent part of Mauritius continued without interruption throughout the period of British colonial rule until its unlawful excision from the territory of Mauritius on 8 November 1965, three years before our independence. This reality was recognized by two arbitrators in the UNCLOS proceedings, when they stated that the excision of the Chagos Archipelago from Mauritius in 1965 showed, I quote, "*a complete disregard for the territorial*

integrity of Mauritius by the United Kingdom" Unquote. No other arbitrator expressed disagreement.

Since the colonial power knew that political parties in Mauritius were divided over the future status of Mauritius – some parties were in favour of independence while others looked to some form of continued association with the UK – it imposed the excision of the Chagos Archipelago as a condition for the independence. This is indeed borne out by contemporaneous official UK records which were subsequently released.

In a note prepared for the then UK Prime Minister Harold Wilson who was to meet the Mauritius Premier in the margins of the Mauritius Constitutional Conference of September 1965, it is stated that, I quote, *"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."* Unquote. I have made copies of that document available to you today, and of course we will be using it in our submissions to the Court.

When Prime Minister Wilson met the Mauritius Premier, he said that, I quote:

> *"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".* Unquote

Following the private meeting at which Harold Wilson threatened the Mauritius Premier, a meeting was called with the Mauritian Ministers where they were given 40 minutes to say **yes** to the excision, failing which the excision would go through by Order in Council and Mauritius would not be granted independence. This was the meeting at which the purported "agreement" of the Mauritian Ministers was obtained for the excision.

This is how the UK achieved its goal of excising the Chagos Archipelago from the territory of Mauritius, in total disregard of international law and human rights. It was an exercise of coercion, one premised on duress.

Other internal memos of the UK Government that have come to light clearly show that the UK being fully aware of the fact that what it was doing was completely illegal, acted with the deliberate intent to present the UN with a *"fait accompli"*. In fact, the period of 1960 and earlier witnessed a very powerful movement in favour of self-determination and decolonization, culminating in the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by Resolution 1514 (XV) in 1960. Everything was done to avoid scrutiny by the Special Political and Decolonization Committee of the UN, lest the UK plans to excise the Chagos Archipelago from the territory of Mauritius would fail.

Excellencies, Ladies and Gentlemen,

Let me now dwell on an even darker period of colonial history associated with the forcible eviction of the population living in the Chagos Archipelago. In an agreement reached in the early 1960s between the UK and the US, the latter asked that the

population of Diego Garcia be removed. But the UK felt that all the islands of the Chagos Archipelago needed to be evacuated.

Hence, the most atrocious crimes were committed by the very country that today claims to be the beacon of the rule of law and the defender of human rights.

All inhabitants were made to leave their birthplace in the most inhumane conditions. Some consider that the forcible removal of an entire population – and refusing a right to return for nearly five decades – in this way constitutes a 'crime against humanity'. Many actually committed suicide on the boat taking them to Mauritius and Seychelles. Those who had come to Mauritius for medical treatment were prevented from going back and in order to terrorize the inhabitants, their animals were all rounded and gassed to death.

The UK has tried to hide the fact that there had been a mass eviction of the inhabitants who had been living in the Chagos Archipelago for several decades. The UK deliberately and wilfully portrayed the inhabitants as contract workers. This was totally untrue and there are several birth certificates of persons who were born in the Chagos Archipelago all the way back to the 1890s and1900s.

Since then, the former inhabitants of the Chagos Archipelago have been yearning to return to their birthplace without any success. The UK has stifled their just and legitimate claim, including through the unilateral declaration of a 'marine protected area' around the Chagos Archipelago while carving out Diego Garcia and its territorial waters.

Mauritius, as you know, brought a case against the UK under UNCLOS. The Arbitral Tribunal ruled that the 'MPA' was established in violation of the provisions of UNCLOS. We are yet to see the UK implement the Award of the Tribunal.

The UK has continuously denied the former inhabitants of the Chagos Archipelago their legitimate right of return to the Chagos Archipelago. The UK has now proposed the disbursement of an amount of 40 million Pounds sterling over a ten-year period supposedly to assist the integration of the former inhabitants of the Chagos Archipelago, wherever they are, signalling clearly that they should forget about ever being able to go back to their birthplace.

Ironically, the citizens of other countries apart from the UK and the US are allowed to stay and work in Diego Garcia. However, Chagossians are deprived of the right to live in their birthplace. This is the extent to which their fundamental human rights are being flouted.

My Government is committed to elaborate, once our decolonization is complete, a plan of resettlement for the former inhabitants as well as any other Mauritian citizen who wishes to live in the Chagos Archipelago, and such resettlement will be effected in the full respect of the human rights and dignity of the persons concerned.

Excellencies, Ladies and Gentlemen,

Regarding the security concerns that our UK and US friends may have, 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.

Successive Mauritian governments have clearly stated that 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.

Excellencies, Ladies and Gentlemen,

The adoption of UN General Assembly Resolution 71/292 constitutes an important milestone as it offers a historic opportunity for the International Court of Justice to contribute to the completion of the decolonization process of Mauritius. There has been much interest around the world, in the media, amongst the academic communities, and in many governments.

As we pursue our struggle to complete the decolonization of Mauritius, we rely on the continued support of your countries and organizations.

We indeed appreciate that your countries and organizations have decided to present supportive written statements to the ICJ.

Countries which voted in favour of Resolution 71/292 have a strong interest in ensuring that the ICJ exercises its discretion to answer the questions posed in that resolution. We invite you to call on the Court to exercise its discretion in that way.

We firmly believe that the Advisory Opinion will assist the UN General Assembly to play its critical role in completing the process of decolonization, including that of Mauritius.

Over the course of the day, we will also be setting out our perspective on how the Court should answer the two questions put to it. It is our hope that your Governments too will feel able to make submissions on these two questions. It is of course for each member of the United Nations to decide how it may want to invite the Court to answer those questions. Our hope is that you will do so in a way that is consistent with our submissions, and, if possible, even strengthen them.

Let me thank you once again for your invaluable support thus far. I hope that this meeting will allow us to exchange views on the submissions that we shall make to the Court by the first deadline of 30 January 2018. Our expectation is that States which make submissions – which need not be lengthy, in the first round – will then receive copies of all other submissions. They will then have an opportunity to make a second submission, by 16 April 2018. It may be that it could be useful to have a further meeting, possibly here in The Hague, after the first submissions are received so that we can exchange views on their contents, and what might usefully be submitted in the second round.

We are open to all ideas and thoughts, in the course of this meeting. I express once again my gratitude for your presence.

Thank you for being here today.

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