

INTERNATIONAL COURT OF JUSTICE

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

Written Statement of the Republic of Mauritius

VOLUME IV

(Annexes 108–149)

1 March 2018

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EXTRACT

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ANGLO-US TALKS ON THE INDIAN OCEAN HELD ON 7 NOVEMBER 1975 AT THE
STATE DEPARTMENT, WASHINGTON DC

PresentUnited States

Mr G S Vest, Director, Politico-Military Affairs Bureau, State Dept
Mr J Noyes, Deputy Assistant Secretary of Defense for Near Eastern,
African and South Asian Affairs, Dept of Defense
Mr G T Churchill, Director, Office of International Security
Operations, State Dept
Mr T Thornton, Member, Policy Planning Staff, State Dept
Mr J Crowley, Director, Office of Northern European Affairs,
State Dept
Captain C G Tate, USN, Far East/South Asia Division JCS, j-5
Dept of Defense
Captain M F Pasztalaniec, USN, FM/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 Nepier-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 DDC.

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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 to keep the islands and lease them back to the Seychelles. The opposite possibility posed by Simon, the Seychelles Minister of Education, of handing them back to the Seychelles and then leasing them, was also ruled out since in fact neither Britain nor the United States had any use for the islands. The options were therefore reduced to two:

- a) we could either give them back to the Seychelles in return for maximum advantages for ourselves; or
- b) we could keep the islands in return for concessions to the Seychelles.

The British preference was for Option (a). Handing back the islands to the Seychelles had a major advantage to the UK in removing one of the obstacles to Seychelles independence. But there was sufficient common ground in the UK and US positions to make this the more desirable Option in any case. Recent Parliamentary and Congressional pressures in the matter of the former contract workers pointed to the undesirability of giving hostages to fortune. We were agreed that there was no real defence need to keep the three islands. Certainly they had a passive defence value in that they were at present denied to any hostile power; but of far more value would be the denial of Seychelles proper if we could obtain this. In any case we should try to get as much as possible if we were jointly agreed that Option (a) was preferable. Unfortunately, the Seychelles Government had already been led to believe that the US Government was prepared to offer a rent for the tracking station and it now looked improbable that they would accept continuing free use of this

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facility. He understood, however, that there was some pressure for a reduction, or indeed abolition, of the duty free privileges connected with the tracking station and retention of these privileges might be something we could ask for as a quid pro quo for the return of the three islands.

50. He recognised that the crux of the argument against Option (a) was the likely Mauritian attitude. Giving back the islands might well give rise to pressures within Mauritius for the return of the Chagos Archipelago, particularly in 1976 when Mauritius was host to the annual conference of the OAU and when there was also the possibility of elections there. As against this, it seemed clear that the retention of Chagos was not an issue for Sir S Ramgoolam, the Mauritian Prime Minister: during his talks on 24 September with Mr Ennals, the Minister of State at the Foreign and Commonwealth Office, he had been given every chance to raise the Diego Garcia issue but had not done so. Moreover, at his press conference later the same day, he had said that the British had paid for sovereignty over the Chagos Archipelago and now could do what they liked with it. Mr O'Keeffe added that the British High Commissioner in Port Louis had advised that some agitation in Mauritius was probable over the next year but was containable. This seemed reasonable: essentially Mauritius had no leverage over Chagos whereas Seychelles did in the matter of the three islands, in that they were an obstacle in the present negotiations for independence.

51. Essentially, however, the question was whether returning the three islands to Seychelles improved our international posture over Diego Garcia or not. The British Government believed that handing back the three islands would be evidence of our commitment to return the BIOT islands when we had no further defence use for them. This had been publicly announced and any decision to retain the three islands when no evident defence need existed for them might legitimately cast doubts on the value of our commitments in this regard. Certainly, it was far better to meet pressures from Mauritius and elsewhere for the return of Chagos with the argument that we were proposing to hand back islands for which there was no defence purpose; and far better to deal with any Mauritian protests in isolation rather than to give Mauritius and Seychelles an opportunity to make common cause.

52. Mr Noyes on the American side said he found the arguments for Option (a) compelling. But did the British side not consider that there was a danger of "unravelling" the BIOT by handing the three ex-Seychelles islands back? If we did so, the BIOT would consist only of ex-Mauritian islands.

53. Mr O'Keeffe said that in his opinion we should play on the fact that we were giving up something for which we had already paid. Unfortunately as far as the satellite station was concerned, the pass had already been sold.

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54. The US side said that in talks with Mr Manham 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 Manham would probably demand for the tracking station.

55. Mr Thomson said that the possibility of "unravelling" the territory would be crucial if it was likely. However, if domestic opinion in both Washington and London were satisfied on the question of Diego Garcia, there was little Mauritius could do physically to get back the islands. But the case of the Seychelles was different. We would be giving up something for which we had no use and we could probably get a good deal in exchange. This would tip the balance. Mr Churchill asked how the British side thought Option (a) might be presented to the Congress. Mr Thomson said that he saw little difficulty. If we were to give the islands back we could say that we no longer needed them for defence purposes, since we were getting certain defence advantages from the Seychelles. This would also be a defensible position for the Seychelles in the OAU, since it was already their policy that there should be no foreign bases on their territory.

56. The US side asked what we proposed to say about the rest of the Chagos Archipelago apart from Diego Garcia, if we were to hand back the Seychelles islands on the grounds that we had no defence use for them. Mr O'Keeffe said that we could retain the idea that they were a cordon sanitaire for Diego Garcia. Mr Thomson pointed out that once the offer to return the three islands to the Seychelles had been made it would be difficult to withdraw it even if what the Seychelles offered in return was not satisfactory. The US side said that there was one advantage in offering the islands back to the Seychelles. The US could not pay a high rental for the tracking station in the Seychelles:

- a) because funds were limited and
- b) because a high rental would form a precedent which would destroy negotiations being completed with other countries around the world.

57. Mr Thomson listed the various advantages which we would wish to get from the Seychelles in return for the three islands. They were:

- a) denial of the three islands to any hostile power;
- b) emergency access for US and UK forces to the three islands;
- c) denial of the Seychelles proper to hostile forces;
- d) duty-free privileges for the US tracking station;
- e) a middle to low rental for the tracking station.

Mr O'Keeffe said the question of returning the three islands to the Seychelles should be raised by the Seychelles. We should not make

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77 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 109

T. Franck & P. Hoffman, “The Right to Self-Determination in Very Small Places”, *N.Y.U. J. Int’l L. & Pol.*, Vol. 8 (1976)

THE RIGHT OF SELF-DETERMINATION IN
VERY SMALL PLACES

BY THOMAS M. FRANCK*
PAUL HOFFMAN**

I. INTRODUCTION

The days of Western colonial dominance have drawn to a close. In the space of a mere twenty years, a billion people have undergone the transition from subjects of a foreign imperium to citizens of independent states.

For the most part, this transition has been smooth enough, considering the extraordinary depth of the legal, ideological and psychological changes occurring in its wake. To be sure, there were exceptions. France and Portugal were too sentimentally tenacious in Algeria, Mozambique and Angola, seeking to hold on to what they regarded as "overseas provinces" tied by long histories of association to the metropole and settled by substantial European populations. They waged hopeless, protracted battles in those territories not only against national liberation forces, but also against an irresistible tide of historical inevitability. The Belgian Congo, now Zaire, became a shambles for the opposite reason. Once the colonial power realized it could not hold on forever it opted for immediate abandonment, and the speed of the transition caught the indigenous population tragically unprepared. In the cases of Vietnam and Indonesia, France and the Netherlands tried, by force of arms, to reassert their colonial control over countries that had seen the myth of Western invincibility destroyed by the Japanese and which, released from foreign occupation by the collapse of Japan, refused to don again the old colonial harness. Under similar circumstances, the United States had the prescience to grant independence to the newly-liberated

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The views expressed here are those of the authors in their personal capacities.

Philippines rather than attempt to restore the *status quo ante*.¹ In virtually all other instances, the Western European colonial powers chose the path of peaceful decolonization.²

That the devolution of empire, with a few exceptions, has been a relatively painless experience is due to a number of factors. One is the post-war ascendancy in Western Europe of Labor, Radical and Social Democratic movements ideologically committed to social equality and therefore to decolonization. While men like Attlee and Mendes-France did not govern their countries for particularly long periods, the steadfastness of their vision permanently transformed political attitudes in their respective countries, particularly on the colonial issue. Thus conservatives, like Harold Macmillan, Ian Macleod and Charles de Gaulle, carried forward what the radicals had begun. In this, they also responded to the growing economic burden of policing and pacifying regions and peoples caught up in the new wave of nationalism. A second contributing factor is the emergence of Western European unity as a serviceable substitute for the national dream of empire. Finally, there is the role of the United Nations.

The United Nations has significantly accelerated the momentum for peaceful decolonization and has done so both instrumentally and conceptually. Instrumentally, the organization has provided a forum in which the non-colonialist states—a large majority of the members even in 1945—could badger and encourage the imperial states to grant independence. The U.N. Charter created a trusteeship system and a Trusteeship Council which imposed on the powers administering trust territories an obligation to report annually and to permit periodic international inspection. Colonies and protectorates which did not fall under the trusteeship system were still covered by the Charter's article 73 obligations.

The conceptual force behind the U.N. role is rooted in much earlier European and Western hemispheric intellectual developments—in the vision of Simon Bolivar, the Monroe Doctrine,³ J.S. Mill and J.-J. Rousseau. The "right of self-determination"

1. President Truman proclaimed independence for the Philippines, 60 Stat. 2695 (1946), pursuant to authority granted by Congress in the Philippines Independence Act, 48 Stat. 456 (1934).

2. Among other, lesser, exceptions are Goa and Guinea-Bissau. It can also be argued that Kenya was a partial exception and that Southern Rhodesia is another.

3. E. Weisband, *The Ideology of American Foreign Policy: A Paradigm of Lockean Liberalism* (1973).

became central to President Wilson's scheme for resolving European boundary questions after the dismantling of the German and Austro-Hungarian empires.⁴ But it was the U.N. Charter, a solemn international treaty of unprecedentedly wide adherence, which at last elevated the concept to a universal legal responsibility. Article 73 obliges those members "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . ."⁵

In Resolution 1514,⁶ the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations further refined the concept of self-determination, enumerating for non-self governing territories which were not covered by trusteeship agreements a set of obligations very similar to those imposed by the trusteeship system. It stated that "all peoples have the right to self-determination;" that "repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence;" and that "[i]mmediate steps shall be taken . . . to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom."⁷

These concepts were operationalized by the creation of a watchdog committee—the Special Committee⁸—which began to assume the same function towards non-self governing territories as was exercised by the Trusteeship Committee in respect of trust territories. In pursuit of the obligations set out in the Charter and Resolution 1514, the Special Committee has regularly investigated

4. For a discussion of the historic U.S. relation to self-determination see Pomerance, *The United States and Self-Determination: Perspectives on the Wilsonian Conception*, 70 *Am. J. Int'l. L.* 1 (1976).

5. U.N. Charter, art. 73(b).

6. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66-67, U.N. Doc. A/4684 (1960).

7. *Id.*

8. The Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, established by G.A. Res. 1654, 16 U.N. GAOR Supp. 17, at 65, U.N. Doc. A/5100 (1961). [hereinafter "Special Committee"]

colonial territories and made reports to the General Assembly on compliance and non-compliance. The Assembly, in turn, has passed resolutions commending or demanding progress in individual colonies and, in the unusual circumstance of a threat to peace and security, has recommended action by the Security Council.⁹

Thus, due to various factors, the "right of self-determination" has played a key role in reshaping the post-war world. By 1976, the job was virtually completed—almost, but not quite. The unfinished business of Rhodesia and the Namibian ex-mandate was still on the decolonization agenda. Moreover, in the process of liberating Africa, the Caribbean and Asia, the momentum for decolonization had bypassed some of the smallest colonies, the flotsam and jetsam of empire. That these bits and pieces should be the last to be decolonized is due primarily to two factors. First, some small territories either do not want to be on their own or have not reached a stage of development sufficient to make the choice. Second, some small, weak territories are actively coveted by stronger, more powerful neighbors which assert claims based on geography, history and/or ethnic affinity.

It may be paradoxical that these small territories should generate particularly stubborn and knotty problems, even creating threats to the peace and security of the international system, at the very end of a largely peaceful transition from colonialism to self-government. Nevertheless, this is precisely the case. The disposition of tiny territories like Djibouti¹⁰ and Belize has brought neighboring states to the brink of war, as has the conflict over the Spanish Sahara, a larger territory with an almost negligible population.

Some of these territories have assumed disproportionate importance in world affairs because of their strategic location—Djibouti and Gibraltar, for example, command important international straits. Some, like the Falkland (Malvinas) Islands, have importance because they may possess petroleum or other mineral resources. All of them have coastlines which will entitle them,

9. A recent example is G.A. Res. 3485, para. 6, U.N. Doc. GA/5438, at 262 (1975) (Press Release), in which the attention of the Security Council is drawn "to the critical situation" in Timor and which "recommends that it take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination . . ."

10. "Djibouti" and "French Somaliland" are used interchangeably except where the context indicates a reference to the port city of Djibouti.

under the emerging terms of the new Law of the Seas, to broad economic zones of up to 200 miles width. To the international lawyer, however, the real importance of these seemingly unimportant imperial shavings lies not merely in their capacity for generating passionate and dangerous international disputes, not in the territories' very considerable strategic and economic value, but in the legal precedents being established in the troubled process of their decolonization. Quite possibly this last chapter in self-determination will again prove that hard cases make bad law. As a result of the politics being played with these "special cases," the legal principles of self-determination carefully outlined in the Charter and U.N. resolutions have suddenly come under fierce attack—not from the colonial powers, but from neighboring states, themselves beneficiaries of self-determination, with designs on the mini-territories. For example, now—at the very end of the colonial era—it is being asserted that all colonial peoples *do not* necessarily have the right to self-determination; that the right does not apply, for example, to a transplanted "settler" population—even one that has been "settled" for hundreds of years. Nor, it is alleged, does the right apply to a colony which, before the colonial era, was part of a neighboring state. As shall be seen, the new assertions may have broad implications that extend well beyond questions of decolonization and go to the essence of the legitimacy both of states and of their boundaries.

II. THE SPANISH SAHARA AND PORTUGUESE TIMOR AS PRECEDENT

A. *The Decolonization of the Spanish Sahara*

Although the Spanish—or Western—Sahara is a territory of 266,000 square kilometers (the size of Colorado), its indigenous population is a mere 75,000.¹¹ The Sahrawi population is comprised for the most part of persons of Moorish or Bedouin race who speak Hassania, a form of Arabic, and live an essentially rural, nomadic life. The majority of Sahrawis identify closely with a tribe, some of which are also found in the neighboring countries

11. Report of the United Nations Visiting Mission to Spanish Sahara, in the Report of the Special Committee, U.N. Doc. A/10023/Add.5, Annex, at 26-27 (1975) [hereinafter: "Visiting Mission"].

of Mauritania, Morocco and Algeria.¹² What had hitherto seemed a valueless and inclement stretch of desert has more recently been actively coveted by these neighboring states, not least because of the discovery of vast phosphate deposits and the likely existence of other minerals, including oil and iron.¹³

Until 1974, the story of the decolonization of the Spanish Sahara was governed by the same norms as other decolonizations. Although both Morocco and Mauritania had indicated an interest based on historic claims, these were not strongly pressed. The U.N. General Assembly and Special Committee treated the colony as it would any other which the international community was nudging towards independence. Historic claims, after all, are nothing unusual in Africa, and in every other instance they had been rejected in favor of self-determination and the immutability of boundaries established by the colonial powers. Thus, Resolution 1514 had not only proclaimed that "all peoples have the right to self-determination" but also that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."¹⁴ The Organization of African Unity buttressed that position by asserting that territories must exercise their right to self-determination within established colonial boundaries.¹⁵

If a colony, in the process of independence, wished to alter its boundaries by joining a neighboring state or by splitting into several states, it could do so only by the free vote of its inhabitants—never in response to the pressures or claims of others.¹⁶ Indeed, where in the process of becoming independent there was an open question as to whether the territorial integrity of the colony should be altered in favor of a union or secession, it had become virtually mandatory for the U.N. to be present during the elections or plebiscite in which that issue was to be determined. Thus, the U.N. supervised plebiscites that led to the merger of British

12. *Id.* at 28.

13. *Le Monde*, November 28, 1975, at cols. 1-3.

14. G.A. Res. 1514, para. 6, *supra* note 6.

15. O.A.U. Assembly Resolution AHG/Res. 17(I), 17-21 July 1964. See also the Charter of the Organization of African Unity, Article 3(3), which pledges "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."

16. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960).

Togoland with newly-independent Ghana in 1956, the merger of the British-administered Northern Cameroons with Nigeria in 1959 and 1961, the Southern Cameroons joining the Cameroon Republic in 1961, the division into two states of the Belgian territory of Ruanda-Urundi in 1961, and the free association between Western Samoa and New Zealand in 1962.¹⁷ The U.N. also participated in the April, 1965 election of a legislature whose mandate was to write a new constitution for the Cook Islands as a first step leading to free association with New Zealand.¹⁸ In 1969 the U.N. participated in the "act of free choice" by which the former Netherlands territory of Western New Guinea (West Irian) opted to become part of Indonesia.¹⁹ In 1974 the U.N.'s Special Committee sent observers to the referendum in the British colony of the Ellice Islands in which the voters decided to separate from the Gilbert Islands, with which they had been jointly administered, and to become the separate territory of Tuvalu.²⁰

Given this history of U.N. resolutions and practice, together with the fact that it was an open question whether the Sahrawis preferred independence for the Spanish Sahara or union with one or both of their principal neighbors, it was to be expected that the United Nations would recommend that a plebiscite be held under its auspices. This is precisely the recommendation made

17. Fifteen Years of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, 2 Decolonization, No. 6, at 19-22 (1975). [hereinafter "Fifteen Years"]

18. G.A. Res. 2005, 19 U.N. GAOR Supp. 15, at 7, U.N. Doc. A/5815 (1965).

19. 23 Yearbook of the United Nations 175-179 (1969); Report of the Secretary-General Regarding the Act of Self-Determination in West Irian, 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 2, U.N. Doc. No. A/7723 (1969).

United Nations participation in the "act of free choice" in West Irian is at best an ambiguous precedent. The U.N. involvement led to the ratification of Indonesian consultative procedures which did not provide for "one man-one vote" and were obviously designed to achieve the result obtained, with the Indonesians exercising "at all times a tight political control over the population." *Id.* at 20. The U.N. failed to refine further the international due process requirements for acts of self-determination when an amendment submitted by Ghana, which would have given the people of West Irian a further opportunity to express their will, was defeated by a vote of 60 (including the United States) to 15, with 39 abstentions. 24 U.N. GAOR, Annexes, Agenda Item No. 98, at 40, U.N. Doc. A/L576 (1969). The vote appears at 24 U.N. GAOR 1813, at 16 (1969).

20. *Fifteen Years*, supra note 17, at 21; Report of the United Nations Visiting Mission to the Gilbert and Ellice Islands, U.N. Doc. A/9623/Add.5 (Part IV), Annex I (1974).

consistently between 1964 and 1973 by the U.N. Special Committee and the General Assembly.²¹ Almost every year, resolutions called on Spain to implement the Sahrawis' right to self-determination. Beginning in 1966, the General Assembly consistently asked Spain "[t]o create a favourable climate for the referendum to be conducted on an entirely free, democratic and impartial basis . . ." and to provide all the necessary facilities to a United Nations mission so that it could participate actively in the organization and holding of the referendum.²²

Spain resisted these entreaties for a decade.²³ Then, in July, 1974, after informing Morocco, Mauritania and Algeria,²⁴ Spain proclaimed a new law giving the Sahara internal self-government²⁵ and, six weeks later, announced that a self-determination plebiscite would be held under U.N. auspices during the first half of 1975.²⁶ When the foreign ministers of Algeria, Morocco and Mauritania met in Nouakchott on May 10, 1974, and again in Agadir on July 24, they still "reaffirmed their adherence to the principle of self-determination for the Spanish

21. The Special Committee first considered Spanish Sahara in 1963 and passed its first resolution on the territory in 1964. 19 U.N. GAOR, Annexes, Annex No. 8 (Part I), at 290-291, U.N. Doc. A/5800/Rev. 1 (1964). The General Assembly resolutions are: G.A. Res. 2072, 20 U.N. GAOR Supp. 14, at 59-60, U.N. Doc. A/6014 (1965); G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 72-73, U.N. Doc. A/6316 (1966); G.A. Res. 2354, 22 U.N. GAOR Supp. 16, at 53-54, U.N. Doc. A/6716 (1967); G.A. Res. 2428, 23 U.N. GAOR Supp. 18, at 63-64, U.N. Doc. A/7218 (1968); G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969); G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970); G.A. Res. 2983, 27 U.N. GAOR Supp. 30, at 84-85, U.N. Doc. A/8730 (1972); G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973).

22. G.A. Res. 2229, 21 U.N. GAOR Supp. 16, at 73, U.N. Doc. A/6316 (1966). The last resolution to contain these requests was G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 111, U.N. Doc. A/9030 (1973).

23. The 1969 resolution, G.A. Res. 2591, 24 U.N. GAOR Supp. 30, at 73-74, U.N. Doc. A/7630 (1969) "[r]egrets that it has not yet been possible for the consultations to take place which the administering Power was to conduct in connexion with the holding of a referendum. . . ." See also G.A. Res. 2711, 25 U.N. GAOR Supp. 28, at 100-01, U.N. Doc. A/8028 (1970). By 1973, G.A. Res. 3162, 28 U.N. GAOR Supp. 30, at 110-11, U.N. Doc. A/9030 (1973) deplored "the fact that the Special Mission provided for in earlier resolutions . . . has not yet been able to visit the Territory in order to carry out the task entrusted to it."

24. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9655 at 2 (1974).

25. *Id.*

26. Letter from the Permanent Representative of Spain to the United Nations to the Secretary-General, Aug. 20, 1974, U.N. Doc. A/9714 (1974).

Sahara,"²⁷ but King Hassan II of Morocco, in a Youth Day speech on July 8th, began to sound a different note. With surprising vehemence he resurrected Morocco's claim to historic title and threatened to use the military, if necessary, to recover his "usurped" territories.²⁸

The Moroccan and Mauritanian governments, faced with the popular Spanish decision to conduct a U.N.-supervised plebiscite in the Sahara, found themselves in an anomalous position. For the most part, they publicly continued to proclaim their support for self-determination, adding that a majority of Sahrawis clearly favored union with one or both neighbors. Privately, however, they knew that a popular vote could go against them and therefore decided to delay the plebiscite by taking the matter to the International Court of Justice. In December, 1974, a majority of the General Assembly, cleverly led by Morocco, inexplicably voted to solicit an advisory opinion of the Court asking whether, before its colonization by Spain, the Western Sahara had belonged to the Moroccan empire or the Mauritanian "entity."²⁹ The Resolution also called on Spain to postpone, pending the I.C.J.'s decision, the referendum that had been so ardently sought for nearly a decade.³⁰

Ten months later the Court, after hearing extensive argument, found the questions posed relevant only in the context of the right of the Sahrawi population to self-determination, and then only as to "the forms and procedures by which that right is to be realized."³¹ During the past fifty years, self-determination had become the rule.³² The exercise of this right could, of course, result in a decision for something other than independence: free association or even integration with another state. But the choice between these legitimate forms of decolonization must always be the "result of the freely expressed wishes of the territory's peo-

27. Report of the Special Committee, U.N. Doc. A/9623 (Part II), at 23 (1974).

28. Letter from the Permanent Representative of Spain, *supra* note 24, at 2.

29. G.A. Res. 3292, 29 U.N. GAOR Supp. 31, at 103-04, U.N. Doc. A/9631 (1974).

30. *Id.*

31. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 36. [hereinafter: "Advisory Opinion"]

32. *Id.* at 32, citing *The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* in [1971] I.C.J. 31.

ples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage."³³

The Court went on, almost incidentally, to find that the evidence before it indicated no ties of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity "as might effect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."³⁴ The current, freely expressed will of the population, not the vicissitudes of history, must determine their future status.

While the International Court was deliberating, a U.N. visiting mission, another by-product of Resolution 3292 (XXIX), went to the Western Sahara with the task of "securing firsthand information on the situation prevailing in the Territory, including information on political, economic, social, cultural and educational conditions, as well as on the wishes and aspirations of the people."³⁵ From extensive travel in the Sahara and in the neighboring countries, as well as from public and private meetings, "it became evident to the Mission that there was an overwhelming consensus among Sahrawis within the Territory in favour of independence and opposing integration with any neighbouring country."³⁶

Faced simultaneously with the adverse decisions of the International Court and of the Visiting Mission, Morocco decided to use force to compel Spain to turn over the Sahara, although, from subsequent events, it seems clear that contingency preparations for the "Green March," as the Moroccan invasion came to be known, had been months in the making. The day after the I.C.J. opinion, Rabat announced a massive march of 350,000 "unarmed civilians" that would enter the Sahara "to gain recognition of its [Morocco's] right to national unity and territorial integrity."³⁷ When the U.N. Security Council failed to act decisively against

33. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29-30, U.N. Doc. A/4684 (1960), cited by the I.C.J. with approval in Advisory Opinion, *supra* note 31, at 32-33.

34. *Id.* at 68.

35. Visiting Mission, *supra* note 11, at 4 (1975).

36. *Id.* at 48.

37. Letter from the Permanent Representative of Morocco to the United Nations to the President of the Security Council, Oct. 18, 1975, U.N. Doc. S/11852 (1975).

this flagrant violation of the self-determination rule,³⁸ Spain, weakened by the prolonged dying of the incapacitated Generalissimo Franco, decided to accede to the claims of Morocco and Mauritania. On November 14, 1975, a joint Moroccan, Mauritanian and Spanish communiqué was issued in Madrid which reported that secret negotiations, carried on in a "spirit of the utmost friendship, understanding and respect for the principles of the Charter of the United Nations . . . have led to satisfactory results in keeping with the firm desire for understanding among the parties and their aim of contributing to the maintenance of international peace and security."³⁹

The secret Madrid agreement in effect stipulates Spain's agreement to Moroccan and Mauritanian partitioning of the colony. In return, Spain is permitted to keep a 35% interest in Fosbucraa, the 700-million dollar Saharan phosphate company.⁴⁰ Spain agreed to establish an interim regime in which a Spanish governor, assisted by Moroccan and Mauritanian deputy governors, would function until February 28, 1976, at which time its responsibilities would terminate. Algeria, left out of the Madrid negotiations, declared that it would accord no validity to the agreement⁴¹ and that it intended to arm POLISARIO, the pro-independence movement in the Sahara. By the end of February, 1976, 60,000 Sahrawis—three-quarters of the population—became refugees, primarily in Algeria, as the Moroccans moved to crush all resistance.⁴²

At the U.N., the General Assembly had passed two totally ineffective—and, indeed, wholly conflicting—resolutions on December 10, 1975. The first of these, Resolution 3458A (XXX), reaffirmed "the inalienable right of the people of the Spanish Sahara to self-determination . . ." and called on the Secretary-General "to make the necessary arrangements for the supervision

38. The initial Security Council resolution, passed on October 22nd, appealed to the parties "to exercise restraint and moderation" so that the Secretary-General could arrange consultations. S.C. Res. 377 (1975). It was not until November 6th that the Council summoned the will to deplore the march and call for Morocco to withdraw. S.C. Res. 380 (1975).

