

**INTERNATIONAL COURT OF JUSTICE**

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

**(REQUEST FOR AN ADVISORY OPINION)**

**WRITTEN STATEMENT OF  
THE REPUBLIC OF INDIA**

**28 FEBRUARY 2018**

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## Chapter 1

### Introduction

1. On 22 June 2017, the United Nations General Assembly (UNGA) passed the resolution A/RES/71/292, by 94 votes in favour, 15 votes against and 65 abstentions, pursuant to a request from Mauritius, supported by African members of the United Nations, 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.” India voted in favour of the resolution.<sup>1</sup>

2. The General Assembly decided, in resolution 71/292, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice (ICJ), pursuant to Article 65 of the Statute of the ICJ, to render an advisory opinion on the following two questions:

- (a) “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?”; and
- (b) “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?”

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<sup>1</sup> On 22 June 2017, during the debate on agenda item 87 “Request for an advisory opinion.....”, which preceded the consideration of draft resolution A/71/L.73 and voting thereupon, India made a statement, in which it pointed out that “.....it is a matter of principle for India to uphold the process of decolonization and respect for the sovereignty of nations. As part of our long-standing support to all peoples striving for decolonization, we have also consistently supported Mauritius, a fellow developing country in Africa with whom we have age-old people-to-people bonds, in that country’s quest for the restoration of its sovereignty over the Chagos archipelago. Continuing our consistent approach to this important issue of decolonization, India supports draft resolution A/71/L.73, proposed by Mauritius and co-sponsored on behalf of the members of the Group of African States, and will vote in favour of it.” The complete Statement of India is available at United Nations General Assembly, Seventy-first session, Official Records A/71/PV.88 (22.06.2017), p. 14.

3. In terms of paragraph 2 of Article 65 of the Statute of the ICJ, the Secretary-General of the United Nations Mr. Antonio Guterres, laid the Question for advisory opinion before the ICJ, vide his Letter of 23 June 2017 addressed to the President of the ICJ.

4. The President of the ICJ, vide its initial Order dated 14 July 2017, requested the UN Member States, which are likely to be able to furnish information on the question submitted to the ICJ for an advisory opinion. That ICJ Order had fixed the time-limit as 30 January 2018, by which the United Nations and its Member States, may furnish such information; and 16 April 2018 as the time-limit within which States and organizations having presented written statements may submit written comments on the other statements, in accordance with Article 66, paragraph 4, of the Statute of the ICJ. Later, the President of the ICJ, on the request of the African Union, vide his Order dated 17 January 2018, revised these dates as 1 March 2018 and 15 May 2018 respectively.

5. The information so provided on the facts and law surrounding the issues involved in the Questions for the advisory opinion, would add to the effort of the ICJ in the framing of the advisory opinion.

6. **The subject matter of the Question** for advisory opinion essentially concerns the completeness of decolonization and independence of Mauritius from the United Kingdom (UK), which commenced (took place) in March 1968, subject to the retention of occupation of the Chagos Archipelago with the UK. The retention was the result of separation/detachment of Chagos Archipelago from Mauritius in November 1965. The basis of the separation appears to have been an understanding/agreement between Mauritius and the UK, wherein in return to the use of Chagos Archipelago for defence purposes, UK made certain undertakings including for compensation to Mauritius; fishing rights; benefits of oil and minerals; and the return to Mauritius of Chagos Archipelago when it is no longer needed for defence purposes. This agreement seems to have been constituted through a series of correspondence between Mauritian political leaders and the UK authorities.

7. **Chagos Archipelago** is a group of seven atolls: Speakers Bank, Blenheim Reef, Peros Banhos, Salomon Islands, Great Chagos Bank, Diego Garcia, and Egmont Islands. This group of islands comprises more than 60 individual tropical islands in the Indian Ocean; situated some 500 kilometres (310 miles) due south of the Maldives archipelago.

8. Mauritius has repeatedly asserted that the Chagos Archipelago is part of its territory and that the UK should return the same to it. It is our understanding that while, the UK recognizes in principle the Mauritian sovereignty over the Chagos, it maintains that the Chagos will be returned to Mauritius once the islands are no longer required for defence purposes. Given the absence of action on the part of the UK in returning the Archipelago, Mauritius has decided to refer the matter, through the UN General Assembly, to the ICJ for an advisory opinion.