39. Third Report by the Secretary-General in pursuance of Security Council Resolution 379 (1975) relating to the situation concerning Western Sahara, U.N. Doc. S/11880, Annex I, at 1 (1975).

40. Morocco and Mauritania have published an agreement under which the two countries will divide the proceeds from the Bu Craa mines. *The Times* [London], April 17, 1976, at 5, cols. 1-2.

41. Third Report by the Secretary-General, *supra* note 39, Annex IV, at 2-3.

42. Interview with Spanish diplomats and UN Secretariat personnel.

of the act of self-determination." The second, Resolution 3458B (XXX), took note of "the tripartite agreement concluded at Madrid on 14 November 1975 by the Governments of Mauritania, Morocco and Spain," recognized the "interim administration" established by the three countries, and called on that administration to permit "free consultation" with the population.

The two resolutions combine a maximum of hypocrisy with a minimum of concern for giving practical effect to the bartered self-determination norm. The U.N., however, was not without those who saw the dangerous implications in the disregard of this fundamental principle. The President-elect of the Thirty-First General Assembly, Sri Lanka's Ambassador Shirley Amerasinghe, condemned Morocco's opportunism and the indifference with which it had been met, warning the Third World that its failure to unite in opposition to the Moroccan and Mauritanian usurpation of the Western Sahara had condoned a trend "to replace the old imperialism by another form of foreign control founded on territorial claims."⁴³ Ambassador Salim of Tanzania, the Chairman of the Special Committee, further pointed out that "cardinal principles were involved" and that the United Nations was thus establishing an evil precedent which "would have consequences not only in the Territory itself but also beyond its borders and even beyond the African continent."⁴⁴

Perhaps the only saving grace in this sordid affair thus far is the refusal of Special Representative Rydbeck to put the U.N. imprimatur on the "act of free choice" by a "rump" Yema'a⁴⁵ which was hastily organized by the Moroccans at the end of February. Thus, at least formally, the international requirement that Sahrawi people exercise their right to self-determination remains effective.

B. The Seizure of Portuguese Timor

The crisis in the decolonization of Portuguese or East Timor closely resembles—and parallels in time—the Western Sahara scenario. For almost three decades after the founding of the

43. U.N. Doc. A/C.4/SR.2175, Fourth Committee, at 15, November 27, 1975.

44. U.N. Doc. A/C.4/SR.2174, Fourth Committee, at 22, November 24, 1975.

45. The Yema'a was created by Spain in May, 1967 as the highest representative body of local administration in the territory. For further information on the history and functions of the Yema'a, see Visiting Mission, *supra* note 11, at 29-39.

Annex 110

United Kingdom, *“Heads of Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles Concerning the Return of Aldabra, Desroches and Farquhar to Seychelles to be Executed on Independence Day”*, FCO 40/732 (18 Mar. 1976)

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HEADS OF AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE ADMINISTRATION OF THE BRITISH INDIAN OCEAN TERRITORY AND THE GOVERNMENT OF SEYCHELLES CONCERNING THE RETURN OF ALDABRA, DESROCHES AND FARQUHAR TO SEYCHELLES TO BE EXECUTED ON INDEPENDENCE DAY

The Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles agree to the return to Seychelles on 29 June 1976 (Independence Day) of Aldabra, Desroches and Farquhar ("the islands") subject to the following conditions:-

1. The Government of Seychelles shall not permit the entry into or use of the territory, territorial waters or air space of Seychelles for any purpose by any of the armed forces of any State or the establishment by any State of rights or facilities of a military character. Provided that any State immediately before the date of this agreement having rights of entry, use or establishment ("the current users") may continue to have rights of entry, use or establishment in accordance with any agreements or consultations between any such State and Seychelles and that the right of access to the islands shall continue for the current users in the event of emergency defence needs after agreement with Seychelles, which agreement shall not be unreasonably withheld.
2. The provisions of sub paragraph 1 shall not apply to courtesy visits by aircraft and by vessels of war in accordance with normal international law and practice.
3. Seychelles shall continue its policy of strict nature conservancy in the islands in accordance with its current legislation and in respect of Aldabra will do so in close consultation with

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the Royal Society of London for Improving Natural Knowledge having regard to the existing arrangements at present applying between the Administration of the British Indian Ocean Territory and the Society.

UNITED KINGDOM

E N Larmour

E N Larmour

BRITISH INDIAN
OCEAN TERRITORY

F R J Williams

F R J Williams

SEYCHELLES

J R Mancham

J R Mancham

F A René

F A René

18 March 1976

Annex 111

Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon.
M. A. Peeroo* (15 Mar. 1977)

EXTRACT

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Oral Questions

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If not, will he take immediate steps to remedy the situation.

Mr. E. François : Sir, the "Calimaye" as well as the wall stands on the private property of Beau Champ Sugar Estate. Government authority was not necessary for the erection of the wall, because, under the law, an owner can enclose his property without asking for Government permission.

FOREIGNERS — GRANT OF MAURITIAN NATIONALITY

(No. B/74) **Mr. B. A. Khodabux** (First Member for Port Louis Maritime and Port Louis East) asked the Prime Minister whether he will give the names of all foreigners who, since March 1968, have been granted Mauritian nationality stating in each case the grounds on which naturalisation was granted.

The Prime Minister : Seven hundred and nineteen foreigners, who satisfied the provisions of the Mauritius Citizenship Act, 1968, have been granted Mauritian nationality since 1968. The list of names is being compiled and will be laid in the Library as soon as it is ready.

TRANQUEBAR — CHILDREN'S PLAYGROUND

(No. B/75) **Mr. R. T. Servansingh** (Third Member for Port Louis South and Port Louis Central) asked the Minister of Local Government whether he will use his good offices with the Administrative Commission of the Municipality of Port Louis to set up forthwith a children playground in the Tranquebar area.

Mr. Espitalier-Noel : Sir, the creation of a recreation complex in the Tranquebar area has already been envisaged and steps are being taken to acquire the necessary land.

VALLEE PITOT — WATER SUPPLY

(No. B/76) **Mr. K. Bhayat** (First Member for Port Louis South and Port Louis Central) asked the Minister of Power, Fuel & Energy whether, in view of the great inconvenience caused to the inhabitants of the Vallée Pitot area through a deplorable water supply, he will use his good offices with the Central Water Authority to provide an individual water prise to every householder of the locality.

Dr. Busawon : Sir, some inhabitants of Vallée Pitot area have constructed their houses up the hillsides and it is difficult to convey water to these individual households by gravity pressure. The C.W.A. is however making designs for water to be supplied generally to the area by means of pumps. In the meantime, water supply to the area is ensured by tankers.

SPEECH FROM THE THRONE — ADDRESS IN REPLY

Order read for resuming adjourned debate on the following motion of the hon. First Member for La Caverne and Phenix (Mr. R. Purryag) :

"That an Address be presented to His Excellency the Governor-General in the following terms :-

'We, the Members of the Mauritius Legislative Assembly here assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to us on the occasion of the Opening of the First Session of the Fourth Legislative Assembly'.

Question again proposed.

→ **M. A. Peeroo** (Third Member for La Caverne and Phenix) : M. le président, on a eu l'honneur à la dernière

séance de ce Parlement d'écouter attentivement les discours prononcés jusqu'ici. Alors qu'il est encourageant de constater que des critiques constructives ont été faites en vue d'améliorer le sort du peuple mauricien, il a été cependant décourageant, dirai-je, d'entendre certaines critiques injustifiées de la part de l'Opposition concernant l'état d'urgence, l'existence de la démocratie dans notre société, et surtout concernant le problème de Diégo Garcia.

Sir Satcam Boolell : On a point of order, Sir, last time the adjournment was proposed by the hon. First Member for Belle Rose and Quatre Bornes (Mr. Bérenger).

Mr. Speaker : I had overlooked that for which I apologize. But now that the Hon. the Third Member for La Caverne—Phoenix has started, I will call the Hon. the First Member for Belle Rose and Quatre Bornes immediately afterwards.

M. Peeroo : Je dirai même, M. le président, que les critiques du chef de l'Opposition ont frôlé la surenchère. Je relève de son discours certaines critiques injustifiées concernant, comme je viens de dire, l'état d'urgence, Diégo Garcia, et la démocratie si elle existe à Maurice ou non. Tout d'abord, je m'attaquerai à cette critique particulière du chef de l'Opposition concernant l'incompétence du Gouvernement. Nous devons analyser les faits, les réalisations du Gouvernement dans le passé, surtout l'accomplissement du plan 1971 à 1975 pour savoir si le Gouvernement n'a rien fait, si le Gouvernement est incompetent.

Mr. Speaker : We are not discussing whether the last Government was competent or not, we are discussing whether this Government is competent, so that we might forget all about the past.

M. Peeroo : M. le président, si j'ai fait mention du passé, c'est pour m'en servir comme base, pour revenir sur les questions qui se trouvent dans le discours du Trône. Nous savons que notre société évolue, et toute société qui est vivante, toute société qui évolue est une société qui connaît des problèmes. L'île Maurice n'est pas une exception. Donc, nous devons nous attendre à ce que notre société connaisse des problèmes, et notre devoir ici est d'aider le Gouvernement, d'aider le pays à trouver des solutions à ces problèmes. Nous savons aussi qu'après l'indépendance notre pays a hérité d'un système que je qualifierai de colonial, un système qui doit être définitivement réformé afin que les aspirations légitimes du peuple soient satisfaites. Mais, quelle a été la politique du Gouvernement après l'indépendance ? Je dois dire ici que le Gouvernement a poursuivi une politique réaliste mais tout en tenant compte des réalités et des besoins de notre pays. Il n'y a pas lieu pour moi, M. le président, de parler des détails, mais je dirai que dans toutes ses entreprises le Gouvernement a réalisé des réussites. Si je viens de dire que nous avons des problèmes, nous sommes conscients dans le Gouvernement que ces problèmes sont difficiles, mais nous pouvons garantir au peuple de ce pays que le Gouvernement actuel est disposé à travailler avec courage et détermination pour trouver des solutions justes afin que nous puissions créer une société où chaque Mauricien aura une sécurité concernant l'emploi, le logement, l'éducation, et ainsi de suite.

M. le président, le chef de l'opposition a parlé de l'incompétence du Gouvernement. Cette critique, il me semble, est facile. Il est facile de critiquer, il est facile de dire que ce pays connaît des problèmes, mais jusqu'ici l'opposition

n'a pas donné des solutions à nos problèmes. Mais, M. le président, nous pouvons en prenant compte, je dirai, des événements économiques dans le passé, voir si notre pays est dans la bonne direction. On sait très bien que les gens qui demeurent dans l'oisiveté critiquent toujours ceux qui vraiment travaillent et connaissent les difficultés dans l'action. Le Gouvernement s'efforce de résoudre les problèmes, mais par contre il y a des gens qui se tiennent sans rien faire et qui critiquent le Gouvernement. Le Gouvernement est disposé à accepter des critiques, comme mon ami, le Premier député de Phoenix et La Caverne a dit. Nous sommes ici au Gouvernement disposé à accepter les critiques, mais les critiques, je le répète, doivent être constructives et non pas destructives.

M. le président, je prendrai un peu de temps peut être pour parler de nos difficultés. Nous avons une population de 850,000 âmes, et une qui augmente par 17,000. En 1960, la population a connu une augmentation de 3%, mais par contre avec une politique réaliste et clairvoyante du Gouvernement, nous constatons qu'aujourd'hui le taux de naissance est de 2%, c'est-à-dire il y a une réduction sensible de naissances à Maurice, c'est-à-dire 1%, ou une réduction de 50% en ce qui concerne les naissances pendant une année. Donc, avec une population de 850,000 âmes, comme je viens de dire, M. le président, et une qui augmente par 17,000 par an, la tâche du Gouvernement n'est pas facile. Nous devons tenir compte des réalités. Je viens de dire que notre tâche ne serait pas si difficile, car nous savons au Gouvernement que le peuple est derrière nous et le peuple est disposé à coopérer afin de mettre fin à la politique de destruction lancée jusqu'ici par l'Opposition.

Le premier objectif de notre Gouvernement est de créer des emplois. On sait quelle était la situation sur le marché du travail avant 1975, mais nous pouvons dire aujourd'hui avec satisfaction que grâce aux efforts de ce même Gouvernement, qualifié d'incompétent par le chef de l'Opposition, 53,000 emplois ont été créés durant la période 1969 à 1975, alors que nous savons que durant les années 1960 seulement 20,000 emplois ont été créés. C'est-à-dire que durant la période de 1969 à 1975 on a créé environ 33,000 nouveaux emplois. Il ne faut pas oublier que dans d'autres secteurs de l'économie, comme l'industrie touristique, le Gouvernement est responsable du progrès accompli. Grâce à cette industrie, encouragée et développée par le Gouvernement, nous avons réalisé en termes de devises étrangères une somme de Rs. 135 m. en 1975, et nous savons aussi que le revenu national a augmenté de 10% alors qu'on s'attendait à 7% comme prévu par le Gouvernement dans le passé. D'autre part, M. le président, il nous faut tenir compte des ressources limitées de notre pays. Nous savons très bien que notre économie est purement agricole, c'est-à-dire que nous dépendons sur le sucre qui représente 90% de nos exportations mais avec de telles limitations économiques nous avons tout de même un travail à faire au niveau national parceque, chaque année, prenant en considération l'augmentation de la population et aussi le pourcentage des jeunes à Maurice, et le fait que 40% de la population ont moins de 15 ans, le Gouvernement a un programme que je qualifierai de pilote afin que ces jeunes de moins de 15 ans dont le nombre s'élève à 40,000 trouveront de l'emploi, de logement. Comme les membres sont au courant ces jeunes-là reçoivent déjà une éducation gratuite. Mais le problème épineux auquel nous avons à faire face, c'est la création

d'un nombre maximum d'emplois pour assurer une vie décente à nos jeunes de moins de 15 ans. Il est à noter, M. le président, que le secteur agricole est un domaine où on ne peut pas créer plus de 2% d'emplois. Dans ce secteur un peu plus d'un pour cent d'emplois est créé, par contre je constate avec satisfaction que le Gouvernement a choisi le secteur industriel pour investir afin de créer plus d'emplois et nous savons que dans ce secteur beaucoup d'emplois ont été créés. En 1974, le Gouvernement a aidé à la création de 30,000 emplois. Nous ne prenons pas compte du nombre d'emplois créés dans l'industrie sucrière, je dis seulement 30,000 dans les industries, dans les usines. 9,000 ont été créés dans la zone franche et 12,000 emplois ont été créés dans les petites industries, les petites usines et les "cottage industries." Avec toutes ces réalisations, M. le président, je vois fort drôle comment le chef de l'opposition a pu qualifier ce Gouvernement d'incompétent, comment se fait-il que le chef de l'opposition n'a pas pris en considération les réalisations du Gouvernement, un Gouvernement qui se lance toujours dans la bonne voie de créer d'autres emplois. C'est difficile de digérer cette critique à l'effet que ce Gouvernement est incompétent. S'il l'est, le temps dira, parce que les réalisations du Gouvernement nous permettent d'espérer qu'il en fera mieux dans l'avenir. Je saisisrai cette occasion pour dire que notre Gouvernement ne va jamais abdiquer devant ses responsabilités envers le peuple et ses responsabilités envers la nation mauricienne, malgré l'obstruction systématique de l'opposition pour embarrasser le Gouvernement dans plusieurs secteurs. Nous sommes dans une position difficile. Nous reconnaissons que notre tâche n'est pas impossible, mais nous ferons notre mieux pour déjouer les manœuvres immorales de l'opposition.

Notre but c'est de créer une société juste, une société socialiste, mais pas une société qui tolère les réactionnaires; et une société au visage humain.

M. Jugnauth : Soyez moins ridicule.

M. Peeroo : Je répondrai au commentaire du chef de l'opposition seulement par ceci "rira bien qui rira le dernier."

Maintenant passant à l'item de Diégo Garcia, M. le président, c'est un problème qui concerne tous les Mauriciens, je dirai même ce problème a un aspect assez triste et malheureux parce que là aussi on a dit que le Gouvernement n'a rien fait concernant la démilitarisation de l'océan indien. Tout d'abord je dirai que notre ministre des affaires étrangères lors de la conférence des pays non alignés, a soulevé la question et a exercé des pressions diplomatiques, et aussi lors de la conférence de l'OUA à Maurice, le Gouvernement a tout fait pour soulever l'opinion mondiale sur ce problème. Mais on critique très souvent le Gouvernement. On a voulu faire comprendre à la population que le Gouvernement est responsable de la vente de Diégo. Mais il y a une explication. D'après un principe de droit international, mes collègues de la profession qui sont de l'autre côté sont au courant qu'un article a été publié dans *Modern Law Review* No. 30 ou 31, un article écrit par le professeur de Smith, qui a pour titre "*Constitutionalism in Mauritius*". Dans cet article, M. le président, un point de droit international a été mentionné. La première question qu'on doit se poser est celle ci : quand la vente de Diégo a été faite, à cette époque là, est-ce que l'île Maurice était indépendante ? La réponse est clairement non. Ce Gouvernement qui vous

dites, est responsable de la vente de Diégo Garcia n'était pas le Gouvernement d'un état souverain. On ne peut pas donc blâmer ce Gouvernement. Mais je dois donner l'assurance à mes amis de l'opposition que des efforts sont déployés afin de voir que l'océan indien soit une zone de paix.

Je viens de mentionner l'intervention et l'action mauricienne lors des conférences de pays non-alignés et aussi l'action du Gouvernement mauricien lors de la conférence de l'organisation de l'unité africaine. Les efforts du Gouvernement dans ce sens continuent parceque il y a encore des pressions diplomatiques qui sont exercées auprès de certaines super-puissances.

M. le président, je passe maintenant à une certaine critique du chef de l'opposition qui a dit que dans ce pays, où l'état d'urgence existe, où semble-t-il il n'y a plus de démocratie. Tout d'abord je dois dire que tout mouvement organisé et enregistré conforme à la loi est libre de publier ce qu'il veut, et tout groupe d'individus, de travailleurs est libre de s'organiser en syndicat. Et ces gens qui disent qu'il n'y a pas de démocratie dans ce pays, savent très bien qu'ils sont libres d'organiser des meetings privés et des meetings publics et même des rassemblements, et je dirai même que cette liberté est tolérée jusqu'à tel point qu'ils sont libres de publier des critiques à l'égard de ceux qui permettent cette liberté. Je dois dire aussi, M. le président, que l'état d'urgence existe sur papier. En pratique les libertés fondamentales du peuple sont là, parcequ'elles ont été expliquées et traduites par des élections municipales à venir aussi bien que par les récentes élections générales. D'ailleurs s'il n'y avait pas de démocratie dans ce pays, comment donc expliquer

la présence de cette opposition dans cette assemblée.

M. le président, il y a un problème que les consommateurs sans distinction de classe connaissent dans ce pays — on avait tout dernièrement parlé de l'augmentation concernant le prix du pain. Sur ce point je dirai en toute franchise et sincérité que je suis d'accord avec le premier député de Quatre Bornes (M. Bérenger) quand il a parlé sur le prix du pain. Personnellement je ne suis pas d'accord avec une augmentation de prix sur le pain parceque quand l'augmentation a été recommandée, (une augmentation de deux sous), la première question qu'on devrait se poser est la suivante: quels chiffres avait-on considérés pour recommander une telle augmentation? Et nous savons très bien que parmi les membres du Gouvernement, il y a un qui fait tout son mieux pour prouver qu'on peut vendre le pain à dix sous et en même temps réaliser un profit. Je suis, M. le président, contre l'augmentation de prix sur le pain.

Concernant l'augmentation de prix sur le poisson frigorifié, il a passé de Rs. 2.40 à Rs. 2.90. Cette augmentation est injustifiée. D'autre part, il est nécessaire, étant donné les circonstances, que les prix soient contrôlés strictement. M. le président, hier j'ai été au marché de Rose Hill pour acheter deux livres de poisson. On m'avait demandé Rs. 6 la livre quand nous savons très bien que le prix de poisson est fixé par le Gouvernement à Rs. 4.50. Ce que le marchand m'avait dit: *'Nous pas rente dans zafaire prix, nous vanne prix qui nous content'*. Sur ce problème, j'ai formulé des critiques mais il y a aussi une solution. Je préconise, M. le président, l'amendement des lois dans ce domaine et il faut aussi donner plus de pouvoirs aux officiers

du ministère des prix et créer une escouade pour contrôler les marchands qui exploitent le petit peuple. Et je suggérerai également la création d'un comité populaire de surveillance pour surveiller à ce que les marchands, qu'ils soient grands ou petits, n'exploitent pas la population, ou les consommateurs. Quand j'ai parlé du comité populaire, M. le président, je n'ai pas voulu dire milice populaire. Ici au Gouvernement, si nous faisons des critiques, nous disons quels sont aussi les solutions parceque je repète, M. le président, nous critiquons pour construire non pas pour détruire. Quand j'ai parlé du comité populaire, M. le président, j'ai voulu dire, un comité composé de membres du public, des volontaires disposés à aider le ministre ou le ministère des pêcheries parceque surveiller à ce que l'exploitation est éliminée dans le pays n'incombe pas seulement au Gouvernement ou au ministre mais aussi incombe à la population, parceque le ministre ou le Gouvernement ne sont pas seulement responsables de ce que la population subit mais il est le devoir de tout un chacun, de tout Mauricien de coopérer, de collaborer afin que l'exploitation d'où qu'elle vienne soit éliminée.

Il y a un autre problème, M. le Président, qui jusqu'ici a été ignoré et ce problème concerne la planification du pays. Quand nous allons vers Curepipe, passant par St. Jean, nous voyons avec regret aujourd'hui que nos meilleures terres sont vendues à des gens qui veulent construire des maisons. Par contre, il est connu de tous que ce pays est purement agricole, que nous ne pouvons pas sacrifier nos meilleures terres; si nous voulons encourager les gens à construire des maisons, il nous faut les encourager à le faire dans des zones où les terres ne sont pas fertiles, ne sont pas productives. Dans ces sites ou ces endroits là, il nous

faut encourager la construction mais non pas à St. Jean ou dans d'autres coins de l'île Maurice qui doivent être réservés pour l'agriculture, parceque comme je viens de dire, notre pays est un pays agricole. L'agriculture, c'est l'épine dorsale de notre économie.

Ce que je préconise, M. le président, c'est la refonte des lois concernant la planification et de créer des zones industrielles, des zones réservées purement à l'agriculture et des zones résidentielles. Par exemple, M. le président, passant par la nouvelle route, on voit des petites collines qui sont vraiment improductives dans ce sens qu'on ne peut pas les cultiver. Quoi faire avec eux ? Ce que je suggère, c'est développer ces collines afin d'encourager les gens à aller construire des maisons là-dessus ou au pied de ces collines, afin de préserver nos meilleures terres.

Et concernant le transport, M. le président, je félicite le Gouvernement pour avoir pris la décision d'accorder des permis à tous ceux qui veulent rouler des autobus. Mais je dirai que cette mesure n'est pas une solution. Cette mesure, je vais la qualifier, comme étant un palliatif. Tôt ou tard, dans cinq ou dans dix ans le problème va apparaître de nouveau parceque quand ces gens qui dans l'avenir recevront des permis pour faire rouler des autobus arrivent à trouver qu'ils font des pertes, ces gens là vont se grouper en compagnie et ce sera la même situation que nous avons aujourd'hui. La solution, je la dirai avec franchise, c'est la nationalisation de l'industrie du transport. Mais je dois dire, M. le président, que la nationalisation ne vient pas de l'Opposition, d'abord parceque dans le programme gouvernemental du parti travailliste, dès 1945, nous avons parlé de nationalisation mais nous devons dire que

Annex 112

U.K. House of Commons, “*Written Answers: British Indian Ocean Territory*” (23 June 1977)

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British Indian Ocean Territory

HC Deb 23 June 1977 vol 933 cc549-50W

Sir Bernard Braine asked the Secretary of State for Foreign and Commonwealth Affairs, in the light of the forthcoming constitutional talks on the Gilbert Islands and the Banaban plea for the separation of Ocean Island, on what conditions the Seychelles Government agreed to the separation of the islands of Desroches, Farquhar and Aldabra from the colony of Seychelles in 1965 to form part of the British Indian Ocean Territory.

Mr. Luard The Seychelles Executive Council confirmed their agreement in October 1965 to the detachment of the islands of Aldabra, Desroches and Farquhar in return for Britain's agreement to construct an airfield on Mahé Island, Seychelles, to compensate the landowners and to resettle the inhabitants. The islands reverted to Seychelles on that country's independence in 1976.

Sir Bernard Braine asked the Secretary of State for Foreign and Commonwealth Affairs, in the light of the forthcoming constitutional talks on the Gilbert Islands and the Banaban plea for the separation of Ocean Island, on what conditions the Government of Mauritius agreed to the separation of the Chagos Archipelago from the Colony of Mauritius in 1965 to form part of the British Indian Ocean Territory.

Mr. Luard The Mauritius Council of Ministers agreed to the detachment of the Chagos Islands after discussions which concerned the negotiation of a defence agreement between Britain and Mauritius —since terminated by agreement— and the grant of £3 million additional to the cost of compensating the landowners and a grant to resettle the islands' inhabitants. Understanding was also reached on rights to mineral, oil and fish resources and there was agreement that, in certain circumstances and as far as was practicable, navigational, meteorological and emergency landing facilities on the islands were to remain available to the Mauritian Government. In the event of the islands no longer being required for defence purposes it was agreed that they should revert to Mauritian jurisdiction.

Annex 113

Mauritius Legislative Assembly, *Diego Garcia - Anglo-American Treaty*, No. B/539 (8 Nov. 1977)

3177

Oral Questions

8 NOVEMBER 1977

Oral Questions

3178

SALE OF CEMENT — CONTROL

(No. B/535) Mr. S. K. Baligadoo (Second Member for Port Louis North and Montagne Longue) asked the Minister for Prices & Consumer Protection whether he will exercise strict control on the sale of cement with a view to avoiding black marketing; and whether he will make a statement thereon.

Mr. Virah Sawmy: Sir, an enquiry was conducted last week at the Mauritius Portland Cement Co. Ltd. and at the level of the main cement distributors in Port Louis, and checks were also made in different localities of the island concerning the sale of cement.

The enquiry indicates that the supply of cement currently distributed on the local market is sufficient to satisfy the demand for that commodity, without giving rise to any black marketing opportunities.

I would like to invite the hon. Member to refer to my Ministry the case of any member of the public who may be finding difficulties to obtain cement. I can assure the hon. Member that every assistance will be given to him and others in the same situation.

ASSISTANCE TO BUS INDUSTRY

(No. B/536) Mr. A. Asgarally (Fifth Member for Montagne Blanche and G.R.S.E.) asked the Minister of Works whether he will make a statement on the form of assistance, technical or otherwise, he has already given and which he proposes to give to the bus industry.

Mr. Bussier: As from June 1976, no Customs duty is levied on bus chassis, as well as on complete buses, provided the buses are licensed by the Road Traffic Licensing Authority.

Certain buses which were running on uneconomical routes received subsidies during the period February 1976 to June 1977.

Further, duty paid on diesel oil imported by bus companies during period July 1976, to June 1977, was refunded to them. Recently, to enable certain bus companies to meet payment of wage increases, it has been decided to refund to them the duty paid by them on diesel oil imported since 1st July 1977.

Further forms of assistance to bus companies will be considered as and when the need arises.

INCREASE IN BUS FARES

(No. B/537) Mr. A. Asgarally (Fifth Member for Montagne Blanche and G.R.S.E.) asked the Minister of Works whether he will give the assurance to the House that there will be no increase in bus fares until the recommendations of the Lavoipierre Commission have been published, studied and debated in the Legislative Assembly.

Mr. Bussier: Sir, Government has no intention to approve any increase in bus fares until the report of the Lavoipierre Commission has been studied.

COMPENSATION TO POLICEMEN WORKING EXTRA TIME

(No. B/538) Dr. J. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Prime Minister whether he will say if Policemen working extra time, in Parliament or in any official function, are duly compensated.

The Minister of Finance: Sir, this matter has been investigated by the Chesworth Committee which has made recommendations for implementation with effect from the 1st July, 1977.

3179

Oral Questions

8 NOVEMBER 1977

Oral Questions

3180

DIEGO GARCIA — ANGLO-AMERICAN TREATY

(No. B/539) Dr. J. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Prime Minister whether he will say if

- (a) Government proposes to question the Anglo-American treaty over Diego Garcia ; and .
- (b) there are any immediate or far reaching possibilities for Mauritius to get Diego Garcia back.

The Minister of Finance : Sir, taking all factors into consideration, the way of trying to recuperate Diego Garcia is by patient diplomacy at bilateral and international levels, and no opportunity is lost by the Government towards this end.

COMMERCIAL RELATIONS WITH SOUTH AFRICA

(No. B/540) Dr. J. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Minister of External Affairs, Tourism & Emigration whether he will say if Government proposes to sever all commercial ties with the Republic of South Africa.

Sir Harold Walter : Such action to be effective, pressure should be exerted by the international community as a whole and, to this end, Government has diligently and consistently been calling for global trade sanctions against South Africa both at the UN and at the OAU.

RESEARCH CENTRE — HISTORY, ART AND CULTURE OF MAURITIUS AND OF THE INDIAN OCEAN

(No. B/541) Dr. J. B. David (Second Member for Belle Rose and Quatre

Bornes) asked the Minister of Education & Cultural Affairs whether he will say if he proposes to create a Research Centre to study the History, Art and Culture of Mauritius and of the Indian Ocean.

Mr. Jagatsingh : Sir, this project will be studied in the light of the report of a UNESCO Consultant who is arriving shortly to advise on its elaboration.

APPLICATION BY POLITICAL PARTY TO USSR EMBASSY FOR FINANCIAL OR OTHER ASSISTANCE

(No. B/542) Mr. C. Guimbeau (First Member for Rodrigues) asked the Prime Minister whether he will make a statement on the action he proposes to take following the publication in *Le Cernéen* of the 21st October, 1977 of a letter addressed by a political party to the USSR Embassy applying for financial or other assistance.

The Minister of Finance : I refer the hon. Member to my reply to P.Q. B/230. In this particular case I am sure the public will draw their own conclusions.

AGENCE FRANCE PRESSE — PUBLICATION OF INFORMATION ABOUT MAURITIUS

(No. B/543) Mr. C. Guimbeau (First Member for Rodrigues) asked the Prime Minister & Minister of Information & Broadcasting whether he will give the name and status of the official correspondent of Agence France Presse in Mauritius and state what measures he has taken with the "Agence" to prohibit the publication of erroneous information concerning Mauritius.

Annex 114

Eduardo Jiménez de Aréchaga, “International Law in the Past Third of a Century”, *Recueil des Cours*, Vol. 159 (1978)

ACADÉMIE DE DROIT INTERNATIONAL
FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS
COLLECTED COURSES OF THE HAGUE
ACADEMY OF INTERNATIONAL LAW

1978

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Tome 159 de la collection

1979

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INTERNATIONAL LAW IN THE PAST
THIRD OF A CENTURY

by

EDUARDO JIMÉNEZ DE ARÉCHAGA

*President,
International Court of Justice*

of self-determination and provides that the principle applies both to peoples of non-self-governing and trust territories and also to peoples within independent and sovereign States : that this right is one that must survive the historical function it performed in the dismantlement of colonialism.

The Outcome of Self-Determination and the Essence of the Right of Peoples

At first sight Resolution 1514 (XV) gives the impression that the natural outcome of self-determination—the necessary result of the exercise of this right—is the “complete independence” of the people concerned. The word “independence” is repeated four times in the seven paragraphs of the Resolution.

It was soon realized, however, that “complete independence” is not to be considered as constituting the only way of implementing the principle. There are examples of non-self-governing territories whose peoples did not wish to assume the full responsibility of independent statehood and preferred to maintain an association or integration with another country. The principle of self-determination is fully safeguarded when such an outcome is the result of the free choice of the people concerned. A resolution also adopted in 1960 by the General Assembly, Resolution 1541 (XV), indicated that the principle of self-determination could take one of the following forms :

- (a) emergence as a sovereign independent State ;
- (b) free association with an independent State ; or
- (c) integration with an independent State.

This resolution further provides that “free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes...” (Principle VII a). And integration :

“should be the result of the freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.”

It is obvious that if these requirements are complied with, the free association or the integration with an independent State also become

manifestations of independence, in the sense that the peoples concerned “freely determine their political status” (para. 2 of Resolution 1514).

Resolution 2625 codifies the various ways of implementing the right of self-determination but in view of the broadening of the scope of the right beyond colonial issues it had to cover other possibilities as well, in more general terms. The fourth paragraph of this Chapter reads :

“The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”

The expression “any other political status freely determined by a people” is wide enough to encompass solutions which would facilitate the settlement of certain contemporary self-determination conflicts requiring a solution other than independence or association, such as, for instance, autonomous or federal constitutional arrangements.

It is in the light of these successive General Assembly resolutions that Resolution 1514 must be interpreted. In the *Western Sahara Advisory Opinion* the Court found that its provisions “in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned ¹⁹²”. The Court added, after quoting Principles VII and IX of Resolution 1541 : “certain of its provisions give effect to the essential features of the right of self-determination as established in Resolution 1514 (XV) ¹⁹³”. The Court also found that Resolution 2625 (XXV) “reiterates the same need to take account of the wishes of the people concerned ¹⁹⁴”.

Consequently, a consultation of the will of the peoples concerned was found to be the essential feature of self-determination. The Court added :

“The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute as ‘people’ entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances ¹⁹⁵.”

The first type of exception would exist for instance in the cases of Gibraltar or the Malvinas (Falkland) Islands where the General Assembly has requested the States concerned to negotiate on the question of sovereignty and transfer of the territory and has refused to accept the effects of a referendum or a consultation of the present inhabitants of those territories.

The second type of exception, the special circumstances making a consultation unnecessary, existed in the cases of Goa or of Ifni. These circumstances combine an unchallenged or accepted territorial claim by a former sovereign which ceased to be so as a consequence of colonialism, and the homogeneity of the population of an enclave with that of the former sovereign surrounding it. In those cases the direct retrocession of the territory was considered by the General Assembly as the means of ensuring at the same time the self-determination of the people and the immediate end of a colonial situation. India said in the case of Goa that it would be senseless to ask the Indians in Goa if they wished to remain Indians. This position resembled that of the Allies in 1919 when they held that asking for a plebiscite in Alsace-Lorraine would be "insultingly illegitimate"¹⁹⁶.

Self-Determination and Historic Title to Territory

In the *Western Sahara* case Morocco and Mauritania contended that on the subject of decolonization there are two basic principles: that of self-determination through a consultation of the will of the people, indicated in paragraph 2 of Resolution 1514, and the principle of national unity and territorial integrity of countries, laid down in paragraph 6 of Resolution 1514 and confirmed by Paragraph 7 of Resolution 2625.

According to this argument decolonization may come about through the automatic retrocession or reintegration of a province to the mother country from which that province was artificially detached by a colonial dismemberment. In support of this argument several instances were indicated—such as those of Gibraltar, Ifni and the Malvinas (Falkland) Islands—in which the General Assembly had been induced to give priority to territorial integrity.

For its part Algeria contended that the principle of self-determination and the fundamental rule of decolonization is that the population of a territory should be consulted as to its future political status and should not be dealt with as mere chattels¹⁹⁷.

This question was not the subject of the request for an opinion, but

Annex 115

Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by the Prime Minister of Mauritius* (11 Apr. 1979)

EXTRACT

401

Motion

11 APRIL 1979

Motion

402

However, after the Commission has reported, nothing prevents any hon. Member to put down a question to inquire about the Government's intentions about laying the report on the Table of the Assembly.

MOTION

Speech from the Throne —
Address in Reply

Order read for resuming the adjourned debate on the following motion of the hon. First Member for Curepipe and Midlands (Mr. P. Simonet) :

"That an Address be presented to His Excellency the Acting Governor-General in the following terms :

"We, the Members of the Mauritius Legislative Assembly here assembled, beg leave to offer our thanks to Your Excellency for the Speech which Your Excellency has addressed to us on the occasion of the Opening of the Third Session of the Fourth Legislative Assembly."

Question again proposed.

M. P. Bérenger (First Member for Belle Rose and Quatre Bornes) : M. le président, on me dira peut-être qu'il est de la nature même des discours du Trône de ne pas coller à la réalité de la situation dans laquelle se trouve l'île Maurice. Cela ne m'empêchera néanmoins pas de dire pour commencer, M. le président, que le discours du Trône prononcé le 27 mars dernier par le Gouverneur-Général n'a véritablement rien à voir, ni avec la situation dans laquelle se trouve actuellement notre pays, ni avec les solutions qui, du point de vue de l'opposition, du point de vue du MMM devraient être apportées d'urgence à ces problèmes. Mon discours, M. le président, va s'axer sur quatre volets : la situation économique d'abord. A l'inverse du *Leader* de l'opposition, qui

avait commencé par les affaires étrangères, je commencerai, moi, par la situation économique, pour passer ensuite à l'éducation, à la politique intérieure, et quatrième-ment donc, à la politique étrangère avant, en conclusion, de suggérer ce qui de notre point de vue, pourrait s'avérer être des solutions à la situation actuelle.

Lorsque, je commence par la situation économique, M. le président, ce n'est pas sans raison, c'est parce que véritablement de mon point de vue, ce devrait être la situation économique actuelle du pays et l'avenir économique du pays qui devrait avant tout retenir notre attention, l'attention de cette Chambre, comme l'attention de la Nation tout entière. J'estime, en effet, M. le président, que non seulement la situation économique actuelle est-elle catastrophique, mais j'estime, ce qui est encore plus grave, que l'avenir est terriblement sombre.

Je commencerai, M. le président, par le chômage. Je vous rappelle que dans son dernier discours du budget l'année dernière, le ministre des finances lui-même était venu dire que le chômage était redevenu à l'île Maurice, la priorité des priorités. Dans l'intervalle, depuis ce discours du budget, donc, non seulement l'emploi n'a-t-il pas progressé, mais au contraire l'emploi a régressé. Des licenciements ont eu lieu dans l'industrie sucrière, dans l'industrie du thé, dans la zone franche, dans le commerce, et même dans l'industrie de construction. De mon point de vue, donc, M. le président, lorsqu'à la page 2 du discours du Trône, le Gouvernement déclare tout simplement dans une situation d'emploi aussi explosive, aussi catastrophique, que "*my government's main objectives remain the continued growth of our economy and the fulfilment of our employment objectives*" il passe complètement à côté du problème,

car le drame est que les "employment objectives" du Plan de Développement 1975-1980 sont absolument dépassés et qu'il ne s'agit plus en fait de "continued growth of our economy", en particulier, de "continued growth of employment" mais au contraire d'une situation où le chômage malheureusement progresse. En attendant donc, de venir aux moyens de créer de l'emploi à l'île Maurice, je commencerai mon discours en insistant cette année, M. le président, sur le fait que, comme l'a dit mon collègue, Sylvio Michel, dans une motion déposée en son nom, nous estimons de ce côté de la Chambre, j'estime en particulier qu'il est absolument essentiel et urgent de mettre sur pied dans les plus brefs délais un système d'allocation chômage. Je me permets de rappeler à la Chambre qu'en 1971 la Chambre avait nommé un *Select Committee* qui avait soumis son rapport intitulé "*Report of the Select Committee on the Setting up of Unemployment Benefit Scheme*". Déposé en mai 1971, ce rapport, comme nous le savons tous, est demeuré lettre morte, et je ne prétends nullement que ce rapport devrait aujourd'hui être mis en pratique. Je rappelle cela à la Chambre uniquement afin que nous ne répétions pas cette erreur de nommer un *Select Committee* qui produirait un rapport, rapport qui disparaîtrait dans un tiroir, dans un ministère quelconque. Nous savons, M. le président, alors qu'il nous avait été dit lorsque le *National Pension Fund* avait démarré, les officiels du Gouvernement, ceux du ministère de la sécurité sociale, et même ceux du Gouvernement, nous avaient donné l'assurance que des années durant, le *National Pension Scheme* travaillerait à perte, que durant des années, le Gouvernement aurait à verser des subsides, si je puis dire, au fonds de pension national. Or, il s'est avéré que ces prévisions des experts du Gouvernement, ces

prévisions du secteur privé se sont avérées complètement fausses. En quelques mois, le *National Pension Scheme* a réussi à mobiliser des fonds considérables, à développer un surplus qui a permis que dix millions de roupies, par exemple, soient prêtées à la *Mauritius Housing Corporation*. Ma suggestion c'est qu'à partir de cette base posée par le *National Pension Scheme*, si nécessaire en augmentant de, disons, 1 ou 2% la contribution des employeurs, à partir de la base posée par le *National Pension Scheme*, avec, si nécessaire, une légère augmentation des contributions, qu'un vrai système d'allocation-chômage qui se grefferait sur le *National Pension Scheme* pourrait être développé. Malgré, donc, l'expérience malheureuse du *Select Committee* de 1971, je suggère au Gouvernement devant la montée du chômage constatée par le ministre des finances lui-même, mais en fait constatée je suis certain, dans nos circonscriptions par tous les députés de cette Chambre, je suggère que le Gouvernement nomme un *Select Committee* de cette Chambre pour se pencher à nouveau sur "*the setting up of an Unemployment Benefit Scheme*" et qui se penche donc sur le fonds de pension national et propose quelque chose de concret, quelque chose de positif mais en même temps quelque chose de réaliste au Gouvernement et à la Chambre.

Le deuxième point sur lequel je m'entendrai concerne l'inflation. Là encore, M. le président, le discours du Trône passe complètement à côté de la situation réelle. Le discours du Trône dit ceci, en termes d'inflation, "*Price control will remain a priority of my Ministers*". En fait, nous savons, M. le président, qu'en cette année 1979, l'inflation depuis janvier a réagi sous un nouveau coup de fouet. Dans le seul mois de janvier 1979, le coût de la vie a augmenté de 2.3%,

pas tomber d'accord, l'*Industrial Relations Commission* devra se servir d'un *secret ballot*. Mais ce n'est pas *compulsory*, et la Commission des relations industrielles a jugé qu'il serait trop politique de faire un tel vote par bulletin secret. C'est pourquoi nous, nous estimons qu'il faudrait imposer cela, il faudrait empêcher quelque manipulation, quelque pression politique que ce soit, permettre aux travailleurs d'exprimer leur choix. Cela vient rejoindre, je le dis surtout à l'intention du ministre des finances cette fois-ci, mais aussi le Premier ministre. Il faut bien réaliser comment fonctionnent les choses. Si un syndicat est reconnu, il est à la table des négociations, il est amené à prendre connaissance des faits, des réalités, on lui soumet des *balance sheets*, il discute des *balance sheets*, etc. mais quand un syndicat, comme la *Sugar Industry Labourers' Union* et la *Union of Artisans of the Sugar Industry*, est systématiquement boycotté, alors qu'il était reconnu et qu'il est toujours majoritaire, ce syndicat ne peut pas dialoguer avec le patronat, quelle est la tentation ? La tentation est naturellement de demander des augmentations de salaires fortes puisqu'on n'est pas devant les faits, on ne discute pas les *balance sheets*, on n'a pas des réunions régulières avec le patronat. Et dans le cas de la fermeture de Solitude et de Réunion la réaction immédiate des syndicats, qui ne discutent pas avec le patronat, la réaction immédiate est de dire non tout de suite avant même d'avoir pris connaissance des faits. Alors, j'estime donc, que l'*Industrial Relations Act* doit être amendé, et qu'une clause doit prévoir que dans les cas de *recognition* un *secret ballot* tranchera, permettra aux travailleurs de se prononcer.

Je passe au quatrième volet de mon intervention, M. le président, la politique étrangère, sujet sur lequel s'est étendu

hier le président du parti travailliste. Là, comme l'a dit le *leader* de l'Opposition, il fait nul doute que les intentions déclarées dans le discours du Trône sont plus que louables. Participer à fond au fonctionnement de l'OUA, la libération du continent africain, participer à fond au mouvement des pays non-alignés, "*work closely with its neighbours*", faire de l'Océan Indien une zone de paix, participer au dialogue ou plutôt à l'affrontement Nord/Sud au profit du sud sous-développé, participer aux discussions ACP/CEE au profit des pays ACP, tout cela est plus que louable. Ce que nous nous considérons obligés de rappeler, c'est que la réalité contredit cela. Malgré que le Parti travailliste, à travers son président et son secrétaire général, ait demandé à participer à la conférence des partis et organisations progressistes des îles du sud ouest de l'Océan Indien. Malgré le récent voyage du Premier ministre et d'une délégation ministérielle en Libye, malgré la déclaration positive — et je félicite le Premier ministre de l'avoir faite, rapidement hier — en faveur du peuple palestinien, nous sommes obligés d'attirer l'attention sur un certain nombre de contradictions, et sur un certain nombre pour nous de positions qui ne sont pas acceptables. Je pense que certains sont en train d'essayer de changer la politique étrangère du Gouvernement. Très bien, très louable effort qui se traduit par les mots utilisés, donc, dans le discours du Trône. Mais, les mentalités ne changent pas aussi facilement, et certaines réactions que nous avons vues ici même ces derniers jours nous permettent de le constater. En effet, premièrement, au moment même où le discours du Trône déclare que l'île Maurice va participer pleinement au mouvement des pays non-alignés, au moment même où l'île Maurice établit des relations diplomatiques avec Cuba, au moment donc où mon ami l'ambassadeur posté à Tana-

narive, Cardozo, viendra visiter l'île Maurice, c'est précisément à ce moment que le ministre des affaires étrangères a choisi, il y a à peine quelques jours, pour s'attaquer à Cuba, pour poser la question "Cuba non-aligned?" sur un ton agressif qui n'était pas nécessaire dans ce contexte. Nous savons tous que Cuba a les positions que Cuba a. La coïncidence veut que le mouvement des pays non-alignés se réunissent au sommet cette année à Cuba. Nous demandons de ce côté de la Chambre que le Premier ministre se rende à Cuba pas parceque c'est Cuba, mais parceque c'est la conférence au sommet des non-alignés. Ils se réuniront ailleurs à un autre moment. Si on s'y rend pour critiquer le non-alignement — ce n'est pas aussi simple que ça — mais l'alignement de Cuba, faites-le, si c'est votre conviction, faites-le, c'est la note que Cuba n'est pas suffisamment non-aligné, mais ne boycottez pas, et n'attaquez pas sans explication Cuba au moment où vous établissez des relations diplomatiques officielles. Je dois faire remarquer que cela, que quand même l'île Maurice aura fait bien du chemin — je regardais ce matin même, j'ai oublié d'apporter le journal en question, je crois que c'était à la veille de l'élection partielle de Vacoas-Phoenix, une belle photo dans le journal travailliste "Nation" une photo de Guy Simon, ministre des affaires étrangères des Seychelles, de moi-même, et moi je suis entre Guy Simon et un ami personnel à moi, Cardozo, qui est ambassadeur à Madagascar de Cuba et qui sera donc accrédité auprès de l'île Maurice, et toute une tartine, "Subversion dans l'Océan Indien", et le pauvre Cardozo n'en a pas cru ses yeux lorsque je lui ai porté le journal, "le pauvre Cardozo qui est l'agent numéro 1 de la déstabilisation communiste", tout ça aujourd'hui est réduit à quoi? Heureusement à rien du tout dans la mesure où ce sera, ce même

déstabilisateur professionnel qui va venir à l'île Maurice représenter officiellement le Gouvernement de Cuba.

Deuxième point où nous constatons un désaccord ou plutôt une contradiction...

The Prime Minister : Avec Georges Marchais aussi.

An hon. Member : Marchais a demandé le retour de Tromelin, ne parlez pas de Marchais ! Marchais est le stabilisateur !

Mr. Béranger : I'll come to that.

J'en viens au deuxième point, le Moyen Orient. Oublions les faux pas passés, ce n'était pas des pas dans la bonne direction, plutôt dans la mauvaise direction mais oublions cela. Oublions les félicitations, l'appui officiel à Camp David, au voyage de Sadate à Jérusalem etc. Ça c'est le passé. C'est avant le grand voyage en Libye. Oublions aussi les félicitations empressées au pauvre Bhaktiar en Iran. Oublions cela, venons à la situation actuelle où le ministre des affaires étrangères a jugé bon de déclarer — pour une fois il a essayé de ne pas dire beaucoup, il a dit une petite phrase, naturellement pas la bonne — que le traité de paix qui vient d'être signé est un pas dans la bonne direction. Chaque ministre a la dignité qu'il a. La déclaration d'hier du Premier ministre, je laisse le soin au ministre des affaires étrangères de la comparer au pas dans la bonne direction qu'il avait jugé nécessaire de prendre à peine une semaine plus tôt. Mais enfin, dans le Moyen Orient le tir est rectifié. C'est très bien mais j'espère quand même que ce ne sera pas simplement quelque vœu pieux, qu'une déclaration comme ça. Le Gouvernement devrait faire tout ce qu'il peut aux Nations Unies, à l'OUA, ici-même vis-à-

vis des Etats Unis pour obtenir d'abord que tous les territoires occupés par Israël après 1967 soient évacués, que Jérusalem en particulier retourne à son statut d'avant 1967, que le peuple palestinien ait un état, ait une terre, ait un pays à lui. J'estime donc qu'il faut que le Gouvernement, quoique l'île Maurice soit un petit pays, fasse pression dans cette direction. Sur l'océan indien, nous considérons choquant de ce côté de la Chambre qu'après les événements en Iran, le Président René d'un tout petit pays de moins de 100,000 habitants, comparé à notre pays d'un million d'habitants, que le Président René le premier ait réagi et envoyé un message au Président Carter pour protester contre la décision américaine d'intensifier sa présence militaire, pour demander qu'il n'y ait pas une nouvelle flotte de guerre américaine postée dans l'océan indien. Le Président René du petit pays seychellois a le premier réagi. Le Président Ratsiraka a réagi lui aussi et a envoyé lui aussi un message de solidarité au Président René et est intervenu auprès du Président Carter mais l'île Maurice n'a pas réagi à ce jour. Aucune réaction, la servilité habituelle ! Là je suis obligé de venir m'étendre quelque peu sur ce que le président du parti travailliste a dit, sur le cours d'histoire absolument faussée que le président du parti travailliste a jugé utile de nous faire hier. Je n'avais pas l'intention de m'étendre là-dessus mais le président du parti travailliste l'ayant fait, je suis obligé de réfuter ce qu'il a dit et de mettre les faits devant la Chambre.

Le président du parti travailliste est venu nous dire, en quelques mots, d'abord en 1965 le Gouvernement mauricien d'alors, le parti travailliste essentiellement, ne pouvait rien faire. Deuxièmement, qu'il avait été entendu dès le départ, que le Premier ministre et le ministre des finances avaient compris dès le départ, qu'il s'agirait

d'une base de communications, un point c'est tout et ensuite, à partir de petites coupures de différents journaux il a essayé de prouver que le parti travailliste a pris position comme il fallait le prendre en ce qui concerne l'océan indien. Je regrette, mais cela n'est pas la vérité historique. Revenons donc aux choses sérieuses. 1965, l'archipel des Chagos est détaché de l'île Maurice de même que certaines îles seychelloises pour former le *British Indian Ocean Territory*. Ce n'est pas sérieux de réagir à partir de coupures de presse. Lisons plutôt ce qui est déclaré à l'Assemblée Législative le 14 décembre 1975 en réponse à une question de Monsieur J. R. Rey, Monsieur Robert Rey donc, qui n'est pas présent, député de Moka à cette occasion. J'ai pris cela au Secrétariat il y a déjà plus de cinq ans parcequ'entre temps nous nous sommes renseignés, — le Secrétariat de la Chambre nous l'a communiqué "Extract from Debates of 14th December, 1965. Mr. Forget on behalf of the Premier and Minister of Finance tabled a reply to a parliamentary question." Donc ça c'est sur le premier point que le Gouvernement ne pouvait rien faire, que Diégo et les autres îles ont été détachés et que nous ne pouvons rien faire. Le ministre qui remplace donc Sir Seewoosagar Ramgoolam, pas encore "Sir" en ce temps là, dépose sur la table la réponse à la question et il dit ceci : "In reply to a parliamentary question, the Secretary of State made the following statement in the House of Commons on Wednesday November the 10th, "With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order-in-Council made on the 8th November."