## Chapter 2

### Mauritius as a colony – the historical facts

9. In the late 15<sup>th</sup> century, **Portuguese explorers** began to venture into the Indian Ocean and recorded the location of Mauritius and the other Mascarene Islands, Rodrigues and Reunion (the latter presently a French overseas territory). In the 16<sup>th</sup> century, the Portuguese were joined by Dutch and English sailors, both nations having established East India Companies to exploit the commercial opportunities of the Indian Ocean and the Far East. By that time, Mauritius was used as a stopping point in the long voyages to and from the Indian Ocean, and no attempt was made to establish a permanent settlement in the Mauritian territory. In this endeavour, the **Dutch East India Company** established the first permanent colony in Mauritius in 1638. The Dutch maintained a small presence on Mauritius, with a brief interruption, until 1710 at which point the Dutch East India Company left the island. Following the Dutch departure, **France** took possession of Mauritius in 1715, and renamed it as the “Ile de France.”<sup>2</sup>

10. During this period, the **Chagos Archipelago** though very well known and appearing on Portuguese charts as early as 1538, remained largely untouched. France progressively claimed and surveyed the Chagos Archipelago in the mid-18th century and granted concessions for the establishment of coconut plantations, leading to permanent settlement. Throughout this period, France administered the Chagos Archipelago as a dependency of the “Ile de France”<sup>3</sup>, i.e., Mauritius. In 1810, the **British** captured the “Ile de France” and renamed it Mauritius. By the Treaty of Paris of 30 May 1814, France ceded the “Ile de France” and all its dependencies (including the Chagos Archipelago) to the United Kingdom.<sup>4</sup> Thus, the Chagos archipelago has been part of the territory of Mauritius since at least the eighteenth 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.<sup>5</sup>

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<sup>2</sup> Award dated 18 March 2015, The Arbitral Tribunal (Mauritius and the UK- In the matter of the Chagos Marine Protected Area Arbitration), paras 56-57, pp. 13-14.

<sup>3</sup> Ibid, para 58, p. 14.

<sup>4</sup> Ibid, para 59.

<sup>5</sup> United Nations General Assembly, Seventy-first session, Official Records A/71/PV.88 (22.06.2017), p. 6.

## **The British Administration**

11. From the date of the cession by France (May 1814) until 8 November 1965, when the Chagos Archipelago was detached from the colony of Mauritius, the Archipelago was administered by the UK as a Dependency of Mauritius. British administration over the Chagos Archipelago was exercised by various means, including by visits to the Archipelago made by Special Commissioners and Magistrates from Mauritius.<sup>6</sup>

12. Although the broad outlines of British Administration of the colony during this period are not in dispute, the Parties disagree as to the extent of economic activity in the Chagos Archipelago and its significance for Mauritius, and on the significance of the Archipelago's status as a dependency. Mauritius contends that there were "close economic, cultural and social links between Mauritius and the Chagos Archipelago" and that "the administration of the Archipelago as a constituent part of Mauritius continued without interruption throughout that period of British rule". The UK, in contrast, submits that the Chagos Archipelago was only "very loosely administered from Mauritius" and "in law and in fact quite distinct from the Island of Mauritius." The UK further contends that "the islands had no economic relevance to Mauritius, other than as a supplier of coconut oil" and that, in any event, economic, social and cultural ties between the Chagos Archipelago and Mauritius during this period are irrelevant to the Archipelago's legal status.<sup>7</sup>

13. For a clearer picture of the matter, a survey of the facts surrounding the decolonization/independence of Mauritius, and the relevant UN resolutions, would hold merit.

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<sup>6</sup> Supra note 2, para 61.

<sup>7</sup> Ibid, para 62.

## Chapter 3

### Process of decolonization of Mauritius – the Status of Chagos Archipelago

#### **Process of Mauritius' decolonization**

14. In the beginning of 1831, the administration of the British Governor of Mauritius was supplemented by the creation of a **Council of Government**. Originally, the Council was composed of ex-officio members and those nominated by the Governor. Subsequently, the Council was democratized through the introduction of elected members. The new **Constitution** for Mauritius was adopted in 1947, which replaced the Council of Government with separate Legislative and Executive Councils. The Legislative Council was composed of the Governor as President, 19 elected members, 12 members nominated by the Governor and 3 ex-officio members. The first elections of the Legislative Council were held in 1948. The next elections held in 1953 marked the beginning of Mauritius' **move towards independence**. The Mauritian representatives began to press the British Government for universal suffrage, a ministerial system of government and greater elected representation in the Legislative Council. By 1959, the Mauritius government had openly adopted the goal of complete independence.<sup>8</sup>

15. Constitutional Conferences held in 1955, 1958 resulted in the revision of the Constitution; and the creation of the post of Chief Minister in 1961. In 1962, Dr Seewoosagur Ramgoolam (later Sir Seewoosagur Ramgoolam) became the Chief Minister within a Council of Ministers chaired by the Governor and, following the 1963 elections, formed an all-party coalition government to pursue negotiations with the British on independence.<sup>9</sup> The final Constitutional Conference was held in London in September 1965 and was principally concerned with the debate between those Mauritian political leaders favouring independence and those preferring some form of continued association with the UK. On 24 September 1965, the final day of the conference, the Secretary of State for the Colonies, the Rt. Hon. Anthony Greenwood MP, who was the minister in the United Kingdom Government with responsibility for Mauritius,

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<sup>8</sup> Ibid, para 65.