Voilà la vérité et d'ailleurs le Premier ministre l'a dit ici, je le citerai tout à

l'heure. Je le répète " *With the agreement of the Governments of Mauritius and the Seychelles etc.*" L'accord du Gouvernement mauricien a été obtenu, le Gouvernement d'alors, le Gouvernement du parti travailliste. Premier point donc, cela. Le premier ministre a eu le temps : 1965, 1967, 1968, 1969 on n'entend pas grand'chose sauf en ce qui concerne le PMSD — je viendrai là-dessus tout à l'heure. Mais finalement à l'Assemblée, le 26 juin 1974 en réponse à Dev Virah Sawmy, dans cette Assemblée même, le Premier ministre, Sir Seewoosagur Ramgoolam parlant de Diégo Garcia, dit ceci : " *The Government of Mauritius was nevertheless informed after we had discussed in England that this had taken place — c'est-à-dire le détachement des îles — and we gave our consent to it.*" Les mots prononcés par le Premier ministre dans le Hansard officiel. " *It was not done like this. But the day it is not required it will revert to Mauritius. But Mauritius has reserved its mineral rights, fishing rights and landing rights — je viendrai là-dessus tout à l'heure, dans une réponse à une question parlementaire il répond exactement le contraire, il y a peine quelques mois — landing rights and certain other things that go to complete in other words some of the sovereignty which obtained before on that island. That is the position. Even if we did not want to detach it I think — un Premier ministre parlant de l'intégrité territoriale de son pays — even if we did not want to detach it — avant il a dit "we gave our consent to it" catégoriquement — even if we did not want to detach it I think from the legal point of view Great Britain was entitled to make arrangements as she thought fit and proper. This in principle was agreed even by the PMSD who was in the Opposition at the time and we had consultations etc.*" D'abord, il vient dire catégoriquement que le parti

travailliste donna son *consent* au détachement de ces îles et en fait de quelle loi parlons-nous ? Vous rirez peut-être mais ça fait des années que j'ai demandé au secrétariat de cette Chambre de me faire avoir copie. C'est à partir de ce petit bout de papier. C'est tout le texte de loi qui a permis au Gouvernement britannique de détacher tous ces territoires de l'île Maurice. C'est tout. Le *Colonial Boundaries Act* de 1895 et que dit le *Colonial Boundaries Act* ? " *Alteration of boundaries of Colony: Where the Boundaries of a Colony have etc etc.*" on peut changer " *provided (2me clause) that the consent of a self-governing Colony shall be required for the alteration of the boundaries thereof*". En d'autres mots, non seulement, le Gouvernement, le parti travailliste d'alors avait les moyens même légaux de protester mais ce n'était pas une protestation légale qui s'imposait. C'est en fait une protestation politique et le Premier ministre a au moins eu la décence de dire qu'il donna son *consent*. D'après mes renseignements c'est uniquement le Premier ministre et le ministre des finances qui furent associés aux discussions avec le Premier ministre d'alors, Sir Harold Wilson. Donc, le point-clé c'est qu'ils donnèrent, le parti travailliste donna, son *consent*. Mais je vais plus loin. Puisque le Premier...

The Prime Minister : We had no choice.

Mr. Bérenger : You had a choice.

Mais je vais plus loin. Après que le 27 avril 1975, lorsque les Anglais s'en vont, on a honte en relisant tout ça. Seulement le président du parti travailliste choisit les journaux qu'il lit. "Maurice regrette le départ des Britanniques" En Avril 1975, lorsque les Britanniques quittent le HMS Mauritius et s'en vont. " *It*

is a tearing away of hearts", a déclaré hier Sir Seewoosagur, Premier ministre en invoquant le retrait du HMS Mauritius. Sir Seewoosagur a déclaré qu'il aurait souhaité qu'une telle décision ne fût jamais prise". Ce n'est pas *Le Militant* ou *Le Peuple*, mais *Le Nation*, journal travailliste qui rapporte les cérémonies déchirantes "a tearing of hearts". Ça, c'est le 27 avril 1975, quelques mois plus tard — puisque le président du parti travailliste aime collectionner les coupures de journaux, le 26 septembre, 1975 "Conférence de Sir Seewoosagur Ramgoolam à Londres". Je cite *l'Express* du 26 septembre 1975. Titre : "La Grande Bretagne a le droit de construire une base à Diégo" Texte : "La Grande Bretagne a le droit souverain de faire construire dans l'îlot de Diégo Garcia une base aéro-navale pour le compte des Etats Unis." Le reste suit. „Mais tous les pays riverains de l'océan indien espèrent qu'il sera possible de transformer cet océan en une zone de paix, a déclaré mercredi le Premier ministre, Sir Seewoosagur Ramgoolam" rapporte l'AFP. En d'autres mots, il reconnaît le droit souverain aux Anglais de faire ce qu'ils veulent de Diégo Garcia et ensuite on va venir nous citer je ne sais combien de bouts d'interviews raccolés ci et là. Voilà les faits. On ne peut pas réfuter, qu'en 1965 ces îles furent détachées de l'île Maurice "in agreement with the Labour Party, with the Government" d'alors, que le Gouvernement avait les moyens non seulement politiques mais légaux de le contester et qu'ils ne l'ont pas fait.

Maintenant je passe au deuxième point que il fut toujours clair au dire du parti travailliste, qu'il ne pouvait s'agir que d'une base de communications. Lisons le même texte que l'*Acting Prime Minister*, l'hon. Forget, déclare à cette Chambre.

Il continue "It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments". Dès 1965, dès le 14 décembre 1965. Et plus loin "If the British Government decides that the Chagos Archipelago is no longer required for defence purposes, the islands will be returned to Mauritius." "Communications", cherchez où vous voulez, il n'y a pas, on ne parle pas de "Communications Centre". Le texte officiel lu par l'*Acting Prime Minister* ici parle lui-même de "defence purposes". D'ailleurs, j'ai pris la peine de relire tous les journaux de l'époque. A partir du 9 août, le *Mauricien* pose des questions "La question d'une base anglo-mauricienne à Diégo serait actuellement la clé de notre avenir constitutionnel". Le 5 octobre, feu Jules Kœnig déclare à propos de la base „Je ne sais rien qui puisse être publié. Les conclusions sont au stade confidentiel." Déclaration de feu Jules Kœnig au journal *Le Mauricien*. Il y a plus : le 6 novembre, meeting PMSD du 5 novembre, rapport le 6, à Rose Hill. Je cite tel quel ce que *Le Mauricien* rapporte : "Un membre du public — 1965 toujours là, toujours en pleine conférence constitutionnelle — Charles Gaëtan Duval parle „Un membre du public : Parlez-nous de la base. Quelqu'un qui crie dans la foule. Monsieur Duval dit qu'il ne peut révéler les secrets du Conseil des ministres. "Personnellement, Monsieur Duval n'est ni contre les Américains ni contre les Anglais. Il réclame d'ailleurs une forme d'association, l'installation d'une base n'est pas sans risque mais il se déclare d'accord pour une base si d'abord ils obtiennent un prix de sucre et deuxièmement un contingent d'émigrants. Donc, le PMSD lui-même reconnaît que c'est d'une base qu'on parle et que cela présente des dangers pour l'avenir mais on est encore en train de marchander

émigration, quota de sucre. Ça continue et, au cours d'une conférence de presse que tient le PMSD immédiatement après la rupture de la coalition d'alors, le 12 novembre, Conférence de Presse du PMSD. "Je tiens à déclarer", Jules Kœnig parle, rapporté par *Le Mauricien*, "Je tiens à déclarer de la façon la plus formelle que le PMSD n'est pas contre le principe de céder les Chagos, ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident — et là on joue sur les mots — le PMSD en approuve le principe ; il est en désaccord sur les termes et les conditions de cette cession". Duval, comme toujours, les pieds dans le plat ajoute, Duval est lui aussi d'accord en principe et ajoute, "Si l'Angleterre et les USA... n'avaient pas d'argent, l'île Maurice leur aurait donné la base." Qu'on ne vienne pas fausser les faits historiques. Tout cela montre que non seulement le parti travailliste, mais que le PMSD aussi était parfaitement conscient que c'était une base *for defence purposes* et pas seulement de communications et que, il y a eu en fait un faux pas historique — cela arrive à tout le monde, on peut demander que le manque d'expérience entre en considération mais qu'on n'essaie pas de fausser la vérité jusqu'à la fin de l'histoire finalement. Tout à l'heure j'entendais le ministre des affaires étrangères dire "Correct, Correct" quand je lisais, le Premier Ministre disant à la Chambre ici le 26 juin 1974 que l'île Maurice avait gardé ses *landing rights*, entre autres, à Diégo Garcia. En réponse à une question parlementaire ici à la Chambre, Question B 635, de l'Hon. Amédée Darga, qui demande "... state if Mauritius has retained its landing rights over the island, state if there has been any breach of agreement etc." Le Premier Ministre lui-même répond "Sir, the reply to parts 1 and 2 c.à.d. landing rights, is generally

negative, because it is not our territory although the plea was made during the constitutional conference, that any plane in difficulty should get the right of landing ; hence, there is no breach of any agreement". "It is not our territory ; we don't have landing rights", et puis ici, on nous dit "correct, correct" comme si l'île Maurice avait gardé ses *landing rights*.

Le député Finlay Salesse, Question B/510 "Will the Prime Minister give a list of all territories which constitute the State of Mauritius". Je me demande si le Premier Ministre, je sais qu'il est débordé de travail, mais avant de mettre des choses pareilles sur papier, est-ce qu'on ne peut pas réfléchir ? On lui demande une liste "of all territories which constitute the State of Mauritius" et il donne la liste, "Round and Flat Islands, Rodrigues, Agalega, Tromelin, Cargados Carajos Archipelago", et Chagos Archipelago pas question. Vous savez que le Cargados Carajos Archipelago c'est St. Brandon etc. Lui, en tant que Premier Ministre il donne une réponse parlementaire, il exclut lui, Diégo Garcia alors qu'il dit ailleurs que cela nous sera retourné lorsqu'on n'en aura plus besoin. En d'autres mots, *he builds up the case against the return of Diégo Garcia to Mauritius*. Naturellement Sir Harold Walter n'a pas manqué lui aussi une occasion de mettre les pieds dans le plat. Autre question, cette fois-ci, de James Burty David, président du parti travailliste, Question B/760, asking "the Minister of External Affairs whether he will consider the advisability of arranging for a delegation of members of the Legislative Assembly to visit Diégo Garcia. If not, why not ?" "It is hardly possible to arrange any sort of visit to any territory which is not within this country's jurisdiction". Donc ce n'est pas notre territoire, c'est en dehors de notre juridiction. Je laisse au prési-

dent du parti travailliste le soin de se retrouver. Pour conclure, je rappellerai pour ceux qui nous disent qu'on n'a pas vendu Diégo Garcia, je rappellerai que le *Financial Return*, c.à.d. le *Financial Report* — je crois que tous les membres savent que chaque année il y a les *Estimates*, et puis après une année d'exercice financier, l'*Accountant General* dépose son rapport pour l'année écoulée, il certifie que les sommes ont été dépensées ; telle somme, telle somme etc. Il certifie, en tant qu'*Accountant General*. Dans le rapport de l'*Accountant General* donc, pour l'année 1965-66, *Statement (G) Capital Revenue, Head L15 Miscellaneous — Sub-heading 4 — Sale of Chagos Island — 40 millions of rupees*. Donc, le Gouvernement lui-même, dans ses propres comptes financiers, a fait inclure 40 millions de roupies, représentant *the sale*, la vente, pas la cession, mais *the sale*. Donc je crois, M. le président, qu'il était nécessaire d'être un petit peu long, pour bien préciser les choses, et je crois que l'heure est arrivée pour le parti travailliste, au nom du bien du pays, et de son intégrité pour une fois, de faire son *mea culpa* et de se joindre aux autres pour obtenir que la base de Diégo Garcia, soit démantelée tout de suite et que l'île de Diégo Garcia soit rendue à l'île Maurice dans les plus brefs délais.

Pendant que je suis sur cette question de l'océan indien, je parlerai aussi donc de Tromelin, et de Saya de Malha rapidement. Dans le cas de Tromelin, nous nous élevons contre la déclaration faite par le Ministre des affaires étrangères. Nous ne pouvons pas accepter sa suggestion d'un tribunal international — je me demande si le Premier Ministre lui a donné le feu vert pour ça — nous sommes ici au cœur de l'océan indien ; Madagascar est à côté, les Seychelles sont là ; il y a une géopolitique explosive dans notre

région que le président du parti travailliste lui-même souligne le premier. La géopolitique, la décolonisation exige que ces îles soient rendues à Madagascar ou à l'île Maurice. Dans le cas de Tromelin, Madagascar a reconnu officiellement que Tromelin devrait retourner — à moi le Président Ratsiraka a dit " Nous n'allons quand même pas nous battre entre nous. L'important est que la France ne reste pas dans cet océan indien à travers des mini-colonies pareilles ". Le Président Ratsiraka m'a dit à moi donc, " Maurice revendique Tromelin, nous revendiquons Les Glorieuses, Bassas da India, Juan de Nova ". Est-ce que nous pouvons accepter que sur la base de pseudo-légalisme, la France transfère Madagascar à partir de tout un chapelet d'îles. Ce n'est pas sur le terrain légal qu'il faut se battre ; même le terrain légal est solide ; mais ce n'est pas sur le terrain légal qu'il faut se battre, mais sur le terrain géopolitique, sur le terrain diplomatique. Je demande donc au Gouvernement, de faire un pas dans la bonne direction pour de vrai, pour une fois de corriger le tir, de ne pas suivre cette ligne d'un tribunal international, avec un juge international etc. mais plutôt de s'associer aux Seychelles, à Madagascar, au Mozambique, à la Tanzanie, aux pays de la région, pour exiger que Tromelin soit rendu à l'île Maurice et que Juan de Nova, Bassas de India et Les Glorieuses soient rendus à Madagascar. Il est révoltant que tout à l'heure — encore une fois c'est la nature profonde du réactionnaire qui parle, il est étonnant qu'au moment où Ratsiraka prend position officiellement en faveur du retour de ces îles à Madagascar et à Maurice, au moment où Georges Marchais, Secrétaire-Général du Parti Communiste français, à la Réunion — vous savez que Tromelin dépend de la Réunion administrativement, le Préfet de la Réunion administre Tromelin, notre

territoire — Georges Marchais vient faire la leçon à Sir Harold Walter, à la Réunion — et lui se permet ici au lieu de se servir de cet argument, au lieu de prévoir l'avenir où il est inévitable que la Gauche arrive au pouvoir en France, à ce moment-là il faudra déterrer cette déclaration du Secrétaire-Général du Parti Communiste et le lui mettre sous le nez pour obtenir que Tromelin nous soit rendu. Au lieu de cela, on se moque de Georges Marchais, on fait de l'ironie aux propos de Georges Marchais. Donc, nous demandons en ce qui concerne Tromelin, que le Gouvernement ...

(Interruption)

Mr. Bérenger : If you don't even know what you say, it's not my fault.

Sir Harold Walter : Je n'ai rien dit.

M. Bérenger : Pour une fois je vous félicite.

Je passe maintenant à Saya de Malha. Sur Saya de Malha, j'ai entendu avec intérêt, lorsque mon collègue Doongoor parlait, j'ai entendu avec intérêt, quoique cela n'a pas été rendu public, le ministre des affaires étrangères dire, "D'après ce que les Soviétiques ont déclaré..." Qu'ont déclaré les Soviétiques ? Nous avons dénoncé les Soviétiques. Je me souviens d'un grand placard sur neuf colonnes dans *Le Militant* — Pillage des bancs de Saya de Malha et de Nazareth — Les coupables : Coréens, Japonais, Soviétiques" C'était resté dans la gorge des Soviétiques, en passant. Qu'ont dit les Soviétiques ? Les Soviétiques ont dit "Nous pêchons sur Saya de Malha ; en dehors de la zone des 200 milles". Or tout le monde sait, enfin, plutôt dans le Gouvernement, très peu savent mais tout le monde ailleurs sait que quand

on mesure la zone de 200 milles ...

(Interruption)

— je vais vous prouver comment vous ne savez pas, dans quelques minutes — quand on mesure la zone de 200 milles à partir d'Agaléga, dernier territoire mauricien, le territoire mauricien le plus rapproché des bancs de Saya de Malha, lorsqu'on mesure la zone de 200 milles, nous coupons à peu près un dixième des bancs de Saya de Malha, moins d'un dixième. Tout le reste tombe en dehors de la zone des 200 milles. Quand on coupe 200 milles, à partir de Coetivy, la dernière île seychelloise la plus rapprochée des bancs de Saya de Malha, on coupe encore un plus petit bout, presque rien des bancs de Saya de Malha. Ce qui veut dire que la vérité, est que 90 p. 100 des bancs de Saya de Malha tombe en dehors des 200 milles. Qu'est-ce que nous sommes en train de dire ? Nous sommes en train de dire nous, que l'île Maurice et les Seychelles ont des revendications sur les bancs de Saya de Malha, en dehors des 200 milles, non pas en se basant sur le concept des 200 milles mais sur le concept du plateau continental et des eaux historiques, du droit historique sur certaines eaux de cette région, mais malheureusement la vérité nous oblige de reconnaître ces deux autres concepts. La zone de 200 milles est aujourd'hui acceptée par les Nations Unies. La conférence n'a pas encore terminé ses travaux. Mais je pense que le ministre des affaires étrangères est suffisamment informé pour savoir que le concept des 200 milles est accepté, ça, c'est un acquis, quoique ce ne soit pas encore officiellement dans un texte des Nations Unies, mais tout le monde l'accepte, cette zone. Mais les deux autres concepts du plateau continental et des eaux historiques ne sont pas encore

région de l'océan indien, mais en même temps nous disons que ce pays ne sortira pas — et cela le discours du Trône aurait dû l'avoir dit clairement — ce pays ne sortira pas de la situation présente s'il ne prend pas un nouveau départ. Pour cela pour nous, quelles conditions doivent être remplies ? D'abord, je le répète, que l'exemple vienne d'en haut, réduire le nombre de ministres, réduire symboliquement ne serait-ce les salaires des ministres, abolir les privilèges de *duy free*, éliminer les scandales, révoquer les nominations scandaleuses dans les ambassades, arrêter les ingérences politiques dans l'administration, le protectionisme, la politique des petits copains. L'exemple doit d'abord venir d'en haut, chaque jour que nous perdons est un drame pour le pays. L'exemple vient d'en haut d'abord. Deuxièmement, il faut un Gouvernement en lequel les travailleurs, les syndicats se reconnaissent, il faut un Gouvernement en lequel d'abord les syndicats se reconnaissent, un Gouvernement qui révoquera l'IRA, qui le remplacera par un texte de loi permettant la démocratie industrielle, qui reformera les entreprises, qui donnera le vrai pouvoir aux salariés, troisièmement, cela vient rejoindre ce que mon Collègue, Rajeev Servansingh avait dit sur le *self-reliance*, troisièmement il faudra promouvoir un nationalisme sain, mobilisateur, que tout ce peuple mauricien se sente un peuple, une nation, en marche vers un avenir. Quatrièmement, qu'il faut qu'il y ait étape par étape avec les nationalisations, les réformes fiscales, la démocratisation et la décommunisation de la vie politique en général, il faut qu'il y ait un programme socialiste sur lequel s'appuierait un tel Gouvernement. Ce n'est que dans ces conditions que, de notre point de vue, on pourra parler de relance de la production, de relance de la productivité. Nous constatons malheu-

reusement que le Gouvernement actuel ne peut pas le faire. Je le dis avec beaucoup de chagrin dans le cœur, nous constatons aussi qu'il nous serait impossible nous autres d'entrer au Gouvernement actuel et de résussir à faire cela. Nous entrerions au Gouvernement pour devenir des ministres, nous ferions certainement mieux que la plupart des ministres, certainement, mais le pays ne prendrait pas un nouveau départ, il n'y aurait pas cette relance, ce nouveau départ du pays. C'est pourquoi nous disons nous entrons au Gouvernement, cela ne change en rien fondamentalement au sort du pays, c'est pourquoi nous resterons donc dans l'Opposition. Mais nous demandons au Gouvernement soit de prendre ce chemin, mais nous considérons qu'il ne peut pas prendre ce chemin, nous considérons qu'il est condamné, qu'il est prisonnier de ses différences de classe, qu'il est prisonnier de ses choix politiques passés, qu'il ne peut pas le faire. Donc nous considérons, le cœur lourd, que dans le pays la situation va aller s'empirant, chômage, endettement, dévaluation possible, explosion sociale, dans un an, deux ans, trois ans. C'est dramatique, mais nous sommes en train d'évoluer à rebours de la situation 1969/70 où le chômage était explosif, la situation était catastrophique, le prix du sucre nous a permis d'aller vers une situation d'emploi, de création d'emplois et de chômage camouflé, parceque cela aussi il faut le dire le prix du sucre nous a permis de camoufler le chômage avec des baisses de productivité qui s'ensuivent, aujourd'hui nous sommes dans l'évolution inverse, nous allons vers la catastrophe. C'est pourquoi non pas au nom du parti, mais au nom du pays, nous estimons étant donné que nous sommes persuadés que le Gouvernement ne peut pas sortir le pays de la situation où il est, ne peut pas lui permettre de prendre un nouveau

départ, nous considérons que nous ne pouvons pas décemment vis-à-vis de notre moral, vis-à-vis de nos engagements, vis-à-vis du pays, et vis-à-vis de l'avenir de ce pays, que nous ne pouvons pas entrer au Gouvernement parceque nous étoufferions dans un carcan qui mène le pays vers la catastrophe, nous estimons étant donné que le Gouvernement n'a plus véritablement une majorité, étant donné les méthodes abjectes dont nous venons d'être témoins, et qui font qu'à Beau Bassin/Rose Hill ce qui se passe, met en jeu l'avenir du pays lui-même, est extrêmement grave pour tout le pays, et nous considérons troisièmement étant donné la situation dramatique qui se développe du côté de l'économie, du côté de l'éducation, et en termes de politique intérieure aussi, nous estimons qu'à ce stade il serait préférable de permettre à la population mauricienne de se prononcer. Qu'on aille donc à de nouvelles élections générales, que la population se prononce, d'un côté ou de l'autre, son verdict finalement aura force de loi et au moins, le pays, souhaitons-le, pourra respirer après cela.

Voilà donc ce que nous estimons de ce côté de la Chambre ce que j'estime — j'ai été très long — de ce côté de la Chambre que ce discours du Trône devrait contenir, mais que malheureusement il ne contient pas.

Merci, M. le président.

→ **Mr. C. Mourba** (First Member for Port Louis North and Montagne Longue) : Mr. Speaker, Sir, of course, I shall not be as long as my Friend has been. I shall try to be as brief as I can and before I begin my speech, Mr. Speaker, Sir, I would like to congratulate the Third Member for Quartier Militaire and Moka for his last intervention because I consider his intervention to be an able one, a clear

one and a courageous one. Sir, in fact too much has been said upon our foreign relationship. The hon. First Member for Belle Rose and Quatre Bornes had spared no effort to speak on Tromelin, Diégo Garcia and so on.

I am aware that my hon. Friend, the First Member for Belle Rose and Quatre Bornes is not a lawyer but he is flanked on all sides by fairly good lawyers. For the hon. First Member for Belle Rose and Quatre Bornes to have said legally, to have insinuated at least, if legally enough Mauritius and the people of Mauritius through its representatives could have protested against the incidence of tearing away Diégo Garcia, Sir, anyone with an inkling of international law, I mean, public international law, not private international law which has to do with conflict of laws, having to do with marriage etc. I am saying, Sir, anyone with an inkling of public international law would ask oneself the question : was Mauritius at that particular moment in our history a sovereign territory ? Mauritius was not independent. Mauritius was a dependent land and legally speaking part of the extra territorial basis of U.K. At that moment in our history, we had two courses to follow. We could either have followed the legal procedure that is attended upon by the force of negotiation at diplomatic levels or we could have, as a people, declared war and opened war against Great Britain. We had only two courses open to the island which is a very small one at that, either we follow diplomatic courses at procedural levels or we declare war against Great Britain. And at that time guerilla warfare and all that was not yet imported into our local political parlance. In my opinion the people of the day who had limited powers because powers were being wielded from Westminster, the

men of the day did what they could. They had a very narrow space to manoeuvre. They did not have the opportunity to do otherwise; they were not speaking as representatives of an independent nation.

Sir, even if those men wanted to go before an international forum, we know what the International Court of Justice is, apart from declaratory judgment, apart from the fact of giving legal opinions on certain factual data — we know, going to the International Court of Justice would not have meant much; but it is very good to stand up, to speak up and to say that it could all have been done in a better way. I am only saying at least the hon. Second Member for Belle Rose and Quatre Bornes, in an attempt not to defend certain people, but to situate history in its right perspective, has made certain quotations from certain valuable newspapers, the hon. Second Member for Belle Rose and Quatre Bornes has tried and successfully so, I believe, to situate the problem in its real perspective. No one in Mauritius, no one on this side of the House is happy with the actual predicament in the Indian Ocean. What should be congratulated is the fact that at least in 1964/65, we were not sovereign, we were not independent. Things were forced upon us but to-day we have taken conscience of it all. The Prime Minister again and again has made public statements, both local and abroad about our position in this country. We want the Indian Ocean to remain a lake of peace, not an American lake nor a *mare sovieticum*.

I am not going to labour the Diégo Garcia problem. Anyone in this country, would have done what these men did at that time, unless it were a revolutionary party which would have taken to guerilla

warfare. And there can be no guerilla warfare in this country. All our mountains are naked and bare. A simple helicopter would catch all the guerilleros of this country. There are no objective conditions for guerilla in this country. So I am speaking to my ex-associates. In 1965 what would they have done if they were in the shoes, in the skin of the actual Prime Minister? No more, no less but I am not going to labour a point which the hon. Second Member for Belle Rose and Quatre Bornes has already done so well.

Sir, the hon. First Member for Belle Rose and Quatre Bornes has mentioned the problem of the Middle East. We are all aware that the Palestinian cause is a genuine one, it is a cause to be supported; but as a back bencher of this Government, being free to speak my personal opinion, I am saying in trying to reach a peaceful solution in the Middle East, there must be compromise on either side.

It is not a question where one side is going to invade another side to its last entrenchment. I am saying that in the Middle East, there must be a vision based on compromise, on tolerance and on mutual understanding. Although we are not 100 per cent in agreement with the Peace Treaty, I repeat, Sir, although we may not be hundred per cent in agreement with the Peace Treaty of Egypt and Israël, yet one must be bold, must be courageous enough to say that Mr. Sadate, at least one man rising against a world of many, has had the courage to take the first step. I am not congratulating him for what he did. Still less am I condemning him. But I am finding out a fact that at least Mr. Sadate of Egypt took the first step. Whether he will be thrown into the dustbin of Middle East history, I do not know, Sir, but I for one, without

engaging this Government, speaking as a backbencher, I say that I believe in a moderate attitude towards critical problems. Sir, when you have got a crisis, it is not a man with high fever who will come and solve the critical situation out of it. It is a man with a cold head. It is a man with some moderation. Everywhere in the world where moderate men have come towards crises, they have solved critical problems; but where people with high political temperament based on ideological extremism have tackled such problems they have only grafted upon one problem, a thousand ones more.

I am saying, I for one, I am not condemning Mr. Sadate. I am not congratulating him but I am saying he took the first step and others now may do the rest and finish the arduous jobs. Perhaps better than he did, perhaps he has not been reasonable at all, but follow him at least in that pursuit of peace.

Sir, having listened to the hon. First Member for Belle Rose and Quatre Bornes one would be tempted to think that we are living in a continent, full of mineral wealth, thinly populated, almost in a cold region, one would think that Mauritius is not Mauritius but we are living somewhere in a quiet cool corner with a high standard of living as in Europe. But this country, Sir, is poor, very poor. Apart from sugar, we do not have anything in terms of economic productivity. Our tea is not in economic terms, a productive commodity. Apart from sugar, we have no underground wealth. We have no mineral resources. We are walking on one leg, a monocrop economy based on sugar. We are being visited by cyclones, if not by anti-cyclones year in year out. We are a tiny speck of a country. We are small. We are not

larger than Surrey in England. And if you take a few golf courses in England, that would be enough to make Mauritius. We are not living in a big continental mass of land. It is a tiny speck. We are devoid of mineral wealth, underground resources, only sugar and this is battered by cyclonic occurrences year in and year out. And what is worse, Sir, we are living in the midst of a fragile society made up of multi-racial components.

If you have all these problems and then you have a bomb in it called literacy, — we have given free education. Our people are the most literate people in Africa. You are poor, you are over-populated, you are small, and you are highly literate. Mr. Speaker, Sir, it is no wonder that this country despite its poverty, despite its tininess is considered to be the fourth or the fifth richest country in Africa after South Africa, Libya, Gabon, and Nigeria. I repeat, Mr. Speaker, this country despite its physical tininess, its poverty of natural resources, its over-population, its multi-racial social texture, is fourth or fifth of the richest country in Africa after South Africa, Libya, Gabon and Nigeria, and to whom does the credit go? Mr. Speaker, Sir, just now the hon. First Member for Belle Rose and Quatre Bornes was speaking about the POA. But, Mr. Speaker, Sir, there are lawyers on the other side who have studied the Public Order Act. The Public Order Act does not cut only on one side. If somebody with a legal understanding reads the Public Order Act, even the Chief Justice and the Prime Minister can be arrested under the Public Order Act. I challenge any lawyer in this country to tell me if according to the Public Order Act the Chief Justice cannot be arrested in his slippers, and the Prime Minister in his pyjamas. This is in the Public Order Act. I have studied it many times. So, when

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Mauritius Legislative Assembly, *Reply to PQ No. B/967* (20 Nov. 1979)

Mr. Jagatsingh : The hon. Member is quoting from the Constitution. As far as I know, I sought legal advice and this is the advice I have got and I have given to the House.

CHA HOUSES — ALLOCATION

(No. B/964) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister of Housing, Lands & Town & Country Planning whether, in regard to the allocation of Central Housing Authority houses, he will state :-

- (1) his policy ; and
- (2) if priority will be given to the eligible persons living in Plaine Verte and Camp Yoloiff for houses built there.

Mr. E. François : Sir,

- (a) the policy is laid down in a paper which is being circulated.

(Appendix VIII)

- (b) This policy will be followed strictly.

CONSUMER COOPERATIVES

(No. B/965) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister for Prices and Consumer Protection whether he will say when essential commodities will be delivered direct to consumer co-operatives and give a list of those commodities.

Mr. Virah Sawmy : Sir, delivery will start as soon as the financial and other arrangements are completed. The essential commodities will include to begin with rice, flour, sugar, edible oil, laundry

and toilet soap, split peas and eventually cement and iron bars.

"NO PARKING" AREAS — PORT LOUIS — TOWING AWAY OF VEHICLES

(No. B/966) Mr. O. Gendoo (Third Member for Port Louis Maritime and Port Louis East) asked the Minister of Works whether, in regard to the proposed towing away of vehicles on "No Parking" areas in the commercial centre of Port Louis, he will say what decision has been taken following the recommendation of the Joint Traffic Committee of the Municipality of Port Louis.

Mr. Bussier : Sir, the matter is being discussed with the Police authorities and the Ministry of Finance, in as much as it involves purchase of new equipment and recruitment of additional personnel.

Mr Gendoo : Does the hon. Minister think that the towing away of vehicles will improve the traffic conditions in the centre of Port Louis ?

Mr. Bussier : This is being done in many countries.

DIEGO GARCIA — RETURN TO MAURITIUS

(No. B/967) Dr. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Prime Minister whether, in view of the fact that the militarization of Diégo Garcia is a serious threat to peace in the whole of the Indian Ocean, he will state :

- (1) if there are any indications that Diégo Garcia will soon be returned to Mauritius ;

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- (2) whether he will show greater political will to recuperate Diégo Garcia and whether he will make a statement thereon ;

- (3) whether he has already discussed the Diégo Garcia issue with the United States Government ;

If so, what has been the outcome of the discussion.

If not, will he initiate immediate negotiations thereon and, if not, why not ; and

- (4) whether he will say when and with whom he last discussed the Diégo Garcia issue and with what result.

The Prime Minister : Yes, Sir. The answer is as follows :

- (a) The islands will be returned to Mauritius if the need for the facilities there disappeared. How soon this will be done, I cannot say.
- (b) The Government believes that the best way of trying to recuperate Diégo Garcia is by patient diplomacy at bilateral and international levels, and no opportunity is lost towards this end.
- (c) The United States Government is aware of our stand on this issue and we shall no doubt press our view point when opportunity arises.
- (d) It is difficult to give precise dates, but whenever opportunity arose, discussions took place with the United Kingdom.

Mr. Bérenger : Sir, the last part of the question was whether he will say

when and with whom he last discussed the Diégo Garcia issue. Can the hon. Prime Minister confirm that he discussed that issue this morning with Vice Admiral Foley who has just flown to Mauritius in a military plane ?

The Prime Minister : My hon. Friend is full of irrelevancies, Sir.

MULTINATIONALS OPERATING IN MAURITIUS

(No. B/968) Dr. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Minister of Finance whether, in regard to the multinationals operating in Mauritius, he will state —

- (1) their names ;
- (2) the names of the members of the Board of Directors of each company ;
- (3) the goods they produce and the countries where they are sold ;
- (4) the nature of the control exercised by Government thereon ; and
- (5) the amount of money which they took out of the country for each of the years 1975 to date.

Sir Veerasamy Ringadoo : Sir, the information is being compiled and will be circulated as soon as possible.

PRIME MINISTER — PUBLIC ENGAGEMENTS 20.11.79

(No. B/969) Mr. G. Fokeer (Third Member for Grand Baie and Poudre d'Or) asked the Prime Minister whether he will give a list of his public engagements for Tuesday 20th November, 1979.

Annex 117

Mauritius Legislative Assembly, *The Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980)*, Committee Stage (26 June 1980)

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Motion

26 JUNE 1980

Motion

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(10.26 p.m.)

The Attorney-General and Minister of Justice (Mr. Chong Leung) : Mr. Speaker, Sir, I move that the Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980) be now read a *second* time.

This Bill seeks to amend the Interpretation and General Clauses Act 1974 by remedying certain defects which have become apparent over the years whilst at the same time making provision for certain essentially technical matters.

In the present state of our law, the definition of "State of Mauritius" or "Mauritius" does not specifically include Tromelin and the amendment proposed in the Bill seeks to remedy this defect.

Moreover questions relating to the service of process on corporations generally and their representation in Court are not free from doubt. Clauses 7 and 8 of the Bill are designed to remedy this defect by making unambiguous provisions on that particular aspect of court procedure.

In the past, the prosecution of persons for offences under several enactments has given rise to avoidable difficulties. The proposed new section 46 of the Act which is embodied in clause 9 of the Bill seeks to put the law on a more rational basis by ensuring that, although a person may be prosecuted under several enactments for the same act or omission, he will nevertheless be punished only once for offences arising out of the same act or transaction.

The Bill further provides that on the issue of any licence, permit or authority, the Government may impose terms and

conditions on the licence, permit or authority not only at the time of its issue or renewal but also during its currency.

New provision is made regarding certain corporations and other bodies. These new provisions are of an essentially technical nature. At present, certain bodies cannot operate because when they are just established, all the members thereof have not been or cannot be appointed. This Bill proposes to make provision for such bodies to operate notwithstanding vacancies when first established provided the requirements regarding quorum are satisfied.

Certain bodies may not operate in the absence of the Chairman. Provision is therefore made for these bodies to carry out their activities notwithstanding the absence of the Chairman, unless the Chairman is required to be present for the purpose of a quorum.

At present there are occasionally unavoidable delays in the reappointment of the members sitting on certain bodies. This prevents business from being transacted. This Bill therefore provides for the outgoing body to operate pending the appointment of the incoming body.

With these few remarks, Sir, I commend the Bill to the House.

Mr. Purryag rose and seconded.

(10.28 p.m.)

The Leader of the Opposition (Mr. A. Jugnauth) : Sir, this Bill again contains many provisions that are welcome by this side of the House and, there is that section 46 of the principal Act, wherein it is provided that :

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"Where a person on the same fact may be 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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Bill read a second time and committed.

**THE LABOUR (AMENDMENT) BILL
(No. XX of 1980)**

(10.42 p.m.)

The Minister of Labour and Industrial Relations (Mr. R. Peeroo): Sir, I beg to move that the Labour (Amendment) Bill be read a second time.

Sir, in 1965, the Termination of Contracts of Service Ordinance, which was afterwards incorporated in the Labour Act 1975, was amended to allow an employer to deduct from severance allowance payable to a worker the share of contributions made by the employer to any pension scheme or provident fund set up for the benefit of a worker. Since 1978 when contributions started to be made to the National Pensions Scheme, deduction of the employer's share of contributions continued to be made.

Many employees became redundant recently, particularly in the construction industry, and to those who joined just before or any time after contributions started to be made to the National Pensions Fund, practically no severance allowance was paid because the employers' share of contributions exceeded the severance allowance payable in such cases.

The Government is aware that redundant employees may face some difficulties in securing another job and that it is essential that they get a lump sum payment to tide them over their temporary financial problems.

With this aim in view, the Government has decided that an employer's share of contributions to the National Pensions

Fund will no longer be deductible from the severance allowance payable to a worker on termination of his employment. Instead, the worker will be assured payment of a severance allowance equivalent to one quarter of a month's pay for workers employed monthly, or eight days' pay for other categories of workers, for every year of continuous service with an employer.

The normal severance allowance rate of half a month or fifteen days' remuneration will continue to be paid for any period during which contributions have not been made to the National Pensions Fund. This normal rate will also be paid in full on that part of the salary of a worker on which contributions are not payable under the National Pensions Act 1976. At present, no contributions are paid on that part of the salary which is in excess of Rs. 1,200 a month.

Under the provisions of the Bill, a worker whose employment is terminated will therefore be entitled to his full severance allowance at the rate of half a month or fifteen days' pay for every year of service before he started contributing to the National Pensions Fund. The same rate of severance allowance will be payable on that part of the salary on which no contributions are made.

With regard to that part of the salary on which contributions are paid to the Fund, the worker will nevertheless be guaranteed a severance pay of a quarter month's salary or eight days' pay wages for every year of service.

There will be no change regarding contributions made to a private Occupational Scheme or Provident Fund or in cases of retirement.

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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. Chong Leung : On a point of order, Sir, when the hon. Parliamentary Secretary, Ministry of Power, Fuel & Energy proposed an amendment to include Seychelles, some Members have laughed. I do not think that this is a laughing matter.

Mr. Jugnauth : Sir, I am on my feet. I have moved an amendment and I have not finished.

The Chairman : If the hon. Member has not finished, he may continue.

Mr. Jugnauth : Sir, I will explain why I am moving this amendment; we all know that the Chagos Archipelago forms part of the territory of Mauritius.

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that, before independence was granted to this country, this part of our Mauritian territory had been excised by the British Government unilaterally. I say "unilaterally", because, as I said a moment ago, when we were having the second reading of this Bill, those who represented Mauritius then, were not representatives of a sovereign country. We were still a colony and, as we know, the British Government, before it gave independence to this country, had no right whatsoever to dismember the territory that belonged to Mauritius; for this reason, we maintain that we have all rights on the Chagos Archipelago, specially when we know, it has been said in this House and outside by the Rt. Hon. Prime Minister that, as a matter of fact, only certain rights were granted to the Britishers over these islands. Even at one time a period was mentioned, and we were told that we had reserved all our rights all round the island, over the islands; all the minerals that would be found, we were even told, could be exploited by Mauritius. The more so, we have been told that there is no written agreement whatsoever between this country and Great Britain. So far as we are aware, Sir, there is but an Order in Council which has created the British Indian Ocean Territory. Some people are speaking of Seychelles, but we know that there are some islands belonging to Seychelles, which were also excised in the same manner, but which Seychelles has recuperated and which have been given back to the State of Seychelles. Therefore, as I have said before, so far as the Opposition is concerned, we have made our position very, very clear, *vis-à-vis* the British Government and, in fact, I discussed this matter with Mr. Luce. For this reason, we are coming forward with this amendment. We know, on different occasions, there had been statements made

by the Members on the other side. There have been even campaigns made on the question of Diego Garcia, outside and for all intents and purposes, we have even been told, in the past, by the Prime Minister: "What do you expect me to do? Take a boat or to take guns and go and take Tromelin and Chagos and whatever it is?" Therefore what we are saying is that, for whatever it is worth, I think we will be asserting our rights by doing what I am suggesting: adding, to the definition of Mauritian territory the Chagos Archipelago. Because, if we, to night, reject this, I think the whole nation realises that, in so far as the recuperation of these islands in future is concerned, how difficult we are going to make our own position in the international forum and *vis-à-vis* Great Britain and the United States.

Therefore I strongly appeal to all the Members on the other side. This is not a partisan question: this is something very serious and very important, something which has to do with the sovereignty and the territory of our country. We will appeal to them to take it as seriously as possible; this vote that we will be taking tonight will be of very great importance for this country, and I hope that my Friends on the other side do realise the importance of this matter.

Mr. Bhayat : Sir, it is very sad that in this House, at this very late hour, we are taking such a serious matter so lightly. This is not a laughing matter and I hope Members will listen carefully to what we are saying because, this very week in the Lok Sabha — and the Prime Minister will be glad to hear this — this very week in the Parliament in New Delhi, a Parliamentary Question has been put by a Member of the Assembly as to what stand has Mauritius taken regarding

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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 renounce 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

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in the definition of the national territory, the Chagos Archipelago, Mr. Chairman. I know the line that will be taken is that it is understood, by the general definition that we already have, that the Chagos Archipelago forms part of our national territory. But we know that this is a matter of controversy, that tomorrow another Government might have to go to the International Court to fight this matter, to fight this case, and this is why we insist that this be included formally in the definition of the national territory. As I said, in respect for democracy, in respect for the next Government we will choose, in respect for the choice of future generations, I think we cannot fail, whether we are on this side of the House, or whether we are on the other side of the House, to add this archipelago to our definition of the national territory. Mr. Chairman, I have made my point. Thank you very much.

The Minister of Economic Planning and Development (Mr. R. Ghurburrun) : Mr. Chairman, years ago, I was the first person to have raised my voice, when I was the High Commissioner of Mauritius in New Delhi, that Mauritius should take this issue to the Hague, and I thought Mauritius had got a right to this land, and if we took the matter to the Hague, we were sure to win it. From that time to this day, I have not changed my mind. There is no doubt that, when the islands were excised, it was done through an undue influence. England was a metropolis, we were a Colony. Even all our leaders who were there, even if they consented to it, their consent was viciated, because of the relationship. The major issue was to gain independence, and therefore the consent was viciated, there was no consent at all. There is no doubt that everyone here would like this country to come back to the State of Mauritius;

but there is unfortunately — and now I am appealing to the lawyers to see the legal issue about it — it is, as yet we have a claim one day I am sure we are going to get back this country. But at the moment, it is still with Great Britain. Today we have a very valid claim; unless we would have vindicated that claim, it won't be serving any purpose, if we were merely to add it.

(Interruption)

What we want to add here is what we own, Tromelin, which has never been excised; this is why we are putting it there. But this has been excised. I don't think it would, in the long run, do any good. The point I wanted to make, not only for record here, but for those outside also, is : even if it is not included here in this Act today, let it be known to everyone that it won't cause any prejudice to a claim we may have ! It is not by a tacit acceptance that we are giving it up. Our claim is there and one day, I very much hope and I can join any number of Members when the time comes; I am prepared to go and fight this case at the Hague when the time comes ! But then, we have to have the sanction of Government. We can't go and fight a case in the Court, unless you get the sanction of the Government. But so long as this is not done, I think it would be a bit futile for us to add this.

I would ask the Opposition, which has got very able lawyers there, to consider that very calmly. I have been giving some thought to this matter; because if I was satisfied that this was going to prejudice our case in the long run, I would have voted for this; but I don't want to take any step that is going to prejudice our claim in the future. That is why I am making my point, that if we don't include

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it today, it should not be constructed as a tacit acceptance; because, I very much hope, the time is not very far away when we shall go and claim this. I am confident that we shall claim this land and this land will come back to us. Thank you, Sir.

M. Bizlall : M. le président, je me suis mis debout pour empêcher le secrétaire parlementaire de faire une gaffe au niveau du parlement. Je lui demanderai, bien humblement, de ne pas insulter la République des Seychelles en venant proposer que les Seychelles soient attachés au territoire de l'île Maurice. Il s'est mis debout, j'ai cru un instant qu'il allait venir avec cette motion.

Je voudrais attirer l'attention du ministre du plan en particulier, qui a parlé sur le *Chagos Archipelago*, en ce qui concerne son inclusion avec Tromelin et Agalega, comme territoires de l'île Maurice. M. le président, faudra-t-il se rappeler que la France a déclaré que Tromelin lui appartient, que la France a des soldats à Tromelin, que la France a fait des développements économiques à Tromelin ? Pour la France, Tromelin n'est pas un territoire mauricien, c'est un territoire français. Mais cela n'a pas empêché le Gouvernement mauricien d'inclure, avec Agalega, Tromelin comme étant partie de notre territoire. Moi je crois que la même politique adoptée par ce Gouvernement en ce qui concerne Tromelin, devrait être étendue 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 Gouverne-

ment a jugé, quant même, utile de le faire, bien que la France a exigé des droits sur Tromelin et se trouve en opposition directe avec le Gouvernement mauricien. Je vois mal comment le Gouvernement mauricien peut inclure Tromelin, et ne pas inclure l'archipel des Chagos !

(1.50 a.m.)

Mr. Doongoor : I want to remind the House — and you must remember also Mr. Chairman, you formed part of the delegation which left in 1977 for the United Nations — that at the last session of our work at the State Department, there were eleven countries represented. I voiced my opinion there concerning Diego Garcia. I stated that the occupation by the United States, of Diego Garcia, is a threat to peace in the Indian Ocean, and that it was the wish of the people and of the Government of Mauritius to recuperate that part of the territory of Mauritius, which is Diego Garcia. I did not stop there, Mr. Chairman. Recently I attended the conference held in Zambia where were present the President of the Labour Party, the Second Member for Belle Rose and Quatre Bornes, and my Friend, Mr. Fokeer. They both witnessed my stand at the conference, and heard what I said: that the occupation of Diego Garcia by the United States was resented by the Mauritian public. We don't feel, Mr. Speaker, that we are in complete security. What has been the history around the excision of Diego Garcia ? What I would like to see, and the public would like to see, is a copy of the agreement between the Mauritian Government, the British Government, and the United Nations, laid on the Table of the Legislative Assembly, so that more light be thrown on this issue. Mr. Chairman, when I mentioned that Seychelles

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also should be included in our territory, I must go far back to 1956, when I was still a student of Standard VI, when I was studying geography. I was thirteen at that time, Mr. Chairman. And through the study of geography I learnt that the dependencies of Mauritius were the Seychelles, Rodrigues — that both Mauritius and the Seychelles formed part of the territory of Mauritius, as also Diego Garcia. When I said that Seychelles should also be included in this, I did it with the intention of throwing more light on the matter, and informing Members when, how and in what circumstances Seychelles has been excised from the territory of Mauritius. Sir, not all the Members are against the retrocession of Diego Garcia. I myself, when I was in presence of this Bill, Sir, I was astounded to see...

The Chairman : I am sorry to interrupt the hon. Member, but I want to put something on record. I am given to understand that the Reporters of the Assembly have been working since 10.00 this morning. They want to help and they are extremely tired. So I am making an appeal that we should make the speeches as short as possible, to keep to the point, in order to help, so that the Reporters who are really doing a very big effort tonight, who have been put to really hard work since the beginning of this week, can cope with the work. They want to help but they ask for our collaboration. Mr. Speaker has asked me to pass on to you that piece of information. So, I make a special appeal to all Members to go straight to the point and to be short.

Mr. Doongoor : I wish also to remind hon. Members that when I recently went on a CAP Conference in Zambia, I appealed that this issue should be taken up at the Court of The Hague.

Mr. Chairman, we are not against the retrocession of Diego Garcia. We want Diego Garcia to be part and parcel of the territory of Mauritius. But we are given to understand that, after forty to fifty years, Diego Garcia will be given back to Mauritius. So, I mentioned that Seychelles also should be included, just to throw more light on it — how another dependency of Mauritius was excised.

Mr. Boodhoo : Mr. Chairman, we fully agree with the request of the Leader of the Opposition and I believe that this request will give a golden opportunity to Government to cast aside any doubt which has crept into the minds of the public.

Mr. Béranger : 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".

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The Chairman : In point of fact...

Sir Harold Walter : Wait a minute, Mr. Chairman. You ruled...

The Chairman : Please ! I have the Chair. I have the responsibility of order in this House ! Don't shout me down, please !

Sir Harold Walter : I did not shout.

The Chairman : Please ! Now, I have over-ruled the question of Seychelles. It has been shelved. The Member just alluded to it.

Sir Harold Walter : That is not the point.

The Chairman : He has not asked me to reopen the question. He has not appealed against my decision. He has simply said that it was, according to him, an insult to a sovereign country. But that is *en passant*. He is coming to the gist of the case. But I don't think the hon. Member is doing anything against the Standing Orders.

Sir Harold Walter : Mr. Chairman, if you will allow me to finish. Your ruling was based on the fact that Seychelles, being a sovereign country, and we having no sovereignty over it, the question cannot be debated. I want the same principle to be applied regarding the amendment which has been brought to this Bill. This is British Overseas Territory, excised, Mr. Chairman, by Order...

The Chairman : I am on my feet, Mr. Minister. This is why I expected you, as Minister, a long time ago to give some information to the House that it was some territory that formed part exclusively of some other territory. I was waiting for

you. You did not do it. I can't help it if the Member now has the floor and speaks about it.

Sir Harold Walter : Therefore, on a point of order, your ruling is that it does not apply, Mr. Chairman ?

The Chairman : You are coming too late !

Sir Harold Walter : There are degrees in lateness.

Mr. Bérenger : I'll have to start again because he messed the whole thing, and I am very sorry for these ladies upstairs. Je répète...

Sir Harold Walter : Sir, I wish to state, on a point of order...

Mr. Bérenger : I am not giving way. I am also up on a point of order !

The Chairman : The hon. Member has the floor, if he does not want to give the Minister the floor, the Minister will have to wait until he has finished, then he will put to me his point of order. Then I shall be able to listen to the Minister. But, for the moment, he has the floor !

M. Bérenger : Je disais, M. le président, qu'il est triste que le débat ait démarré par une insulte, appuyée par le *front bench* d'en face, Riant, ricannant, alors que nous parlons du cœur même de notre pays, alors que nous parlons d'une 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 !

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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'île 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 parce que 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 Sallesse dans une question B/510 de 1977 ou 1978 — je crois que c'est 1978 — demande au Premier ministre *whether he will state the list of all territories which constitute the State of Mauritius ?* Le Premier ministre répond :

"Sir, the following islands form part of the State of Mauritius : Mauritius and the surrounding islands, such as, Round and Flat islands, Rodrigues, Agalega, Tromelin and Cargados Carajos Archipelago".

C'est-à-dire, St. Brandon. Excluant Chagos — et ça c'est un précédent extrêmement grave, que des Français, comme Me Oraison, se permettent de nous faire la leçon, à nous, patriotes mauriciens ; ça c'est déjà un précédent grave ; ça peut être utilisé déjà contre nous, nonobstant

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 concilier ces deux choses ? Nous avons applaudi le ministre, de ce côté de la Chambre : les Chagos forment partie de l'Etat mauricien ! Ou est la logique dans tout cela ?

The Prime Minister : Fishing rights !

Mr. Bérenger : Fishing rights ! Je continue, M. le président, j'en viens à 1974 — *Hansard* du 26 juin 1974 — le Premier ministre répond :

'Mauritius has reserved its mineral rights, fishing rights and landing rights and certain other things that go to complete, in other words, some of the sovereignty which obtained before, on that island'.

Je suis d'accord que c'est confus ! Mais quand même, c'est quelque chose 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 ! Parce que, un jour, l'île Maurice exploitera — je ne parle pas du côté militaire de la chose — mais en terme de ressources agricoles, en termes de poissons, en termes de minéraux 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 Diego 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 Diego 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 pétition qu'ils ont remis au Premier

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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 répète que ce que le ministre du plan et de développement économique a dit n'est pas correct. Ce serait pire qu'un *tacit agreement* si nous votions aujourd'hui ! Ce serait pire que de ne pas avoir inclus les Tromelin ! Inclure les Tromelin, en excluant les Chagos, serait pire que n'importe quoi ! C'est pourquoi nous demandons au Gouvernement — sur cette question, au moins, puisqu'il y va du sort du pays, du territoire mauricien, du territoire national — de ne pas en faire une question de parti, de prendre l'amendement — c'est un amendement qui n'appartient pas au MMM, c'est un amendement qui appartient au pays ! Nous le mettons devant tous les partis qui sont à cette Chambre et nous proposons que ce soit le Premier ministre, lui-même, qui, au nom de l'île Maurice, propose l'amendement, M. le président !

Sir Harold Walter : Sir, I know that it is late; we are in the early hours of the morning, after a hard day's work and our nerves are at the end of their tether. Therefore, we get excited; we use invectives and we allow steam to be let off after several defeats. I am prepared to concede that on a psychological platform. But, Mr. Chairman, we are dealing here with a very important question which goes to the root of the interpretation of the law regarding the definition of the State and the law governing

such definition. I know that, to go to the philosophy of it, would go a long time. So, I will come back to it in a minute. But, before I do that, I would like to place on record that it is the second time in this House that the Prime Minister is taken to task in a personal manner !