<sup>9</sup> Ibid, para 66.

announced that the United Kingdom Government intended that Mauritius would proceed to full independence.<sup>10</sup>

### **Detachment of the Chagos Archipelago**

16. During the ongoing process of independence, the UK presented a proposal to separate the Chagos Archipelago from the remainder of the colony of Mauritius, with the view to retain the Archipelago under British control. According to Mauritius, the proposal stemmed from a decision by the UK in the early 1960s to "accommodate the desire of the United States to use certain islands in the Indian Ocean for defence purposes."<sup>11</sup> The US Navy had identified the island of Diego Garcia as a location for military facilities in the Indian Ocean. The British Government was approached in 1963 about the use of Diego Garcia with the necessity for "detachment" in order to retain sovereignty and control and ensure the security of any future military base on the island. This resulted in the creation of British Indian Ocean Territory (BIOT) on 8 November 1965, by a prerogative Order in Council (UK Statutory Instrument No 1, 1965), comprising the Chagos Archipelago and some other islands formerly in the colony of Seychelles. On 30 December 1966, the US and the UK governments signed an Exchange of Notes making the entire Chagos islands "available to meet the need of both Governments for defence."<sup>12</sup>

17. On 19 July 1965, the Governor of Mauritius communicated the proposal to detach the Chagos Archipelago to the Mauritius Council of Ministers. Initially, the Mauritian Ministers did not like the idea of detachment, indicating that detachment would not be acceptable to public opinion in Mauritius and proposed the alternative of a long term lease, coupled with safeguards for mineral rights, fishing and agricultural rights. The Governor of Mauritius, however, informed the Mauritian Ministers on 13 August 1965 that the proposal of a lease was not viable.<sup>13</sup>

18. Thereafter, a series of meetings and consultations culminated in a provisional agreement in principle to the detachment of the Archipelago in exchange for the Secretary of State

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<sup>10</sup> *Ibid*, para 67.

<sup>11</sup> *Ibid*, para 69.

<sup>12</sup> *Ibid*, p. 2.

<sup>13</sup> *Ibid*, para 72.

recommending certain actions by the United Kingdom to the Cabinet. The draft record of the Lancaster House Meeting set out the following:<sup>14</sup> (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. to Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands; (iv) the British Government should use its 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) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius.

19. Sir Seewoosagur Ramgoolam conveyed that this was acceptable to him, Mr. Bissoondoyal and Mr. Mohamed in principle, but expressed the wish to discuss with his other ministerial colleagues. The Mauritius side added the following to the list of six items (undertakings): (vii) Navigational & Meteorological facilities; (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. These additions were incorporated in the final record of the Lancaster House Meeting.<sup>15</sup>

20. According to the records quoted in the Arbitral Award of 18 March 2015 in the matter of the Chagos Marine Protected Area Arbitration between Mauritius and the UK, the Governor of Mauritius informed, on 5 November 1965, the Colonial Office that the Council of Ministers has confirmed agreement to the detachment of Chagos Archipelago on the understanding that "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them. 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. In (viii) "on or near" means within area within which Mauritius would be able to derive

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<sup>14</sup> Ibid, para 74.

<sup>15</sup> Ibid, paras 76-77 (para 77 contains the full record of the meeting held in Lancaster House at 2.30 pm on Thursday 23<sup>rd</sup> September in an effort to reach understanding for the detachment of Chagos).

benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed. The Governor also conveyed that “[Parti Mauricien Social Démocrate] Ministers dissented and were considering their position in the government.” So, the Parties differ on the circumstances in which the consent was obtained and consequently its implications.<sup>16</sup>

21. Thereafter, the detachment of the Chagos Archipelago was effected by the establishment of the BIOT on 8 November 1965 by an Order in Council. Pursuant to that Order, the governance of the newly created BIOT was made the responsibility of the office of the BIOT Commissioner, appointed by the Queen upon the advice of the UK Foreign and Commonwealth Office (FCO), and assisted by a BIOT Administrator.<sup>17</sup>

22. On 19 November 1965, the Secretary of State cabled the Governor of Mauritius that as regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the UK Government and that it would not be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.<sup>18</sup>

23. Thus, in 1965, the United Kingdom split the Chagos Archipelago away from Mauritius, and the islands of Aldabra, Farquhar, and Desroches from the Seychelles, to form the British Indian Ocean Territory (BIOT). The islands were formally established as an overseas territory of the United Kingdom on 8 November 1965. However, with effect from 23 June 1976 Aldabra, Farquhar, and Desroches were returned to the Seychelles on their attaining independence.