The hon. Member, Mr. Bhayat, has considered it fit to tell the Prime Minister that, by acting in the way he acted, in the interests of the *Ilois*, he had committed an act of treason ! I know that my Prime Minister, in the Sheikh Hossen affair, has been called a murderer ! He has been called somebody who has set fire to a dwelling-house, who has treated the Police with all the names possible ! Thank God, *il y a encore des juges à Berlin !* They vindicated the head of the SSS ! Unfortunately, said under the parliamentary immunity, the Prime Minister could not do any thing about it ! It is sad that to-day this voice has been re-echoed by somebody who sits on the front bench of the MMM, treating the Prime Minister of traitor ! A man who has brought independence to this country ! Who has given forty-two years of his life to the service of this country ! Who has given an uplift to everybody here for the respect of their dignity ! Who has given free education ! Who has made them what they are to-day ! Is that the man whom you call a traitor ? When he was only acting in good faith, when he was acting in the interests of the *Ilois* ? What has happened to-day, Mr. Chairman ? Is it not the same Sheridan who has been requested to defend the interests of the *Ilois* ? So, where did the Prime Minister go wrong, Mr. Chairman ? Now, you cannot have your cake and eat it ! You cannot come and ask for compensation and say that 'I renounce all my rights to go there'

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and, in the same breath, you come here and add to a Bill a territory over which you have no sovereignty! We have been questioned, Mr. Speaker! Why Tromelin is added? Tromelin has never been excised, Mr. Chairman! As early as 1956, this Government let Tromelin on lease to Mr. Britter. In 1956, when the French wanted to operate a meteorological station there, they asked for permission from this Government and they were granted it. For historical and juridical reasons, we are standing on firm ground! But, Mr. Speaker, we do not believe *dans les mirages de la pensée idéologique de certains!* We only believe in dialogue! Tromelin is on the good way! Tromelin has been discussed at the highest possible level. The Prime Minister and the President of France! Am I to disclose here the contents of that conversation when the results are not final yet? You wait and see!

Now, Mr. Chairman, Diego Garcia: the statements of the Prime Minister have been quoted here, as if the Prime Minister has been saying a lie! What the Prime Minister has been saying all along is that at the moment that Britain excised Diego Garcia from Mauritius, it was by an Order in Council! The Order in Council was made by the masters at that time! What choice did we have? We had no choice! We had to consent to it because we were fighting alone for independence! There was nobody else supporting us on that issue! We bore the brunt! To-day everybody wants to jump on that bandwagon! Many of those sitting opposite where were they when independence was being fought? Who were those who wanted independence? To-day, independence is a nice basket of fruit and everybody wants his share out of it! Mr. Speaker, when the excision took place, it became the British Overseas

Territory and it is mentioned as such! When the discussions took place, it was made clear that the mineral rights, the fishing rights were preserved even employment of Mauritians on Diego Garcia was promised but, unfortunately, the British who discussed with us, never told us that they were going to have a military base there! What they told us was that they wanted a station for weather purposes.

They wanted a station for fuelling, for their transport and their fleet, that is all. A communications base; the British told us that. As to how the British leased it to the Americans, that's another matter. I am not going to enter into the merits and demerits of the presence of this base there, because it goes to the security of the area. So what is wrong in the answers given by the Prime Minister on Diego Garcia? Is that an act of treason? Now, it was by consent that it was excised. Even that has been mentioned to Mr. Luce when he was here only two or three weeks ago. We mentioned it at the Lusaka Conference to Lord Carrington in the presence of Mrs. Thatcher, we said: "When do you think we can get back Diego Garcia?" "Oh, you know it is on a lease, but we bear it in mind, we bear it in mind". Is that type of action, going to be conducive to a dialogue leading to the restitution of Diego when the time comes? There is no motive behind us! There is no hurry for us to get it back. We don't want to see another one coming to put himself there and say: "We want peace, but I enter Afghanistan with 80,000 soldiers"! Super powers again! I don't want to change one for the other. I don't want to be involved in it. We know why all these words are said; the louder they are said, the more beneficial they will be, we understand that. We are not going

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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 strike through which it is going. On these two principles, Mr. Chairman, I move that the question cannot be entertained.

The Chairman : Will the Minister of External Affairs say to this House whether the British, what you call it, the British Indian Ocean Territory forms part of the sovereign totally independent country or not?

Sir Harold Walter : It forms part of Great Britain and its overseas territories, just as France has *les Dom Tom*; it is part of British territory there is no getting away from it; this is a fact, and a fact that cannot be denied; no amount of red paint can make it blue! It is not receivable, Mr. Speaker, in this light, there is no point of order.

(Interruption)

There is no point of order, Mr. Speaker, any decision of the Speaker thereon shall not be opened to appeal.

(Interruption)

The Chairman : I know, I know, and I am going to take my responsibility. I have ruled that the Seychelles being a sovereign country, the question of the Third Member for Rose Belle and Grand Port cannot be entertained. In the same way I regret that as the BIOT forms part of Britain and is, therefore, an independent and sovereign State, this amendment is declared not receivable by me.

M. Bizlall : Quand vous avez 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'île 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.

M17	Motion	26 JUNE 1980	Motion	3418
	(At this stage, the Members of the Opposition left the Chamber)		On Second Schedule	
	Clause 3 ordered to stand part of the Bill.		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".	
	Clauses 4 to 9 ordered to stand part of the Bill.		Amendment agreed to.	
	The title and the enacting clause were agreed to.		Second Schedule, as amended, ordered to stand part of the Bill.	
	The Bill was agreed to.		The title and the enacting clause were agreed to.	
	The Labour (Amendment) Bill (No. XX of 1980) was considered and agreed to.		The Bill, as amended, was agreed to.	
	THE NATIONAL PENSIONS (AMENDMENT) BILL (No. XIV of 1980)		THE SUGAR INDUSTRY LABOUR WELFARE FUND (AMENDMENT BILL)	
	Clauses 1 and 2 ordered to stand part of the Bill.		Clauses 1 to 3 ordered to stand part of the Bill.	
	Clause 3 — Section 20 of the principal Act amended.		Sir Harold Walter : Mr. Chairman, it is sad that the Members of the Opposition have left the Chamber in such a shameful way. Sir, it is very serious, what I am going to say : each time they suffer a defeat, they are in that state. Probably none of them ever box — so they never learn how to take blows and to give as many.	
	Motion made and question proposed : "that the clause stand part of the Bill".		The Chairman : It is their right to behave as they wish.	
	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".		The title and the enacting clause were agreed to.	
	Amendment agreed to.		The Bill was 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.		The Fire Services (Amendment) Bill (No. XV of 1980) was considered and agreed to.	

Annex 118

Organization of African Unity, Assembly of Heads of State and Government, 17th Ordinary Session, *Resolution on Diego Garcia*, AHG/Res.99(XVII) (1-4 July 1980)



**ORGANIZATION OF
AFRICAN UNITY**
Secretariat
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**ORGANISATION DE L'UNITE
AFRICAIN**
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Addis Ababa

**ASSEMBLY OF HEADS OF STATE AND
GOVERNMENT
SEVENTEENTH ORDINARY SESSION
1 – 4 July 1980
Freetown, Sierra Leone**

AHG/Res. 99 to 101 (XVII)

**RESOLUTIONS ADOPTED BY THE SEVENTEENTH ORDINARY
SESSION OF THE ASSEMBLY OF
HEADS OF STATE AND GOVERNMENT**

AHG/Res. 99 (XVII)

RESOLUTION ON THE DIEGO GARCIA

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July 1980,

Pursuant to article I, para 2, of the Charter of the Organization of African Unity, which stipulates "The Organization shall include the Continental African States, Madagascar and other islands surrounding Africa",

Considering that one of the fundamental principles of the Organization is the "respect for the sovereignty and territorial integrity of each state",

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the OAU,

Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realizing the militarization of Diego Garcia is a threat to Africa, and to the Indian Ocean as a zone of peace,

DEMANDS that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

Annex 119

Note from M. Walawalkar of the African Section Research Department to Mr Hewitt, FCO
31/2759 (8 July 1980)

RESTRICTED. Mr. H. G. H. H.

Reference

JEB 020/3	
RECEIVED	17 JUL 1980
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Mr. Hewitt - EAD.

(The parallel with 14)

(But the Malagasy never agreed)

to 'cession' of OAU SUMMIT: DIEGO GARCIA

1. Reference telno. 133 of 5 July from Freetown. You asked for comments on the resolution's reference to '...the fact that Diego Garcia has always been an integral part of Mauritius'.

2. Diego Garcia and the other Chagos islands were among the dependencies of Mauritius ceded to Britain by France under the Treaty of Paris (1814). Britain continued to administer them from Port Louis (or at least - if not actively to administer - they were included by Britain in official catalogues of the dependencies of Mauritius ever since the first schedule was compiled in 1826). From 1921 onwards the Chagos Archipelago, Agalega and St. Brandon were known as the Lesser Dependencies of Mauritius. In 1965 the Chagos islands were detached from Mauritius to form part of the British Indian Ocean Territory. Agalega and St. Brandon remained ~~part of~~ ^{attached} Mauritius and since independence in 1968 have ~~formed part~~ ^{remained} of the Mauritian state; had the Chagos islands not previously been detached they would presumably have done the same.

3. I suspect that the reasoning behind the statement that Diego Garcia has 'always' been 'an integral part' of Mauritius may lie along these lines. Territorial integrity and the inviolability of colonially-inherited boundaries are two of the main consensus principles which have held the OAU together. It is obvious that if any exceptions are made the arbitrary nature of practically every international boundary in Africa would be open to dispute. In its application to island-states - which present their own problems - the OAU in general has a short memory. Although historically there are frequent cases of detachment of island dependencies for administrative convenience by both Britain and France, eg. the creation of the separate colony of Seychelles in 1903 out of the colony of Mauritius, the OAU in general only concerns itself with the situation at, or shortly before, independence. Thus 'always' should not be taken too literally, for although the Chagos archipelago and the island of Mauritius are far apart and can have had no possible connection until both were settled by the French at different times in the eighteenth century, 1814 onwards must seem a very long period of unbroken territorial association ~~to~~ the OAU.

4. The resolution is unusually loosely-worded and badly drafted. The statement, for instance, that Diego Garcia was not ceded to Britain for military purposes is at least true in that it was not ceded at all: Mauritius as a then dependency of Britain was not a sovereign independent state and was therefore incapable of 'ceding' territory. What the Mauritian Government did was to give their agreement to detachment which, even without this consent, Britain could have effected anyway under an Order in Council.

5. You might be interested to compare the resolution with that on the islands in the Mozambique Channel held by France and claimed by Madagascar which was adopted by the OAU Council of Ministers meeting in Liberia last year. (copy attached).

8 July 1980.

(Mrs. M. Walawalkar)
African section
Research Dept.

RESTRICTED.

CODE 18-77
55 8/78

Annex 120

U.K. House of Commons, *Written Answers: Diego Garcia*, FCO 31/3836 (11 July 1980)

Mr. Michael McNair-Wilson asked the Attorney-General how much in total his Department and the Lord Chancellor's Department will pay in insurance during the current financial year; and if he will publish a functional breakdown of the total amount.

The Attorney-General: No insurance costs are incurred by the Attorney-General's Department and those by the Lord Chancellor's Department are negligible, save for some £15,000 for insuring premises used by the Law Society in the operation of the legal aid scheme. This is included in the grant to the legal aid fund.

Mr. Stanbrook asked the Attorney-General if he will now prosecute the BBC under the Prevention of Terrorism Act in respect of its actions in interviewing the killer of Mr. Airey Neave, and co-operation with the IRA in setting up and filming a roadblock in Carrickmore.

The Attorney-General: I have considered the police reports on these two incidents and have consulted leading counsel, and I have decided against instituting any criminal proceedings against any members of the staff of the BBC, in respect of either incident. I have, however, written to the chairman of the BBC to express my views about the conduct of those involved and to give my understanding of the effect of section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1976. It is this section which places on the citizen a section which places on the citizen a section which places on the citizen a moral duty to report to the police information relating to terrorists and acts of terrorism.

Sir Robert Cooke

Sir Robert Cooke
Mr. Harold Walker asked the Chancellor of the Duchy of Lancaster to what facilities in the House of Commons Sir Robert Cooke has been given access, and by whose authority.

Mr. St. John-Stevens: As an ex-Member of the House of Commons, Sir Robert Cooke may go to the Members' Lobby.

As a holder of a Palace of Westminster photo-identity pass, which is issued to certain civil servants who attend the House of Commons regularly on duty, Sir Robert may use the Strangers' Cafeteria. This pass was issued on the authority of the Serjeant at Arms.

Diego Garcia

Mr. Newens asked the Prime Minister if she will make a statement on the talks she has had with the Prime Minister of Mauritius, and what references were made to the future of Diego Garcia during the course of these.

The Prime Minister : I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government.

Earnings Statistics

Earnings Statistics

Mr. Austin Mitchell asked the Secretary of State for Employment if he will publish in the *Official Report* a table showing for each of the years 1973 and 1977 to 1979 the percentage increase in average wages and salaries in the previous year and cumulatively since 1970 and 1973, respectively, together with the increase in wages and salaries per unit of output for: (a) manufacturing industry, (b) the whole economy less production industries and (c) gas, electricity and water.

Mr. Jim Lester: The following table sets out the available information in respect of each of the years 1973 and 1977 to 1979.

Annex 121

U.K. House of Lords, *Parliamentary Question for Oral Answer: Notes for Supplementaries*,
FCO 31/2759 (23 July 1980)

House of Lords
PARLIAMENTARY QUESTION

for ORAL answer on WEDNESDAY 23 JULY 80

*Rec'd 18/7
Sue. 2/7*

E. A. Department

Please submit your draft reply (normal maximum 50 words) through an Under-Secretary and the Private Secretary to Mr Ince to reach this office by NOON ON THURSDAY 17 JULY 80

The draft reply should be accompanied by full supplementary and background material: see Diplomatic Service Procedure Volume 5 for guidance. Text of Question as follows:

†*The Lord Brockway — To ask Her Majesty's Government what has been their response to the unanimous demand of the Organisation of African Unity that the island of Diego Garcia should be returned to Mauritius and that bases and military installations in the Indian Ocean be removed.

My Lords, Her Majesty's Government are aware of the Resolution on Diego Garcia passed by the Organisation of African Unity on the 4th of July. They have received no representations from the Organisation.

531 D.330655 2m 8.75 C.F.C. (2-8.39/3)

REFERENCES

FLAG A	11 July 1980	Col 314
FLAG B	5 July 1980	Freetown telno 133

NOTES FOR SUPPLEMENTARIES

WHAT IS THE ATTITUDE OF HMG TO THE RESOLUTION?

1. Resolutions of the OAU are for members of the Organisation. We wish to see peace and stability in the Indian Ocean area. The threat to this does not come from the West.

DID THE PRIME MINISTER OF MAURITIUS ASK FOR THE RETURN OF DIEGO GARCIA WHEN HE SAW THE PRIME MINISTER ON 7 JULY?

2. There was a general discussion covering political, economic and cultural matters, including Diego Garcia. Both governments recognise the role Diego Garcia plays in contributing to the peace and stability of the area.

MAURITIUS' 'CLAIM' TO DIEGO GARCIA?

3. The Chagos Islands, of which Diego Garcia is the main island, were detached from Mauritius in 1965 with the agreement of the Mauritius Council of Ministers. It was also part of the agreement that if the islands were no longer required for defence purposes they would revert to Mauritius. This remains the policy of Her Majesty's Government.

IF MAURITIUS ACCEPTS THE NEED FOR A BASE ON DIEGO GARCIA, WHY DID SHE TABLE THE RESOLUTION AT THE ORGANISATION OF AFRICAN UNITY DEMANDING ITS REMOVAL?

4. That is for the Government of Mauritius.

HAS A SETTLEMENT REGARDING COMPENSATION YET BEEN REACHED FOR THE ISLANDERS RESETTLED IN MAURITIUS?

5. Her Majesty's Government have made an offer of £1.25m as compensation for displacement. We await the community's response. This offer is in addition to £650,000 paid in 1973 for resettlement of the families in Mauritius.

US PROPOSALS TO DEVELOP FACILITY ON DIEGO GARCIA?

6. Earlier this year we were consulted on minor improvements, eg improvement to the water supply and fuel storage. We have also held consultations with the Americans on further measures necessary to improve facilities on the Island. Details of these further improvements are still being refined.

(if pressed)

They include larger storage areas, better refuelling arrangements and increases wharfage.

UK/US CONSULTATION ON USE OF DIEGO GARCIA?

7. The published 1976 Anglo-US Agreement establishes certain requirements for consultation about use of the facility at Diego Garcia. These requirements have not changed.

(if pressed)

We are satisfied that the two sides have a clear understanding about the circumstances in which joint decision is required.

PRE-POSITIONING OF UK SHIPS ON DIEGO GARCIA?

8. This summer the Americans intend to pre-position at the Island merchant ships carrying military equipment. These ships do not constitute a naval task force. They may be rotated periodically within the Indian Ocean.

ATTITUDE OF INDIAN OCEAN STATES TO UNITED STATES FACILITY ON DIEGO GARCIA?

9. The facility on Diego Garcia contributes to the maintenance of stability and security in the Indian Ocean. This is to the benefit of states in the area.

ARMS LIMITATION IN INDIAN OCEAN/INDIAN OCEAN PEACE ZONE?

10. We support realistic moves towards peace and stability in Indian Ocean area. We are participating in the United Nations Ad Hoc Committee to consider whether implementation of the Indian Ocean Peace Zone is feasible in current circumstances.

EXISTENCE OF UNITED STATES FACILITY ON DIEGO GARCIA INCONSISTENT WITH INDIAN OCEAN PEACE ZONE?

11. The presence of large numbers of Soviet troops in Afghanistan is a far greater threat to peace in the Indian Ocean area.

UNITED KINGDOM ATTITUDE TO UNITED STATES DEFENCE POLICY IN INDIAN OCEAN?

12. Her Majesty's Government welcome United States proposals that will strengthen stability and security in the Indian Ocean area.

USE OF FACILITY BY B52s?

13. The island has not been used by B52s.

(if pressed on future use)

No decision has yet been made about the upgrading of the runway.

Annex 122

Letter from M. C. Wood to Mr Hewitt, FCO 31/2759 (22 Sept. 1980)

CONFIDENTIAL

Mr Hewitt - EAFD

DIEGO GARCIA AND MAURITIUS

The United
Kingdom
Territory /

1. Acquired sovereignty over the Chagos archipelago by cession from France. The archipelago was for a long time part of the Colony of Mauritius, but in 1965 it was removed from Mauritius and placed in the newly formed British Indian Ocean Territory (see British Indian Ocean Order 1965, SI 1965/1920). This was done under the Colonial Boundaries Act 1895. Mauritius (less of course the archipelago) became independent in 1968. At no time has Mauritius had sovereignty over the Chagos archipelago. At no time has the United Kingdom given up its sovereignty over the archipelago. Whatever may be the legal force of the "agreement" which you refer to in paragraph 2 of your minute (and I have been shown no papers concerning this "agreement"), it is not in the nature of a lease. I have seen nothing to suggest that the "agreement" implies that the United Kingdom's sovereignty over the Chagos Islands is in any way qualified. Even if it were the case that we had a legal obligation to Mauritius to cede the archipelago "if the need for the facilities on the islands disappeared", this would not in my opinion mean that ^{the UK's} sovereignty over the archipelago in the meantime was any different from ^{our} sovereignty over any other part of the territory of the United Kingdom and its Colonies (except, perhaps, in that that sovereignty is subject to the obligation to cede).
2. Which verb is used is very much a matter of taste, and will perhaps in some measure depend upon context. Viewed as a strict legal matter, from the point of view of international law, the word "cede" is the most accurate. If looser language is desired, then perhaps "transfer" is the best term to use. The word "revert" (and even more "reversion") should, in my opinion, be avoided as far as possible since they might be read as suggesting that we only had some kind of a lease over the islands. The word "return" would not necessarily carry the same implication, and I would see no objection to its use. (It could of course be argued from a strictly legal point of view that "return" is inaccurate, since Mauritius has never had sovereignty over the islands. When they formed part of the Colony of Mauritius, Mauritius was not a sovereign State and it was the United Kingdom which had sovereignty over them, not Mauritius.) In short, I think the only word to avoid is "revert". Even this, when used in a non-technical sense, does not necessarily carry the implication of a lease. But it is better avoided.
3. As I understand our "agreement", it does not imply any recognition on our part of "a limited Mauritian claim to sovereignty". All it implies is that we will cede the islands to Mauritius in certain events.

/4.

CONFIDENTIAL

CONFIDENTIAL

4. I am copying this to Mr Watts, in case he wishes to add anything on his return.

M. C. Wood

M C Wood
Legal Advisers

22 September 1980

cc Mr Watts, Legal Advisers

P.S. It would have been helpful to have been shown more papers e.g. the paper from which you are quoting in para 2 of your minute of 18/9.

*M.C.W.
22/9*

M. Hewitt (EAD)

Nothing to add.

*A. Watts 24
ix*

CONFIDENTIAL

Annex 123

Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980)

4223

Oral Questions

25 NOVEMBER 1980

Oral Questions

4224

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)

4225

Oral Questions

25 NOVEMBER 1980

Oral Questions

4226

asked the Prime Minister whether he will say if he has had discussions with the French Government with a view to allowing Mauritian airplanes to refuel at Tromelin Island en route to Agalega and back.

The Prime Minister : No, Sir. In fact, there is no need for such discussion since Tromelin is an integral part of the State of Mauritius.

Mr. Jugnauth : Can I ask the Prime Minister whether officially the Government of this country has made known to the French Government that this is the official stand of this country ?

The Prime Minister : We have put it on our map.

Mr. Bérenger : If there is no need to ask for the right to land at Tromelin island, because it forms part of the State of Mauritius, can I ask the Prime Minister whether he has any objection to himself, the Leader of the Opposition, myself and the Minister of External Affairs — if he gets in the Twin Otter of Air Mauritius — to having the Twin Otter of Air Mauritius fly to Tromelin in the very next days ?

The Prime Minister : I don't know if arrangements can be made.

Mr. Boodhoo : Is the Rt. hon. Prime Minister in a position to explain to the House in what way the French are exploiting Tromelin island ?

The Prime Minister : I cannot say.

CITÉ ROCHES BRUNES — SEWERAGE SYSTEM

(No. B/1143) Mr. J. C. de l'Estrac (First Member for Stanley and Rose Hill) asked the Minister of Housing, Lands and

Town and Country Planning whether he will give the reasons why, in spite of repeated requests no action has been taken in Cité Roches Brunes, Rose Hill, to solve the serious problems caused by the defective sewerage system.

Mr. E. François : Sir, I am advised by the CHA that the emptying of cesspits at Roches Brunes is already underway as a result of representations made by occupiers of the houses. Consideration is being given for the improvement of all pits in the estate.

Mr. de l'Estrac : Will the hon. Minister be honest enough to recognise that work has started after the question was put ?

Mr. Speaker : I would ask the hon. Member to withdraw that.

Mr. de l'Estrac : I withdraw the word "honest". Will the hon. Minister agree...

Sir Harold Walter : The hon. Member has to withdraw the whole question.

Mr. de l'Estrac : I am going to put another question, Sir. Will the hon. Minister agree that work has only started after the question was put to him last Tuesday ?

Mr. François : I need prior notice of this question, Sir.

C.E.B. TRANSPORT WORKSHOP — REPAIRS OF PERSONAL STAFF CARS

(No. B/1144) Dr. J. B. David (Second Member for Belle Rose and Quatre Bornes) asked the Minister of Power, Fuel and Energy whether he will, for the benefit of the House, obtain from the C.E.B. the following information

Annex 124

Note from M. Walawalkar of the African Research Department to Mr Campbell of the East African Department - Diego Garcia: Research on Mauritian Government's Claim to Sovereignty, FCO 31/3437 (8 Oct. 1982)

SECRET

Reference

✓ *Unfiled*
Mr Campbell - EAD

DIEGO GARCIA: RESEARCH ON MAURITIAN GOVERNMENT'S CLAIM TO SOVEREIGNTY.

1. I refer to your minute of 28 September.

(i) 1976 FCO 'Report'.

2. You will have seen a copy of my minute dated 30 September to L & RD, who have been unable to find the Note in question. They have however turned up a reference to it (see attached) on file HKT 243/436/1 Part D of 1976. L & RD believe that the Note itself may well be on Parts A, B or C of the same file, but apparently these have been with EAD for some time. You may therefore be able to put your hands on it. *attached*

3. If, as I suspect, however, the Note is indeed the same as that quoted in the footnotes of the recent Minority Rights Group Report, and speaks of "payments of compensation to the Mauritian government for loss of sovereignty" over the Chagos Archipelago" you might prefer simply to tell Mr Lesser that on the basis of information supplied, we are unable to identify the document he requests.

(ii) The £3 million grant.

4. The £3 million grant was paid to Mauritius in recognition of the detachment of the Chagos Archipelago, not, as Mr Lesser states, as compensation for loss of sovereignty over it. This was our position in 1965 and is certainly our position now. Unfortunately, however, the office has not always been consistent in its pronouncements on the matter (cf. para.3 above), though probably the most potentially embarrassing past statement is that enshrined in Hansard 21 October 1975, (Written Answers, col.130):

"Mr Newens asked the Secretary of State for Foreign and Commonwealth Affairs what sums have been paid in compensation to the Seychelles and to Mauritius, respectively, for the surrender of sovereignty and other rights over Diego Garcia and other British territories in the Indian Ocean.

Mr Ennals: Grants amounting to £3 million were provided to Mauritius as compensation for the loss of sovereignty over the Chagos Archipelago. A new international airport was constructed for Seychelles at a cost of about £6½ million as compensation for the loss of sovereignty over Aldabra, Farquhar and Desroches".

5. In fact the £3 million grant was only one of the conditions under which Mauritius Ministers agreed to the separation of the Chagos Islands. In your reply to Mr Lesser you may find it useful to draw upon the following statement made on 23 June 1977 by the Secretary of State, Mr Luard (Hansard, Written Answers, col. 549-550):-

... /"The

* my italics

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"The Mauritius Council of Ministers agreed to the detachment of the Chagos Islands after discussions which concerned the negotiation of a defence agreement between Britain and Mauritius - since terminated by agreement - and the grant of £3 million additional to the cost of compensating the land-owners and a grant to resettle the islands' inhabitants. Understanding was also reached on rights to mineral, oil and fish resources and there was agreement that, in certain circumstances and as far as was practicable, navigational, meteorological and emergency landing facilities on the islands were to remain available to the Mauritius Government. In the event of the islands no longer being required for defence purposes it was agreed that they should revert to Mauritian jurisdiction".

6. Negotiations were lengthy and complex. Agreement in principle to the detachment was reached at a meeting with Mauritian Ministers in London on 23 September 1965. After the meeting, Ramgoolam proposed certain amendments to the meeting record in a manuscript letter dated 1st October. These were incorporated in the final record, which was cleared with him. The record was submitted with Colonial Office Secret Despatch no.423 of 6 October 1965 (copy attached) to the Governor, Port Louis, for confirmation by the Mauritian Government. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5 November. The provisos mentioned above were acknowledged by Colonial Office secret telno.298 of 8 November, which made clear that the Chagos Archipelago would remain under British sovereignty, that the islands were required for defence purposes, and that there was no intention of permitting prospecting on or near them.