### **Grant of Mauritius independence**

24. On 4 March 1968, British authorities passed the Mauritius Independence Order<sup>19</sup> (The Mauritius Independence Order, 1968) with a Schedule containing the Constitution of Mauritius. Section 2.1 of the Order stipulates 12 March 1968 as the “appointed day”. Section 4.1 of the Order mentioned that the Constitution will come into effect in Mauritius on the appointed day, i.e., 12 March 1968.

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<sup>16</sup> Ibid, paras 79-80.

<sup>17</sup> Ibid, para 81.

<sup>18</sup> Ibid, para 84.

<sup>19</sup> GN No. 54 of 1968 – “The Mauritius Independence Order, 1968.”

25. An “Explanatory Note” (which is not part of the Independence Order otherwise) explains: “By virtue of the Mauritius Independence Act 1968 Mauritius will attain fully responsible status within the Commonwealth on 12<sup>th</sup> 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.”

26. Accordingly, Mauritius became independent on 12 March 1968. It is pertinent to note that on that day, the Chagos Archipelago was still under the UK occupation and being used for defence purposes since November 1965.

## Chapter 4

### United Nations resolutions and other measures

#### UN resolutions

27. The key issue to be addressed in the Question for advisory opinion relates to the completeness of the decolonization of Mauritius. The United Nations being the chief world body to help achieve the objective of decolonization, it is warranted to take stock of the efforts of the United Nations towards this objective, as has been mentioned in the text of the Question itself.

#### **Resolution A/RES/1514 (XV)**

28. The key international document to the decolonization process is the United Nations General Assembly resolution 1514 (XV) adopted on 14 December 1960 entitled “Declaration on the granting of independence to colonial countries and peoples.”

29. On 28 November 1960, Cambodia, on behalf of 26 Asian and African countries, introduced a draft resolution which was eventually sponsored by 43 Asian and African States. The Cambodian representative said that the sponsors of the draft had tried to find formulae and solutions which could be acceptable to the greatest possible number of delegations, if not to all Members of the Assembly. They therefore appealed to all delegations to study the text carefully and open-mindedly, so that a period of humanity's history which should have been left behind—that is, the exploitation of peoples by other peoples and the domination of countries by other countries—could be forgotten.<sup>20</sup>

30. The 43 African-Asian countries that sponsored the resolution for the adoption of Declaration were: Afghanistan, Burma, Cambodia, Cameroun, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Cyprus, Dahomey (now Benin), Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, **India**, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Laos, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Niger,

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<sup>20</sup> The Yearbook of the United Nations, 1960, Part 1: Section 1: Political and security questions, Chapter 5: Declaration on granting independence to colonial countries and peoples, p. 46.

Nigeria, Pakistan, Philippines, Somalia, Saudi Arabia, Senegal, Sudan, Togo, Tunisia, Turkey, United Arab Republic (now Egypt and Syria) and, Upper Volta (now Burkina Faso).<sup>21</sup>

31. The General Assembly, after solemnly proclaiming the necessity of bringing colonialism, in all its forms and manifestations, to a speedy and unconditional end, adopted, on 14 December 1960, the resolution 1514(XV) entitled “Declaration on the granting of independence to colonial countries and peoples”<sup>22</sup>, by a vote of 89 to 0, with 9 abstentions. The abstaining countries were: Australia, Belgium, Dominican Republic, France, Portugal, Spain, Union of South Africa, United Kingdom, and United States.<sup>23</sup>

32. The international community, through this Declaration, demonstrated the strong resolve that 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 the opportunity to determine their own destiny and form of government. All strongholds of colonialism in any form of possessions in the territory of other countries must be eliminated. All countries must observe strictly and steadfastly the provisions of the UN Charter and the resolution (Declaration) concerning equality and respect for the sovereign rights and territorial integrity of all states.

33. The international community has thus maintained that the immediate and complete elimination of colonialism in all its forms is the key to encourage the forces of peace, progress and freedom. The United Nations, by adopting the Declaration, performed part of its duty bound endeavour towards ending the colonial system.