7. No formal published agreement exists. In response to a parliamentary question, Ramgoolam informed the Mauritian Legislative Assembly in late November 1979 that:

"... it would not be in the public interest to release the terms and conditions of the agreement regarding the excision of Diego Garcia from the Mauritian territory. I should like to point out that there is no agreement as such on this issue. There is only a record of discussions that took place in London during the Constitutional talks in 1965. As this document is marked secret and in view of the general convention regarding the protection of secret documents it would not be proper to release the record of the discussions". (l'Express 24 November 1979).

8. A communique on the detachment of the Chagos Archipelago and the formation of BIOT was issued by the Chief Secretary's Office, Port Louis, on 10 November 1965 (Mauritius at that stage not having achieved full self-government). A copy is attached. It announces inter alia that: "... the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance".

/9.


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Reference

9. I should make the point that the consent of Mauritian Ministers to the detachment of the Chagos Archipelago in 1965 was sought for essentially political reasons, and at the insistence of the then Colonial Secretary, Mr Greenwood. Constitutionally, it was open to Britain, the colonial power, to detach the islands by Order in Council without that consent.

10. Since Mr Lesser intends his research for publication in a journal of international law you will no doubt wish to clear your answers to his questions with the Legal Advisers.



M Walawalkar (Mrs)
Research Department

8 October 1982

SECRET

Annex 125

Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3622 (11 Nov. 1982)



063/1

Peter Hunt Esq
EAD
FCO

Spoke to Research
Department. They have
taken this on board but have not carried

RESTRICTED

Mr Hunt out any specific and will
not do so until we put a
specific problem to them.

Grateful if you would
ask the Research
Department are
taking this on.

11 November 1982

Mr Campbell PH 17/11

Mr Wainman-Sunila

PH 17/11

BRITISH
HIGH COMMISSION
CHAUSSEE · PORT LOUIS · MAURITIUS

①

Sent to 16/11
Mr Watts, Deputy Legal
Adviser,
Mrs Walawalkar, Research

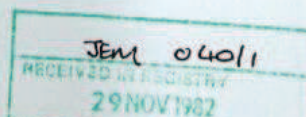
PH 15/11

CHAGOS ARCHIPELAGO: SELECT COMMITTEE

1. I wrote to you on 8 October telling you of the select committee which has been set up to examine the history of the detachment of the Chagos Archipelago in 1965. When I saw the Minister of External Affairs on 8 November he told me that the committee (which he is chairing) has still a good deal of way to go before it can issue its report. He hoped however that this would be available in January.
2. The committee is meeting in private and has the power to call witnesses including Ministers and ex-Ministers. At the moment they are receiving evidence from Sir G Duval who voluntarily agreed to discuss events in 1965. Later they will call the present Prime Minister Mr Jugnauth who of course was in London for the Mauritius Constitutional Conference in 1965 as deputy leader of the Independent Forward Block. Later they will call Sir Seewoosagur to give evidence.
3. It will only be after the evidence has been compiled that a decision will be taken as to whether to employ a jurist.
4. While there is nothing very alarming in all this at present I feel sure that you will wish to dust off the 1965 papers since we may well be faced with embarrassing assertions about the connection between the excision of the Chagos Archipelago and the British Government's undertaking to give Mauritius independence.

J N Allan

RESTRICTED



Spoke to Research
Department. They have
taken this on board but have not carried

RESTRICTED

Mr Hunt out any specific and will
not do so until we put a
specific problem to them.

Grateful if you would At 1/4
inform that Research 24/4
Department are
taking this on.

Mr Campbell 17/11
Mr Wainman-Smith.

At 17/11

BRITISH
HIGH COMMISSION
CHAUSSEE · PORT LOUIS · MAURITIUS

(1)

11 November 1982

Mr Hunt Esq

WML
23/4

Sent to 16/11
Mr Watts, Deputy Legal
Adviser,

Mrs Walawalkar, Research

PH 15/11

CHAGOS ARCHIPELAGO: SELECT COMMITTEE

I wrote to you on 8 October telling you of the select committee which has been set up to examine the history of the detachment of the Chagos Archipelago in 1965. When I saw the Minister of External Affairs on 8 November he told me that the committee (which he is chairing) has still a good deal of way to go before it can issue its report. He hoped however that it would be available in January.

The committee is meeting in private and has the power to call witnesses including Ministers and ex-Ministers. At the moment they are receiving evidence from Sir G Duval who voluntarily agreed to discuss events in 1965. Later they will call the present Prime Minister Mr Jugnauth who of course was in London for the Mauritius Constitutional Conference in 1965 as deputy leader of the Independent Forward Block. Later they will call Sir Seewoosagur to give evidence.

After the evidence has been compiled that

Annex 126

Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (4 Mar. 1983)



063/1

P L Hunt Esq
EAST AFRICAN DEPARTMENT
F C O

RESTRICTED

BRITISH HIGH COMMISSION

PORT LOUIS

4 March 1983

in Hunt *Doc* *Attch*
C's in hand - not
and, please? I have
checked by me. No reply.
5. 14/3

Mr Campbell (or)

Mr Dobson 17/3

Mr Weir-Smidt.

Attch.

urgent 8/3.
Mr Weir-Smidt (Research Dept)

Can you help on 2(a)
and 2(b) please?

P L Hunt.

EAD 8/3.

My dear Rebo,

1. You will recall that I have corresponded about the Select Committee's report on the circumstances in which the Chagos Archipelago was excised from Mauritius. Although Harish Boodhoo, when he passed through India earlier this year, suggested at a press conference that the report of the Committee would be circulated at the NAM, I have been given assurances that this will not be the case. The document still needs final editing and this cannot take place until de Lestrac himself returns from India. The report will be submitted to the Legislative Assembly but the Government do not as yet know whether there will be a debate on it.
2. No doubt you are continuing to husband all the relevant documents so that we can be in a position to refute any wild allegations. At the moment there seem to be two matters which are pre-occupying the Mauritians.
 - (a) de Lestrac is reported as saying in Paris that Ramgoolam had to agree to the excision under duress because the alternative put to him was a referendum on Independence (which presumably he feared because of the strength in those days of Duval);
 - (b) was the decision by the British Government to excise the Chagos Archipelago discussed and agreed in Cabinet? When I saw Serge Clair, the Minister for Rodrigues and the Outer Islands, the other day he let slip that if it could be proved that the Mauritian Cabinet agreed to the excision then their case would be considerably weakened.

J N Allan

J N Allan

RESTRICTED

Annex 127

Letter from M. Walawalkar of the African Section Research Department to P. Hunt of the East African Department on the Mauritian Agreement to Detachment of Chagos, FCO 31/3834 (9 Mar. 1983)

REFERE
HERI

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Dpt.
Rt 2/13
Mr Hunt - EAD

Reference	JES 00011
RECEIVED	14 APR 1983
DEPT. OF DEFENSE	RECEIVED
INTELLIGENCE	RECEIVED

MAURITIAN AGREEMENT TO DETACHMENT OF CHAGOS.

1. I refer to para.2 a) and b) of Mr Allan's letter of 4 March.

a)
2. Although a referendum on independence was the demand of Duval's PMSD it is my firm recollection that the record of the 1965 Conference and of the side-meetings on the detachment of Chagos contain no hint that the threat of a referendum was used by HMG to blackmail Ramgoolam. The Prime Minister did, however, implicitly threaten Ramgoolam with detachment by Order in Council if agreement were not forthcoming. Please see p2 of the attached Note (the Prime Minister's meeting with Ramgoolam on the morning of 23 September). Given that the Constitutional Conference was considering the question of the ultimate status of Mauritius and that the main debate was between the advocates of independence and of continuing association with Britain, however, I imagine that the Prime Minister's further suggestion that the "best solution might be Independence and detachment by agreement ..." could also have been interpreted by Ramgoolam as a threat (or a promise). The trouble is that the official record does not tell us everything. It cannot, for example, convey atmosphere and innuendo.

b)

3. Yes - or at least the equivalent of Cabinet, the Mauritius Council of Ministers. (The detachment of Aldabra, Farquhar and Desroches was also agreed by the Seychelles' equivalent at the time, the Executive Council). The final version of the record of the 23 September 1965 meeting with Mauritian Ministers, which incorporated certain amendments made by Ramgoolam in a manuscript letter dated 1st October, was submitted with Colonial Office Secret Despatch no.423 of 6th October 1965 (copy attached) to the Governor, Port Louis, for confirmation by the Mauritian Government. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5th November.

4. The above information derives from our records and from memory. I have not called for the relevant departmental files, since I assume that these are the very ones L&RD will wish to scrutinise with a view to the release of documents (Mr Wenban-Smith's minute of 12 January to Miss Blayney refers). In case Mr Allan wants further documentation you might, however, like to have the following reference (of the main file covering exchanges with Mauritian Ministers on the Chagos issue; PAC 93/892/01.

M. Walawalkar
M Walawalkar (Mrs)
Research Department

9 March 1983

CODE 18.77

SECRET

Annex 128

Letter from W. N. Wenban-Smith of the Foreign and Commonwealth Office to M. J. Williams,
with draft, FCO 31/3835 (25 Mar. 1983)

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Foreign and Commonwealth Office

London SW1A 2AH

25 March 1983

M J Williams Esq
NEW DELHIreferences attached
4/14FA
H/31/5

Dear Sir,

MAURITIUS: CLAIM TO BIOT

1. In our telno 89 to Delhi, we undertook to write about previous undertakings relating to the 'return' of the Chagos to Mauritius.
2. The starting point is the terms on which the detachment of these islands was agreed with Mauritius in 1965. A summary of HMG's undertakings to the Mauritius Government is contained in the enclosed minute prepared by Pacific and Indian Ocean Department in March 1969. As you will note, paragraph 22 of the record of a meeting with Mauritius Ministers on 23 September 1965, read with Colonial Office Despatch No 423 of 6 October 1965 together constituted HMG's definitive proposals. These texts have not been published but are reflected in the statement made by the Secretary of State for the Colonies in the House of Commons on 10 November 1965. We are still looking for Mauritian statement of 21 Dec. 1965 (para 10 of enc).
3. This particular issue does not appear to have roused much further Parliamentary interest until much later. On 21 October 1975 Mr Ennals said that £3m was granted to Mauritius 'as compensation for the loss of sovereignty over the Chagos Archipelago'. (I attach the full text of question and answer.) This was, and is, a potentially embarrassing statement. The £3m grant was paid to Mauritius in recognition of the detachment of the Chagos Archipelago not as compensation for loss of sovereignty over it. This was our position in 1965 and is certainly our position now. Later, on 11 July 1980, the present Prime Minister, answering a rather different question, also from Mr Newens, said that it remained HMG's policy that the islands should 'revert to Mauritius' in the event that they were no longer required for defence purposes (full text also attached).

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4. As we have explained in various guidances (e.g. Guidance No. 157 of 20 July 1982), British sovereignty over the Chagos (and over Mauritius and the Seychelles) originated in their cession by France under the Treaty of Paris in 1814. In the case of Mauritius, sovereignty was transferred to it at independence in 1968 i.e. nearly 3 years after the detachment of the Chagos (which has of course remained uninterruptedly under British sovereignty since 1814).

5. It is worth noting the difference between the Chagos islands (once a dependency for administrative convenience of the colony of Mauritius) and the Dependencies in the South Atlantic, i.e. South Georgia and the South Sandwich Islands, which are, also for reasons of administrative convenience, dependencies of the Falklands Islands colony. Whereas title to the Chagos and Mauritius derived from a single source, the Treaty of 1814, the basis of our title to South Georgia and the Sandwich Islands is separate and different from that to the Falklands colony itself.

6. It is against this background that we have tried to keep on an extremely narrow path in recent pronouncements. We are of course keen to avoid any suggestion that Mauritius has sovereignty. We also maintain that Mauritius never did have sovereignty. If reminded of the 1975 answer, we should probably have to say something to the effect that all that Mauritius was being compensated for was not receiving the sovereignty it would otherwise have acquired on independence.

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7. There is also the question of what we can use in describing the notion of reattachment. 'Cede' obviously describes most accurately any eventual transfer of sovereignty and is the one we prefer to use. But, provided the context does not imply that Mauritius has sovereignty, 'return' is legally acceptable, although this has created confusion in Mauritian minds and has led them to assert that the use of 'return' implies recognition of their sovereignty.

/'Revert'

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'Revert' can be used in a suitable context, but is best avoided because this term (and even more 'reversion') might be read as suggesting that we only had some kind of lease over the islands.

*Yours in
Nipl.*

W N Wenban-Smith

U. Han just seen your letter 24.1. OK now.

cc:
R W Renwick Esq CMG
Washington

J N Allan Esq CBE
Port Louis

M I Goulding Esq
UKMIS New York

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DSR 11 (Revised)	DRAFT: minute/letter/telegram/despatch/note FROM: W N Wenban-Smith DEPARTMENT: East African Dept TEL. NO: 233 4549	TYPE: Draft/Final 1+ Reference
SECURITY CLASSIFICATION TOP SECRET SECRET Confidential RESTRICTED UNCLASSIFIED PRIVACY MARKING .....In Confidence CAVEAT	TO: M J Williams Esq NEW DELHI SUBJECT:	Your Reference Copies to: R W Renwick CMG Esq WASHINGTON J N Allen CBE Esq PORT LOUIS M I Goulding Esq UKMIS NEW YORK
<p><i>blind copy to me, pl. AD 4/11</i></p> <p><i>Mr Wenban-Smith</i> <i>P. L. Hunt</i> <i>17/3</i></p>	<p>1. In our telno 89 to Delhi, we undertook to write about previous undertakings relating to the 'return' of the Chagos to Mauritius.</p> <p>2. The starting point is the terms on which the detachment of these islands was agreed with Mauritius in 1965. A summary of HMG's undertakings to the Mauritius Government is contained in the enclosed minute prepared by Pacific and Indian Ocean Department in March 1969. As you will note, paragraph 22 of the record of a meeting with Mauritius Ministers on 23 September 1965, read with Colonial Office Despatch No 423 of 6 October 1965 together constitute HMG's definitive proposals. These texts have <u>not</u> been published but are reflected in the statement made by the Secretary of State for the Colonies in the House of Commons on 10 November 1965.</p> <p>3. This particular issue does not appear to have roused much further Parliamentary interest until much later. On 21 October 1975 Mr Ennals said that £3m was granted to Mauritius 'as compensation for the loss of sovereignty</p> <p style="text-align: right;">/over</p>	
Enclosures—flag(s).....		

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4. As we have explained in various guidances (eg Guidance No 157 of 20 July 1982), the main basis for our continued sovereignty over the Chagos is that the islands were included among those ceded to us by France by the Treaty of Paris in 1814, and that Mauritius acquired no sovereignty over any territory until the time of its independence in 1968, nearly 3 years after the detachment of the Chagos islands from its administrative jurisdiction. It is worth noting in passing that there is a difference here between the Chagos, whose status had been that of a Lesser Dependency of Mauritius and the ~~lesser~~ Dependencies in the South Atlantic, ^{i.e. South} Georgia and the South Sandwich Islands. The latter are administered from the Falklands solely for the administrative convenience, and our title to them is quite separate and different from ^{the basis of} our title to the Falklands themselves. But, when we acquired the Chagos they were already in some sense dependencies of Mauritius.

5. It is against this background that we have tried to keep on an extremely narrow path in recent pronouncements. We are of course keen to avoid any suggestion that

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Mauritius has sovereignty. We also maintain that Mauritius never did have sovereignty. If reminded of the 1975 answer, we should ^{probably have} ~~be obliged~~ ^{something to the effect} to say ^{not} that all that Mauritius was being compensated for was ~~the delay in~~ ^{it} receiving the sovereignty ~~they~~ ^{otherwise} would have acquired on independence.

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Annex 129

Mauritius Legislative Assembly, *Report of the Select Committee on the Excision of the Chagos Archipelago*, No. 2 of 1983 (June 1983)

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MAURITIUS LEGISLATIVE ASSEMBLY

REPORT
OF THE
Select Committee
ON THE
Excision of the Chagos Archipelago

(No. 2 of 1983)



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REPORT
OF THE
Select Committee
ON THE
Excision of the Chagos Archipelago

REPORT of The Select Committee on the Excision of the Chagos Archipelago

I — Introduction

1. On 21st July 1982, the following motion standing in the name of the Honourable The Prime Minister was unanimously approved:—

“This Assembly is of the opinion that, in accordance with Standing Order 96 of the Standing Orders and Rules of the Legislative Assembly, a Select Committee of the House consisting of not more than nine members to be nominated by Mr Speaker, be appointed to look into the circumstances which led to and followed the excision of the Chagos Archipelago, including Diego Garcia, from Mauritius in 1965 and the exact nature of the transactions that took place with documents in support and to report; the said Select Committee to have powers to send for persons, papers and records.” (1)

2. On 20th August 1982, Mr Speaker nominated the following Honourable Members to form part of the Select Committee (2):—

The Honourable Minister of Finance

The Honourable Minister of Commerce, Industry, Prices & Consumer Protection

The Honourable Minister of External Affairs, Tourism & Emigration

The Honourable Minister of Agriculture, Fisheries & Natural Resources

The Honourable Attorney-General and Minister for Women's Rights & Family Affairs

The Honourable Minister for Rodrigues & the Outer Islands

The Honourable A. Gayan

Dr the Honourable S. Peerthum

The Honourable Mrs F. Roussety

3. At its first meeting, the Select Committee unanimously elected the Honourable Jean-Claude de l'Estrac, then Minister of External Affairs, Tourism and Emigration, to the Chair.

4. The Committee met on 11 occasions and in the course of its proceedings heard witnesses whose names are listed in Appendix 'A' of this Report.

(1) Mauritius Legislative Assembly—Debates No. 8 of 21st July 1982—Col. 1026-1056.

(2) Mauritius Legislative Assembly—Debates No. 17 of 20th August 1982—Col. 2397—2398.

II — The Chagos Archipelago

5. The Chagos Archipelago — until 8th November 1965, a dependency of Mauritius — comprises the islands of Diego Garcia, Egmont or six Islands, Peros Banhos, Salomon Islands, Trois Frères, including Danger Island and Eag'e Island. It lies some 1200 miles north-east of Mauritius and covers an area from 7°39' to 4°41' S and from 70°50' to 72°41' E. The largest island of the group is Diego Garcia which is about 11 square miles.

6. The early history of the archipelago is closely associated with that of the Seychelles which were both explored by the Portuguese as far back as the first half of the sixteenth century. Since then, both archipelagoes have known the fate common to the other islands of the region which changed hands, most particularly, according to the hazards of the long standing rivalry between the British and the French in the Indian Ocean. It is to be noted—as a premonition to the present status of Diego Garcia—that on 18th March 1786 an attempt was made from Bombay, by the East India Company to convert the island into a military base.⁽¹⁾ The venture proved unsuccessful. But when, during World War II, Diego Garcia happened to be a valuable 'naval port of call' ⁽²⁾, the assessment proved to be a worthy one which dates back as far as 1769 when the French Naval Lieutenant La Fontaine made 'a thorough survey of the bay, the first sign of French appreciation of the possible strategic value of that island. ⁽³⁾

Indeed, the strategical situation of the main island of the Chagos Archipelago—about 3,400 miles from the Cape of Good Hope, 2,600 miles from the North West Cape, Australia, 2,200 miles from Berbera, Somalia and 1,900 miles from Masirah Island, Oman ⁽⁴⁾—was bound to make of Diego Garcia a point of capital importance in modern geo-politics. This position, in the nearest vicinity of the Maldives and of India, became more evident after World War II when England gradually withdrew from the region, in the wake of its new policy of granting political independence to its colonies.

7. Hence, the Chagos Archipelago was bound to play a pre-eminent role in what tended to constitute, through Britain's withdrawal, 'one of the largest and most complex power vacuums of the post-war periods.' ⁽⁵⁾ Later, the Gulf crisis was soon to make of the region a most strategic field of action for the powers which are bent upon controlling the energy routes to Europe and Asia.

(1) Auguste Toussaint — *L'Océan Indien aux XVIIIe siècle* — Flammarion, p. 65.

(2) Joël Larus — *Diégo Garcia; Political clouds over a vital U.S. base*, Strategic Review, Winter 1982—United States Strategic Institute, p. 46.

(3) Robert Scott—*Limuria, The Lesser Dependencies of Mauritius*—Oxford University Press, p. 244.

(4) Robert Scott—*Op. cit.* p. 68.

(5) Joël Larus—*Op. cit.*

8. It might be useful to record here that it was not long after the British colonisation of Mauritius that the islands which constituted the dependencies thereof became an object of considerable interest to the new administering government. On 21st March, 1826, the House of Commons voted a resolution asking that an address be presented to His Majesty requesting that he 'be graciously pleased to give directions that there be laid before this House a return of the number of all the islands, which come under the denomination of dependencies of Mauritius, showing their geographical position in reference to that island, the extent of their territory, and any census which may have been taken of their population together with their civil and military establishments and the description of naval force which may have been stationed there at any time since the conquest of the colony.' (1) Complying with the request, Sir Lowry Cole, the then Governor of Mauritius, submitted, on 19th September of the same year, to Lord Bathurst what one of his successors described as 'the first catalogue of the dependencies of Mauritius ever to have been compiled' and which even included two islands 'which are now known to have existed only in the imagination of cartographers.' (2)

9. However, since the coming into force of the instructions contained in the Letters Patent of 31 August 1903 which made of the Seychelles a colony administratively independent from Mauritius, thought was constantly given by the British Government to the necessity of sharing between the two colonies the islands around. Such an exercise was concluded in 1921 and the Chagos Archipelago remained one of the lesser dependencies of Mauritius.

III — The British Indian Ocean Territory

10. The long association of the Chagos Archipelago with Mauritius came to an end on 8th November 1965 with the coming into force of the British Indian Ocean Territory Order (Appendix 'B'). The new "colony" originally included not only the Chagos Archipelago, but the Farquhar Islands, the Aldabra Group and the islands of Desroches which formed part of the then British Colony of the Seychelles. Mention of these dependencies of the Seychelles is of strong political relevance. The two main political parties of the Seychelles which met the British Authorities during the first constitutional talks on the independence of that country (14—27 March 1975) made it a point to claim the islands back, but to no avail. However, as a result of the second talks with the Foreign and Commonwealth Office and which culminated into the independence of the then colony (28th June 1976) the Farquhar Islands, the Aldabra Group and the islands of Desroches were finally returned to the Seychelles. Hence, with the coming into force on 28th June 1976, of the British Indian Ocean Territory Order 1976, the 'territory' now comprises only the Chagos Archipelago, one of the former lesser dependencies of Mauritius.

(1) Mauritius Archives—SA 9.

(2) Robert Scott op. cit. p. 3.

11. The excision from Mauritius of the Chagos Archipelago was effected in accordance with the provisions of the Colonial Boundaries Act, 1895, but in complete violation of Resolution 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the 948th General Meeting of the United Nations Organizations, on 14th December 1960 (Appendix 'C'). Later,

- (i) the United Nations General Assembly Resolution 2066 voted on 16th December 1965 (Appendix 'D'), in line with the Declaration on the Granting of Independence to Colonial Countries and Peoples (Appendix 'C'); and
- (ii) the Resolution on Diego Garcia voted by the Assembly of Heads of State and Government of the Organization of African Unity at its 17th Ordinary Session in Sierra Leone from 1st to 4th July 1980. (Appendix 'E')

will be flouted in the same manner.

12. It would be wrong, however, to pretend that the excision of the Chagos Archipelago was a unilateral exercise on the part of Great Britain. In a statement in the House of Commons, no less a person than the Prime Minister of Great Britain declared that "the Government of Mauritius have been kept fully informed of, and have raised no objection to, the proposed use of Diego Garcia as a naval communication facility". (1) Details of such connivance, together with the Select Committee's opinion on the legal and moral validity of the transaction are shown later in the report. (Para. 52). The Committee, however, hastens to record that the attitude of the political delegation which attended the Mauritius Constitutional Talks 1965 when the question was first mooted is in sharp contrast with the firm and patriotic stand of the Seychelles political leaders who succeeded during the Constitutional Talks which preceded the independence of the Seychelles to recover the territorial integrity of their country.

13. The first public announcement in regard to the excision was made in the House of Commons on 10th November 1965 by the then Secretary of State for the Colonies, Mr Anthony Greenwood. (2). The news, embargoed for release in Mauritius at 20.00 hrs on that day, reproduced *in extenso* the Secretary of State's statement and contains the vague indication that the islands would be used for "defence facilities by the British and United States Governments." Mention is also made therein of the compensation to be paid to the company which exploited the plantations on the islands, the cost of "resettling elsewhere those inhabitants who can no longer remain there" and an additional grant of £3m. for development projects in Mauritius (Appendix 'F'). Later, the freeholds were acquired at agreed prices totalling £1,013,200.

(1) House of Commons debates—Vol. 811, Col. 138.

(2) House of Commons debates—Vol. 720, Col. 1-2.

14. The decision of the British Government became immediately a matter of big concern to most of the countries of the world and particularly to those located in the Indian Ocean and which saw in the process the beginning of a long term militarization of the region, with inevitable risks of involvement in nuclear warfare.

15. On the excision issue, as early as 16th December 1965, the United Nations, as its 1398th Plenary Assembly voted a Resolution inviting, *inter alia*, 'the administering power to take no action which would dismember the territory of Mauritius and violate its territorial integrity.' (Appendix D).

16. The Resolution did not, in the least, deter the British Government in its plans. On 30th December 1966, an Exchange of Notes was signed in London between the United Kingdom and the United States Governments on the Availability of certain Indian Ocean Islands for Defence Purposes (Common Paper No. 3231) and which confirmed the deal to use the islands in a joint military venture by the two countries. Indeed, the United States Government agreed at the very start 'to contribute up to £ 5m towards the costs of setting up the British Indian Ocean Territory, by waiving to that extent research and development surcharges for the United Kingdom purchase of the Polaris missile system.' (1) The islands of the British Indian Ocean Territory were made available for the defence purposes of both governments for an initial period of 50 years. (2)

17. The nature of these defence arrangements was first released to local public information in a press communique issued on 3rd December 1965 by the Government of Mauritius and which indicated "that at the time the matter was discussed with the Mauritius Government, the British and the American Governments were considering the establishment of a communications centre, supporting facilities and a naval refuelling depot" on the islands. (3) The disturbing element in the communique and which was for the first time brought to the public knowledge refers to prior consultation with the Government of Mauritius on the issue. This feature will be analysed later in the report. (Paras 39-44) In addition, it should be noted that the relatively more detailed press release of the Mauritius Government bears contrast with the euphemistic approach of the United Kingdom Government which persisted as late as 1970, on the eve of an upgrading of such facilities, to pretend that these innocently consisted of "a limited United States naval communications centre, partly operated by the United Kingdom and which would provide communications support to United States and United Kingdom ships and aircraft in the Indian Ocean." (4)

(1) House of Commons debates—Vol. 899, Col. 271-272.

(2) House of Commons debates—Vol. 870, Col. 1274.

(3) Mauritius Legislative Assembly debates No. 27 of 14th December, 1965, Col. 1850-1851.