34. The resolution called for the speedy and unconditional end to colonialism in all its forms and manifestations and declared that “any attempt aimed at the partial or total disruption of the

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<sup>21</sup> The Yearbook of the United Nations, *Ibid.*

<sup>22</sup> The text of the resolution containing the Declaration is available at [A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV))  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV))

<sup>23</sup> See A/L.323 and Add.1-6, adopted by the UN General Assembly on 14 December 1960, meeting 947 by roll-call vote.

national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.<sup>24</sup>

35. Notable among the nine States abstaining from voting was the UK. In a speech explaining its abstention, the UK representative spoke of “The degree to which the peoples of these territories, with our help, can succeed in creating new nations, **undivided**, strong and genuinely independent, is, we believe, crucial both to their own future happiness and to the progress and well-being of mankind as a whole.”<sup>25</sup> Notwithstanding these stated aspirations, in July 1965, the Governor of the British Colony of Mauritius was instructed to commence negotiations with Mauritian Ministers about detachment of the Chagos Archipelago from Mauritius.

#### **Resolution A/RES/2066(XX)**

36. Following the public announcement of the detachment of the Chagos Archipelago, the matter was raised in the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Consequently, on 16 December 1965, the UN General Assembly condemned the act of detachment in resolution 2066 (XX)<sup>26</sup> entitled “Question of Mauritius”, calling on the UK to fully implement Resolution 1514 (XV) and “to take no action that would dismember the Territory of Mauritius and violate its territorial integrity”.<sup>27</sup>

37. The General Assembly noted with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration adopted in resolution 1514(XV), and in particular of paragraph 6 thereof which declares 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.”

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<sup>24</sup> UNGA resolution 1514(XV) of 14 December 1960, operative paragraph 6.

<sup>25</sup> Creation of BIOT – The Chagos Archipelago, p.1 (<https://sites.google.com/site/thechagosarchipelagofacts/home/creation-of-biot>)

<sup>26</sup> The text of the resolution is available at [A/RES/2066\(XX\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2066(XX))  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/2066\(XX\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2066(XX))

<sup>27</sup> Operative paragraphs 3, 4 of res. 2066(XX) of 16 December 1965.

38. The resolution explicitly expresses the condemnation of the UK not implementing the Declaration to complete the decolonization of Mauritian territory. The General Assembly had, through this resolution, further invited the UK to complete Mauritius decolonization and report the same to it and to the Special Committee established with regard to the implementation of the Declaration. The UK ignored this call and pressed ahead with its plans for the BIOT.

#### **Resolution A/RES/2232(XXI)**

39. The UN General Assembly again considered this question in December 1966, relating to the territories of all States mentioned in resolution 1514 (XV) of 14 December 1960.

40. The General Assembly adopted the resolution 2232(XXI)<sup>28</sup> on 20 December 1966. The General Assembly, in this resolution, reaffirmed the inalienable right of people of colonial territories including that of Mauritius to full and complete independence. By calling upon the administering Powers to implement, without delay, UN resolutions on complete decolonization, it reiterated incompatibility with the UN Charter, of any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories. The General Assembly decided that the United Nations should render all help to the peoples of these Territories in their efforts freely to decide their future status. It requested the Special Committee for special attention to the colonial Territories and tasked for reporting on the implementation of this resolution in the next (22<sup>nd</sup>) GA session.

#### **Resolution A/RES/2357(XXII)**

41. As a result of inaction by the colonial power/s concerning completion of decolonization and ignoring all previous resolutions to that effect, the General Assembly again took up this question at its 22<sup>nd</sup> session (1967) and adopted resolution 2357(XXII)<sup>29</sup> on 19 December 1967.

42. In this resolution, the General Assembly reiterated all condemnations, displeasures concerning the non-implementation of the Declaration on the Granting of Independence to

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<sup>28</sup> The text of the resolution is available at [A/RES/2232\(XXI\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2232(XXI))

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/2232\(XXI\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2232(XXI))

<sup>29</sup> The text of the resolution is available at [A/RES/2357\(XXII\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2357(XXII))

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/2357\(XXII\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2357(XXII))

Colonial Countries and Peoples. The General Assembly also reiterated all requests concerning the help and assistance to the peoples of these Territories and concerning the reporting obligations of the Special Committee.

### **Arbitration**

43. Following the announcement of the Marine Protected Area (MPA) in the maritime zone around the Chagos Archipelago by the UK Government on 20 December 2010, the Government of Mauritius initiated arbitral proceedings against the UK Government under the Law of the Sea Convention (UNCLOS) challenging its legality on the basis of the disputed sovereignty. Mauritius argued that the UK, not being a “coastal State” in respect of Chagos Archipelago under UNCLOS and international law, had no authority to purport to establish a MPA around the Archipelago. The UK and Mauritius presented their arguments before the Arbitral Tribunal in April 2014.

44. The Tribunal considered in detail the undertakings given by the United Kingdom to the Mauritian Ministers at the Lancaster House talks in September 1965. The UK had argued that those undertakings were not binding and had no status in international law. The Tribunal however, rejected that argument, holding that those undertakings are of value and have binding effect. 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.<sup>30</sup> The Tribunal found unanimously that the United Kingdom's undertakings with respect to (a) fishing rights, (b) the eventual return of the Archipelago, and (c) the benefit of mineral and oil resources were legally binding on the United Kingdom.<sup>31</sup>

45. The Tribunal reviewed the circumstances surrounding the detachment of the Archipelago and concluded that the United Kingdom's undertakings were part of the bargain by which Mauritian agreement to detachment was obtained and demonstrated intent to bind the United Kingdom, whether or not they were legally binding prior to independence. As a legal matter, the Tribunal noted that the United Kingdom had repeated the undertakings on many occasions since

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<sup>30</sup> Award, *supra* note 2, para 547.B, p. 215.

<sup>31</sup> *Ibid.*

the independence of Mauritius and concluded that the United Kingdom was prevented, by the legal principle of estoppel, from now denying that the undertakings were binding upon it.

46. In the absence of clarity concerning sovereignty of Chagos Archipelago and in the absence of necessary and adequate consultations with Mauritius with the view of giving due regard to the Mauritian rights and interests under UNCLOS, the Arbitral Tribunal found the establishment of the MPA by UK around the Chagos Archipelago in contravention of UNCLOS.<sup>32</sup>

47. The Arbitral Tribunal rendered its Award on 18 March 2015, in which it unanimously held that the MPA which the United Kingdom declared around the Chagos Archipelago in April 2010 was created in violation of international law, and hence unlawful.

### **Regional efforts**

48. In June 2015, the Assembly of the African Union passed a resolution on Chagos Archipelago.<sup>33</sup> The African Union recognized the Chagos Archipelago, including Diego Garcia, as integral part of the territory of Mauritius. The resolution reflected the resolute commitment of Mauritius for the effective exercise of its sovereignty over the Chagos Archipelago, in keeping with the principles of international law. The African Union deplored, in the resolution, the continued occupation of the Chagos Archipelago by the U K, pointing out that this has the effect of denying Mauritius its sovereignty over the Archipelago and it leaves the decolonization of Africa as incomplete.

49. The African Union held, through the resolution, the excision by the UK of the Chagos Archipelago from the territory of Mauritius as unlawful, stating that it violated the international law and the UN resolutions. The AU has, by committing full support to the cause of Mauritius, called upon the UK to end the unlawful occupation of the Chagos Archipelago and return the same to Mauritius.

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<sup>32</sup> Ibid.

<sup>33</sup> Assembly/AU/Res.1(XXV) - Doc. EX.CL/901(XXVII).

## Chapter 5

### Necessity of the Question for advisory opinion

50. British Cabinet papers, at the time of detachment of the Chagos Archipelago, reveal that Mr. Harold Wilson, the Prime Minister, informed the Mauritian Premier in September 1965 that part of the price for independence was Mauritius' assent to the detachment of the Chagos. In the immediate post-independence period, the excision of the Chagos was of limited consequence to the new state of Mauritius which was struggling with economic and ethnic problems and it was not until June 1980 that a majority of the Mauritian parliament first called on the UK to return Chagos Archipelago to Mauritius and the first formal claim was subsequently made by Mauritius on 9 October 1980 in an address by the Mauritian Prime Minister to the UN General Assembly.<sup>34</sup>

51. In 1982, following the report of a Select Committee into what had happened in 1965, the Mauritian Government's formal position was that Chagos had been illegally excised from Mauritian territory. Since then, Mauritius has repeatedly claimed sovereignty over the Chagos. Meanwhile, the UK has consistently maintained that it has no doubts about its claim to sovereignty whilst at the same time acknowledging that it will cede the islands to Mauritius when they are no longer required for defence purposes.<sup>35</sup>

52. The Constitution of Mauritius stipulates that the outer islands of Mauritius includes the islands of Mauritius, Rodrigues, Agalega, Cargados, Carajos, and the Chagos Archipelago, and any other island comprised in the State of Mauritius. The Government of the Republic of Mauritius has stated that it does not recognise the British Indian Ocean Territory (BIOT) which the United Kingdom created by excising the Chagos Archipelago from the territory of Mauritius prior to its independence, and claims that the Chagos Archipelago forms an integral part of the territory of Mauritius under both Mauritian law and international law.<sup>36</sup>

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<sup>34</sup> Supra note 28, p. 2.

<sup>35</sup> Ibid.

<sup>36</sup> "*Chagos remains a matter for discussion*". *Le Defimedia*. Archived from *the original* on 27 April 2015. Retrieved 22 September 2012, [https://en.wikipedia.org/wiki/Chagos\\_Archipelago\\_sovereignty\\_dispute#cite\\_note-defi1-2](https://en.wikipedia.org/wiki/Chagos_Archipelago_sovereignty_dispute#cite_note-defi1-2)

## Depopulation

53. Between the years of 1967 and 1973, some 2000 Chagossians were removed from the Chagos Islands and shipped to Mauritius and Seychelles.<sup>37</sup> The Islanders were apparently removed unwillingly and without consultations. Remaining Chagossians on the island of Diego Garcia were also reportedly pried onto ships destined for the islands of Peros Banhos and Salomon. By 1973, the Chagos Archipelago had all its permanent inhabitants completely moved out.<sup>38</sup> Throughout internal discussions about resettlement options for the Chagossians, memoranda from this period indicate that the U.K. Government was fully aware that it proposed to expel native islanders from their homeland, and insofar as they considered the legal rights of the islanders, showed determination to override such legal rights.<sup>39</sup>

54. It is pertinent to note in this context that the BIOT Order enacted by the Queen (of Britain) in 1965, empowered the Commissioner to ‘make laws for the peace, order and good governance of the territory’. Using the powers under Section 11 of the BIOT Order, the Commissioner enacted BIOT Ordinance of 1971. Section 4 of the 1971 Ordinance provided for the compulsory removal of all the inhabitants. Proceedings were brought by way of judicial review in the High Court in England in August 1998 by a Chagossian person named Olivier Bancoult. In the judicial review proceedings, the validity of the 1971 BIOT Immigration Ordinance was challenged and on the 3<sup>rd</sup> November 2000 the Divisional Court held that section 4 of the Immigration Ordinance was beyond the legal authority of the BIOT Constitution.<sup>40</sup>

55. On 10 June 2004 the UK Government passed into law the British Indian Ocean Territory (Constitution) Order 2004 and the BIOT (Immigration) Order 2004.<sup>41</sup> By declaring that no person has the right of abode in the territory, or the right to enter it except as authorized, these

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<sup>37</sup> Norton-Taylor, R(2012) Diego Garcia archives shed light on fate of deported Chagos Islanders. <http://www.theguardian.com/uk/2012/apr/18/archives-diego-garcia>, See Model United Nations at UC Davis: Davis Model United Nations Conference XV, 20-21 2017, p. 8. (<http://dmunc.org/wp-content/uploads/UNSC-Formatted.pdf>)

<sup>38</sup> Model United Nations at UC Davis, *ibid*, pp 8-9.

<sup>39</sup> UK/US Agreements <<https://sites.google.com/site/thechagosarchipelagofacts/diego-garcia/us-uk-agreements>>. Model United Nations at UC Davis, *ibid*, p. 9.

<sup>40</sup> Regina (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs and Another (No,1) Divisional Court, Queen’s Bench Division, (2000) 123 ILR 555. Model United Nations at UC Davis, *ibid*.

<sup>41</sup> British Indian Ocean Territory (Constitution Order) Buckingham Palace, The Queen’s Majesty in Council (2004) Model United Nations at UC Davis, *ibid*, p.10.

Orders ensure the abrogation of existing rights to live in the territory which the Chagossians possess. This provoked a further challenge by Mr. Bancoult [Bancoult (2)] in 2006 where the UK Divisional Court held the Orders to be irrational.<sup>42</sup> In the Court of Appeal, the Orders were unanimously held to be an abuse of power. In 2008, the Secretary of State appealed to the House of Lords on the question on the validity of section 9 of the British Indian Ocean Territory (Constitution) Order 2004 but by the end of it they basically held that this was a matter of foreign policy and the Judiciary should not interfere.<sup>43</sup>

56. U.K. Foreign Secretary David Miliband's announcement of the creation of a Marine Protected Area ("MPA") in the British Indian Ocean Territory ("BIOT") in 2010 included a "no-take" marine reserve where commercial fishing stood banned.<sup>44</sup> The measure appears to have direct implications for the possible resettlement of the native population of the Chagos Archipelago.

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<sup>42</sup> R (Bancoult) v. Secretary of Foreign and Commonwealth Affairs (2006) EWHC 1038 (Divisional Court), Model United Nations at UC Davis, *ibid*.

<sup>43</sup> UK Court of Appeal (2008) QB 365/ 3 WLR 955. Model United Nations at UC Davis, *ibid*.

<sup>44</sup> Rincon, P. (2010) UK Sets up Chagos Islands Marine Reserve. <http://news.bbc.co.uk/2/hi/science/nature/8599125.stm>.

## Chapter 6

### Conclusion

57. **The historical facts** indicate that the Chagos Archipelago throughout, pre and post colonial era, has been part of the Mauritian territory. These islands came under the British colonial administration as part of Mauritian territory.

58. The UK, since May 1814, is administering/occupying the Chagos Archipelago as part of Mauritian territory in the capacity of a colonial power. The understanding reached in November 1965 between Mauritius and the UK for the retention of Chagos by the UK for defence purposes and return thereof to Mauritius when no longer needed for defence purposes, is also in itself an evidence that Mauritius has been and continues to be the sovereign nation for the Chagos Archipelago, this being immaterial that by whom and for what purpose these islands are, for the time being, used or administered.

59. Thus, the historical aspect of the matter evidences and establishes the Chagos Archipelago as part of the Mauritian territory to the exclusion of the sovereignty of any other state.

60. **The legal aspect** should root and establish itself in the historical facts, behaviour of the nations concerned, and the consideration of the issue/s by the relevant bodies/institutions, United Nations being the most relevant body in matters of world affairs. Mauritius became independent on 12 March 1968. From the legal perspective, the sequence of events before independence, around that time and thereafter play a crucial role in determining the status of complete decolonization.

61. The United Nations, in December 1960, recognizing the ardent desire of the peoples of the world to end colonialism in all its manifestations; believing in the necessity of an end to colonialism and all practices of segregation and discrimination associated therewith; convinced of the right of all peoples to full freedom and of the integrity of their national territory, solemnly proclaimed the necessity of a speedy and unconditional end of colonialism in all its forms and manifestations in the General Assembly resolution 1514(XV). This resolution declared “any

attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country, incompatible with the purposes and principles of the Charter of the United Nations.”

62. However, instead of complying with the resolution, in November 1965, retention/detachment of the Chagos Archipelago took place, appearing to be in violation of obligations under the resolution. The United Nations reacted to the detachment of the Chagos Archipelago by adopting resolution 2066 (XX) entitled “Question of Mauritius” in December 1965, calling on the UK to fully implement Resolution 1514 (XV) and “to take no action that would dismember the territory of Mauritius and violate its territorial integrity”. The resolution obligated the UK to complete the decolonization of Mauritius and report the same to the General Assembly and to the Special Committee.

63. The UK however, pressed ahead with its plans for the detachment of Chagos Archipelago. There being no positive steps by the UK towards and resulting in complete decolonization of territories including the Mauritius, the UN General Assembly again considered the issue in December 1966. Condemning the non-implementation of its resolutions and the continuation of colonial occupations, the General Assembly adopted resolution 2232(XXI) on 20 December 1966, reaffirming the right of colonial territories including Mauritius to full and complete independence, with the call to the administering Powers to without delay, complete decolonization. Seeing no action by the administering Powers, the General Assembly once again adopted similar resolution 2357(XXII) on 19 December 1967.

64. The Arbitral Tribunal constituted by agreement between Mauritius and the UK has, in its Award dated 18 March 2015, unanimously found legally binding - UK’s undertakings with respect to: the fishing rights of Mauritius in the waters of Chagos Archipelago; the eventual return of the Archipelago to Mauritius and; the benefit of mineral and oil resources in and near the Archipelago. The Award has, by declaring as unlawful the Marine Protected Area established by the UK in the waters of Archipelago, denied the status of the UK as the coastal State for the Archipelago. Further, by declaring as legally binding the undertaking of the UK to return the Archipelago to Mauritius, the Award has confirmed the legal obligation of the UK to return the Archipelago to Mauritius.



65. The historical facts concerning the Chagos Archipelago and the legal aspects associated therewith confirm: the sovereignty of the Chagos Archipelago with Mauritius (which fact the UK also admits); non-implementation by the UK of the UN resolutions concerning decolonization of Mauritius; and the process of decolonization of Mauritius so remains incomplete.

Respectfully Submitted



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28 February 2018