(4) House of Commons debates—Vol. 808, Col. 328.

These arrangements, within the terms of the 1966 Exchange of Notes, were approved, in principle, by the United Kingdom Government in 1968. A further Exchange of Notes was signed on 24th October, 1972, and the facility began operating in 1973 (1) when the United Kingdom Government agreed to "a limited expansion of the radio station" (2) in addition to the original defence facilities which were said then to "consist of a United States navy radio station, an 8,000 ft runway which is not capable of taking the larger transport and tanker aircraft fully laden; a natural anchorage restricted in draught and turning room; accommodation for some 450 personnel; and limited aircraft parking space and oil storage facilities." (2)

18. However, on 5th February, 1974, a statement made in the House of Commons by the Secretary of State for Foreign and Commonwealth Affairs, Mr Julian Amery, revealed that Her Majesty's Government had agreed in principle to a proposal of the United States Government made in January 1974 and in accordance with the 1966 Anglo-American Agreement (Command Paper No. 3231) to the expansion of the facilities at Diego Garcia and which would involve "improvements to the anchorage and to the airfield as well as to the shore facilities". The last part of the statement is however, indicative of military concern of a larger dimension:—

"Her Majesty's Government have long felt that it is desirable in the general Western interest to balance increased Soviet activities in the Indian Ocean area. Accordingly, they welcome the expansion of the United States facilities which will also be available for British use. Against this background, the United States and the British Governments have agreed to consult periodically on joint objectives, policies and activities in the area. As regards the use of the expanded facilities in normal circumstances, the United States and British representatives in Diego Garcia will inform each other of intended movements of ships and aircraft. In other circumstances the use of the facilities would be a matter for the joint decision of the two Governments." (3)

Later, on 20th March, 1974, the Under-Secretary of State for Foreign and Commonwealth Affairs, Miss Joan Lester, again stressed that one of the reasons for the United Kingdom's acceptance of the United States proposal was the fact that the Soviet naval presence in the Indian Ocean had increased steadily in quantity and quality over the last five years and is larger than that of the Western countries. (4)

(1) House of Commons debates—Vol. 870; Col. 1274.

(2) House of Commons debates—Vol. 897; Col. 204.

(3) House of Commons debates—Vol. 868; Col. 276-277.

(4) House of Commons debates—Vol. 870; Col. 1275.

19. An assessment of the actual military arrangements on the islands is obviously difficult and whatever may be their size and nature is immaterial to this report. On two occasions at least,—11th March and 22nd July, 1975—the then British Secretary of State for Defence, Mr Roy Mason, declared to the House of Commons that it was not the policy of the British Government “to confirm or deny the presence of nuclear weapons in ships, aircraft or any particular location”—a statement pregnant with alarming military connotations.

Ten days after the announcement in regard to the constitution of the British Indian Ocean Territory, the then Secretary of State for the Colonies, Mr Anthony Greenwood, declared to the House of Commons: “There is certainly no question of any derogation from Britain’s sovereignty of these territories.” (1) And, later, the then Secretary of State for Foreign and Commonwealth Affairs, Mr Hattersley, re-echoed: “The island of Diego Garcia is British Sovereign Territory.” (2) At this stage, the Committee cannot dismiss the fact that such sovereignty was claimed in the teeth of strong opposition from the United Nations Organisation, the Organisation of African Unity and most of the independent States in the Indian Ocean, including India, whose Prime Minister, Mrs Indira Gandhi, on 7th February, 1974, highlighted the danger that the militarization of the Chagos Archipelago constituted for the security of her country.

IV — The Mauritius Constitutional Conference, 1965

20. On 7th September, 1965, a Mauritius delegation comprising representatives of the Mauritius Labour Party, the Parti Mauricien Social Démocrate, the Independent Forward Bloc, the Muslim Committee of Action and two independent Members of the Legislative Assembly (Appendix G) met at Lancaster House, under the chairmanship of the then Secretary of State for the Colonies, Mr Anthony Greenwood, “to reach agreement on the ultimate status of Mauritius, the time of accession to it, whether accession should be preceded by consultation with the people and, if so, in what form.” (3) The Conference met until 24th September, 1965.

21. The claim for independence was supported at the Conference by the Mauritius Labour Party, the Independent Forward Bloc and the Muslim Committee of Action, although this party had put up certain conditions in regard to the electoral system. The Parti Mauricien Social Démocrate advocated, as a substitute for independence, close constitutional associations with Great Britain and submitted that, in any event, the people of Mauritius should be allowed to express their preference in a free referendum.

(1) House of Commons debates Vol. 720, Col. 1309.

(2) House of Commons debates Vol. 872, Col. 327.

(3) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 1.

22. In the final communiqué issued on 24th September 1965, the Secretary of State for the Colonies ruled out the proposal submitted by the Parti Mauricien Social Démocrate for association with Great Britain on the ground that "given the known strength of the support for independence, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled." The plea for a referendum which, in the Secretary of State's opinion would prolong "the current uncertainty and political controversy in a way which would harden and deepen communal divisions and rivalries" was also discarded. The United Kingdom's Government ultimate decision on the issue was "to fix a date and take necessary steps to declare Mauritius independent after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly." (1)

23. The final communiqué also referred to the following defence arrangements between the British and the Mauritius Governments:—

23. At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield. (2)

(1) Report of the Mauritius Constitutional Conference—September 1965—Sessional Paper No. 6 of 1965, p. 4.

(2) Op. cit., p. 5.

That section of the communiqué which touches upon military arrangements makes no mention of any agreement in regard to the excision of any part of the Mauritian territory in the context of either mutual defence or what was ultimately termed "in the general western interest to balance increased Soviet activities in the Indian Ocean." (1)

However, in the light of evidence produced by representatives of the political parties which took part in the Mauritius Constitutional Conference 1965, and which is reviewed at paragraph 25 hereunder, the Committee is convinced, without any possible doubt, that, at a certain time while the Constitutional talks were on, the question was mooted. And, further, the Committee is satisfied that the genesis of the whole transaction is intimately connected with the constitutional issue then under consideration.

24. The Committee regrets that, apart from Sir Seewoosagur Ramgoolam who led the Mauritius Labour Party delegation, the leaders of the other participating political parties are no more. Nevertheless, the Committee has been fortunate enough to hear members from each of the parties present at Lancaster House, in September 1965.

25. Their reports to the Select Committee can be summarized as hereunder:

A The Mauritius Labour Party

The Mauritius Labour Party, led by the then Premier and Minister of Finance, Dr the Honourable Seewoosagur Ramgoolam, now Sir Seewoosagur Ramgoolam, was, numerically speaking, the most important political party which attended the Constitutional Conference. Sir Seewoosagur was heard by the Select Committee on 6th December 1982. He declared that the eventual excision of the Chagos Archipelago from Mauritius never appeared on the agenda of the Constitutional talks nor was it ever brought for discussion in Mauritius prior to the Conference. It was only, while the talks were on, that he had two private meetings with the British Authorities; one, at 10, Downing Street where the British Government's decision to grant independence to Mauritius was communicated to him by the then Prime Minister, and the second, on 23rd September, 1965, in one of the committee rooms of Lancaster House where he was, for the first time, informed by the Secretary of State, Mr Anthony Greenwood, of the United Kingdom's intention of detaching the Chagos Archipelago from Mauritius.

(1) House of Commons debates Vol. 868, Col. 277.

Sir Seewoosagur declared that he accepted the excision, in principle, as (i) he felt he had no legal instrument to prohibit the United Kingdom Government from exercising the powers conferred upon it by the Colonial Boundaries Act 1895, which powers could not be resisted even by India when the partition of this country took place before its independence (ii) he could not then assess the strategic importance of the archipelago which consisted of islands very remote from Mauritius and virtually unknown to most Mauritians and (iii) it was concretely expressed to him that the islands would be used as a communications centre and not as a military base.

Sir Seewoosagur strongly emphasised that, at no time, during that meeting and during meetings he had subsequently with the Secretary of State — after the Constitutional talks — to discuss details of the excision, was he made aware that the United States of America were in the deal and that the islands would be required for a joint U.K./U.S.A. defence venture. So much so that the statement made in the Legislative Assembly, on 14th December 1965, by the then Acting Premier, Mr Guy Forget, (Appendix 'F') came as a surprise to him. He even declared to the Select Committee that the circumstances which led to the introduction in that statement of certain elements then unknown to him were still shrouded in 'mystery'. He did not deny, however, that while the Conference was on, a Mauritian delegation led by late Mr Guy Forget met the Minister in Charge of Economic Affairs in the American Embassy in London.

Sir Seewoosagur maintained that the choice he made between the independence of Mauritius and the excision of the archipelago was a most judicious one. He thought, however, that had all the political parties present at Lancaster House been united in the claim for independence, better conditions might have been obtained. But, the Parti Mauricien Social Démocrate (P.M.S.D.) walked out of the Conference, as soon as it became evident that independence could not be avoided.

Sir Seewoosagur recalled that at one of the meetings on the excision issue, with the Secretary of State, he stressed that the sovereignty of Mauritius over the islands should be maintained and all rights connected with fishing and mineral prospection should be preserved. He also claimed the possibility for planes to use the strip on Diego Garcia for any emergency landing on their route to and from Mauritius. No records of these proceedings were communicated to him, but he had the impression

that, apart from the claim for sovereignty, all the other points were agreeable to the British Government including a proposition that, in the event of excision, the islands would be returned to Mauritius when not needed by the United Kingdom Government. He recognised, however, that apart from certain statements made by himself and members of his Government in international meetings, no official request had been made for the retrocession of the islands to Mauritius.

Touching upon the question of the displacement of the Ilois community, Sir Seewoosagur said that it was never raised with him at any time in London and whatever correspondence he exchanged later in Mauritius with the British High Commission on the subject, had to take into account the unexpected nature of the statement made in the House by late Mr Guy Forget. (Appendix 'F')

Sir Veerasamy Ringadoo confirmed that, at no time, was the question of the excision of the Chagos Archipelago brought on the table of the Mauritius Constitutional Conference of September 1965. He might have been informed of such proposals after the private meeting Sir Seewoosagur Ramgoolam had with the Secretary of State, Mr Anthony Greenwood, on 23rd September, 1965. He did not object to the principle of the excision as he felt that, being given the defence agreement entered into with Great Britain (paragraph 23)—a decision which had the unanimous support of all political parties present at Lancaster House, most particularly in view of the social situation which had deteriorated in Mauritius—the United Kingdom Government should be given the means to honour such agreement. It was in this context that he viewed the excision of the islands which were to be used as a communications station.

Sir Veerasamy stated that, about one week after the Constitutional talks, Sir Seewoosagur Ramgoolam and himself had discussions with officials of the Foreign Office on the excision issue, where both of them stressed that (i) when no longer needed, the islands should be returned to Mauritius (ii) all rights connected with fishing and mineral prospection would be maintained for Mauritius (iii) the possibility for planes to use the strip on Diego Garcia, in any emergency, on their route to and from Mauritius should be recognized and (iv) 'all the requirements for the installation of the station and for the food and everything would, as far as possible, be taken from Mauritius.' Unfortunately, no minutes of this meeting were circulated.

Sir Veerasamy supported Sir Seewoosagur's contention that nothing was heard in Mauritius about the excision until Mr Guy Forget made a statement in the Legislative Assembly on 14th December, 1965. He also maintained that the substance of this statement was absolutely alien to the nature of the talks he had, in company of Sir Seewoosagur, with the officials of the Foreign Office, in London.

Sir Harold Walter also stated that, at no time in Mauritius, prior to the Constitutional talks, was the question of the excision brought up for discussion. He happened to learn of this issue when he saw the definition of the State of Mauritius in a draft Constitution prepared for the country by the Colonial Office. He then questioned Sir Seewoosagur Ramgoolam on the matter and the latter revealed to him that he had to make some concessions on that score, as he felt that at one time during the Conference, the British Authorities tended to agree to the claim of the Parti Mauricien Social Democrite (P.M.S.D.) for a referendum.

Sir Harold did not resist the stand taken by the Leader of the Mauritius Labour Party as he knew the amount of pressure that was made to bear on the United Kingdom Government against the grant of independence to Mauritius. Moreover, public opinion in the country was largely divided on the nature of constitutional progress to be achieved. Indeed, he had got Sir Seewoosagur's assurance that the abandonment of the Chagos Archipelago had been agreed on certain conditions, namely, that (i) fishing and mineral prospection rights would be preserved for Mauritius (ii) the islands would be returned when no more needed and (iii) Mauritians would be employed to work there. He further stressed that no Mauritian delegate present at Lancaster House had expressed any dissent on the principle of the excision.

Sir Harold declared having been made aware of the United States' interest in the archipelago "years after" the Constitutional Conference. Everything that could have been published on that issue before or immediately after the talks might have escaped his attention as he was mainly interested in the accession of Mauritius to national sovereignty.

Sir Harold stated that the question of the Ilois was raised in London and they were considered as Mauritians who had migrated to work on the islands. However, the amount of compensation to be paid by the United Kingdom was not discussed at his level and he came to know about it much later.

Sir Satcam Boolell informed the Committee that the question of the excision of the Chagos Archipelago was raised by the British Officials in private with Sir Seewoosagur Ramgoolam, in London. He was not much concerned about it as he only had in mind the independence of Mauritius. He can vaguely recollect that the United Kingdom Government wanted Diego Garcia to be used as a signal station and that the whole archipelago would be returned to Mauritius when no more needed. He was further given to understand that all mineral resources around the islands would remain the property of the Government of Mauritius. At no time was he made aware of the United States involvement in the deal.

Sir Satcam further added that, in spite of the fact that he was then the Minister responsible for agriculture, he had no idea of any bid for the sale of Mauritian sugar on the American market as that transaction was in the hands of the Mauritius Sugar Syndicate.

Sir Satcam affirmed that he did not attend any meetings where the excision of the Chagos Archipelago was discussed and on this question he had put all his trust in the wisdom and experience of Sir Seewoosagur Ramgoolam.

B. *The Parti Mauricien Social Démocrate (P.M.S.D.)*

The first political commotion which took place in Mauritius, as a result of the excision of the Chagos Archipelago was the resignation, on 11th November, 1965, of the three P.M.S.D. Ministers (Messrs Koenig, Duval and Devienne) from the coalition Government. The next day, they convened a press conference in Port Louis and explained that the reason for their resignation was Government stand in regard to the excision of the Chagos Archipelago. The party's leader, Mr Koenig, stressed that the P.M.S.D. was not against the use of the archipelago for a joint United Kingdom/United States defence venture. But his party felt that Government should have retained the sovereignty of Mauritius over the islands and negotiated their occupation, on the best possible terms, direct with the occupying powers. The P.M.S.D. had in mind the possibility of securing a substantial sugar quota on the United States market and defining a policy of emigration to the United States for unemployed Mauritians.

This stand was supported by Sir Gaëtan Duval, Q.C., one of Mr Koenig's co-delegate, when he appeared before the Select Committee on 12th November, 1982. He underlined that a periodical review of such arrangements direct with the occupying powers would have been most beneficial to Mauritius. Sir Gaëtan further assured the Committee that the Council of Ministers was, from the very start, aware that the Chagos Archipelago would be used for defence purposes jointly by the United Kingdom and the United States. He indicated that this state of affairs is contained in official documents. The possibility of recruiting Mauritian workers for the construction of military installations at Diego Garcia and the purchase, as far as possible, of materials from Mauritius was even envisaged at that time.

Sir Gaëtan explained that, on 23rd September, 1965, while the Mauritius Constitutional Conference was discussing the proposition for a referendum put forward by his party, the chairman, Mr Anthony Greenwood, suspended the proceedings and invited the Mauritian delegates to meet him and offer their views on the future of the Chagos Archipelago. The P.M.S.D. refused to attend the meeting, feeling that such a question was outside the agenda of the Conference and that the party had no mandate to consider any possible excision of part of the Mauritian territory. Sir Seewoosagur Ramgoolam, Sir Abdool Razack Mohamed and Mr Sookdeo Bissoondoyal, representing respectively the Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc responded to the invitation but Sir Gaëtan was not in a position to say if the final decision was taken in their presence or as a result of private consultations between Mr Anthony Greenwood and Sir Seewoosagur Ramgoolam. It was, revealed Sir Gaëtan, at the resumption of proceedings, after such a meeting extraneous to the Conference agenda, that the Secretary of State ruled out the suggestion for a referendum, leaving the clear impression that some sort of blackmailing had taken place.

Alluding to the question of the displaced Ilois, Sir Gaëtan argued that the excision having taken place in 1965, that is, three years before the independence of Mauritius, those persons cannot be considered as citizens of Mauritius but British nationals. He regretted that (i) the case of Mr Vencatassen had been withdrawn from the British Law Courts, thus depriving the community at large from obtaining the verdict of the Court on this delicate issue and (ii) the attitude of the Mauritius Government, after independence, vis-à-vis the United Kingdom, might, in a large measure, have jeopardised the claim of Mauritius for recovering its sovereignty over the archipelago.

C *The Independent Forward Bloc (I.F.B.)*

Honourable Aneerood Jugnauth, Q.C., Prime Minister of Mauritius, who formed part of the Mauritius Delegation to the Constitutional talks 1965, under the banner of the I.F.B., was heard by the Select Committee. He stated that never, in the course of the talks, was the question of the excision of the Chagos Archipelago raised. Some time before the Conference ended, the Leader of the Mauritius Labour Party, Dr Seewoosagur Ramgoolam, came to the desk of the I.F.B. delegation and told the delegates that he had accepted a proposition from the United Kingdom to use Diego Garcia as a communications station. There was no indication that the islands would be used as a military base, nor was the question of an excision from the Mauritian territory mentioned. Mr Jugnauth said that, at the time, the I.F.B. "had not much to say about it", as the party thought that the installation of communications facilities on the islands was an innocuous venture.

Mr Jugnauth stressed that, at no time, did the Leader of the I.F.B. inform his co-delegates that he had taken part in any private talks on the issue with the British authorities, nor was the eventual excision of the islands ever discussed at party level. He added that the statement made by Mr Guy Forget in the Legislative Assembly on 14th December, 1965, (Appendix 'F') came as a surprise to him in the sense that it contained facts that were never brought to his knowledge or to that of his party before. He was not a minister when the excision was discussed in the then Council of Ministers and he was never informed subsequently of the decision then taken.

Mr Jugnauth recalled that the withdrawal of the P.M.S.D. from the Constitutional talks had nothing to do with the excision of the Chagos Archipelago which, he repeated, was never brought on the Conference agenda. The P.M.S.D. delegates left when they learnt of the United Kingdom's intention to grant independence to Mauritius.

The Committee wishes at this stage to reproduce a statement made in the Legislative Assembly, on 19th October, 1976 by late Mr. S. Bissoondoyal, then Leader of the I.F.B. on the excision of the archipelago and which supports substantially the evidence of Mr. Jugnauth:—

The London Conference in 1965 witnessed this question coming out whether Mauritius would agree to part with Diego Garcia. That was the question put to me as a Member of the Government, put to me in private. I had an answer for it and that question was also put to the Leader

of the Parti Mauricien. I am aware of the attitude of the Parti Mauricien at that time. Now let me make it clear to the House, the aftermath of all this matter was dealt with personally by the Prime Minister and no Government then existing. I was a Member of the Government, I knew what was taking place: (1)

- D. *Mr Maurice Paturau, D.F.C., C.B.E.—Independent Member*
Mr Paturau appeared before the Select Committee on 13th December 1982. He formed part of the Mauritius delegation which attended the Constitutional talks of September 1965. He revealed that he participated in no less than two meetings with the British authorities on the question of the excision of the Chagos Archipelago, but all these meetings were extraneous to the open Constitutional Conference which was then in progress. It was in the course of the first of these meetings that Dr Ramgoolam himself and the other party leaders took cognizance of the amount of compensation proposed by the United Kingdom. When the possibility of securing a sugar quota on the American market was evoked by the Mauritian side, the British officials suggested that this question should be dealt with direct with the American Embassy in London. A meeting was accordingly arranged and Mr Guy Forget led the Mauritian delegation which comprised, *inter alia*, Messrs Abdool Razack Mohamed and Jules Koenig. The request of Mauritius was turned down by the American officials who stated that "as far as Chagos was concerned, they would not commit the American Senate or House of Representatives about anything like a sugar quota." They intimated that anything connected with the Chagos Archipelago issue was a matter for direct negotiation between the United States and the United Kingdom Governments, and not with Mauritius.

The second meeting took place after the P.M.S.D. had retired from the Conference and the Mauritius delegation was then represented by Dr Ramgoolam, Messrs Abdool Razack Mohamed, Sockdeo Bissoondoyal and himself. A final compensation of £3m was then proposed by the United Kingdom Government. He expressed dissent as he thought the compensation inadequate, but the other delegates agreed.

Mr Paturau stressed that during all the negotiations that took place, he had in mind the lease of the Chagos Archipelago by Mauritius. An initial period of thirty years was even proposed during which term a sugar quota at more remunerative prices would be negotiated, coupled with the possibility of obtaining

(1) Debates No. 28 of 1976, Col. 2885-2886.

rice and flour from America at subsidized rates. Such lease would have been, more or less, on the model of the North West Cape Agreement between Australia and the United States, signed in 1963. He did not agree that the idea of a communications station was devoid of any military connotation. The American sub-marines needed in fact a land base which would 'generate enough messages at low frequency, but of high power so that they could reach the sub-marine and give it the actual position it was in so that it could fire its missiles with as much precision.'

Referring to the attitude of the P.M.S.D. on the excision issue, Mr Paturau said that, at no time, either in London or in Mauritius, did that party express any opposition to the principle of the excision. The party was most concerned at Lancaster House with reservations in the electoral system and walked out of the Conference on that issue, whereas the resignation of the Ministers of that party from the then Council of Ministers was motivated by the inadequacy of the compensation offered by the United Kingdom Government. As regards the inhabitants of the islands, he explained that, to his mind, those who came from the Seychelles were considered as migrants, whereas the others were "established Mauritians" whose fate was never discussed at the meetings he attended.

V — The Lesser Dependencies in the Wake of a New Destiny

26. In November 1959, a Commission headed by Professor J. E. Meade was appointed to report to His Excellency the Governor of Mauritius, then Sir Colville Montgomery Devereux, K.C.M.G., C.V.O., on ways and means of improving the economic and social structure of Mauritius. Although the terms of reference of the Commission were wide enough, the Commissioners did not feel that a study of the economic potentialities of the dependencies of Mauritius, including Rodrigues, was justified. Indeed, the temptation of ignoring whatever contribution the lesser dependencies particularly, could make to the economy of Mauritius was so great that at paragraph 6:44 of their report, the Commissioners invited Government to reject an application for financial assistance made by the two private companies which were then engaged in copra production on the Chagos and Agalega islands. (1)

27. The outright ignorance of the lesser dependencies and of their possible contribution to the economy of Mauritius, by the Meade Commission, did not deter the private sector in its attempt to rehabilitate the islands by a more scientific approach to copra production. The sector felt that if the soap and oil industry were to be maintained in Mauritius, as a means of helping both to combat unemployment and to save foreign exchange,

(1) J. E. Meade & Others, *The Economic and Social Structure of Mauritius*—Frank Cases & Co. Ltd. p. 138.

it was imperative that the raw materials produced on the islands should not be abandoned. Hence, in September/October 1961, an exploratory survey of the islands was undertaken by a team composed of Mr René Maingard de la Ville-es-Offrans, acting on behalf of Rogers & Co., Mr Paul Moulinié, an entrepreneur from the Seychelles and Dr Octave Wiehé.

28. Mr René Maingard de la Ville-es-Offrans, now Sir René Maingard de la Ville-es-Offrans, C.B.E., was heard by the Select Committee on 8th February 1983. He related to the Committee the attempts made by the private sector to rehabilitate copra production on the islands, with a view particularly to saving the soap and oil industry in Mauritius. These attempts may be summarized as follows. In August 1961, the two private companies which were operating on the islands offered to Rogers & Co. to buy 55% of their shares. Rogers & Co., before taking any decision on the offer, resolved to conduct a survey *in situ* of the islands and this exercise was undertaken by the team referred to at paragraph 27 above. After a full assessment of the economic situation of the operating companies and a thorough survey of the prospects of the industry, the party recommended that the islands be purchased by a private enterprise made up with the equal participation of Rogers & Co., the existing shareholders and Mr Paul Moulinié of the Seychelles. Mr Maingard de la Ville-es-Offrans tried to enlist, for the purpose, the financial support of the Government of Mauritius. Hence, through the agency of Dr Seewoosagur Ramgoolam, a meeting was arranged at Le Reduit between himself and the Governor of Mauritius (Sir Colville M. Deverell, K.C.M.G., C.V.O.), the Colonial Secretary (Mr Tom Vickers, C.M.G.), the Financial Secretary (Mr A. F. Bates, C.M.G.) and Mr A. L. Nairac, C.B.E., Q.C. who was then Minister of Industry, Commerce & External Communications.

The Governor then informed him that, taking into consideration the recommendations of the Meade Commission, the Colonial Office was opposed to any form of Government financial participation in the venture.

On 7th March 1962, the Colonial Steamships Co. Ltd. offered to put up a society, the Chagos Agalega Ltd., at par with Mr Paul Moulinié and shareholders from the Seychelles with a view to purchasing the islands. That company was registered in the Seychelles and the promoters suggested that the sovereignty of the islands should be transferred from Mauritius to the Seychelles. Although the then Governor of the Seychelles seemed agreeable to the project, the Colonial Office again stood in the way. Hence, the exploitation of the islands remained the sole concern of the Chagos Agalega Ltd., which had become the owners of the islands.

In 1964, Mr René Maingard de la Ville-es-Offrans had again the possibility of discussing, *inter alia*, the future of the islands with top British political personalities, such as Messrs Lennox-Boyd, Patrick Wall, Ian Mac Leod and Sir Tufton Beamish. He got the firm impression out of the talks that the British Government had no intention of parting with the islands for which they had conceived projects of a nature other than industrial.

In April 1967, the assets of the Chagos Agalega Ltd. were compulsorily acquired by the United Kingdom Government and the administering company gave full powers to Mr Paul Moulinié to discuss the compensation issue and to take all measures connected with the displacement of the local population. Indeed, neither the Government of Mauritius nor any of the Mauritian shareholders took part in the negotiations. The amount paid by the United Kingdom Government was £660,000.—, but consideration of the company's assets brought the figure to Rs 7,500,000. The Chagos Agalega Ltd was wound up on 19th December 1975 after the compulsory acquisition, on 1st October 1975, of Agalega by the Government of Mauritius. Its registration at the Registrar General's Office of the Seychelles was cancelled on 11th December 1980.

29. The Meade Commission was appointed 'to make recommendations concerning the action to be taken in order to render the country capable of maintaining and improving the standard of living of its people, having regard to current and foreseeable demographic trends' with particular reference to 'the economics of the staple agricultural industries of Mauritius'. In the chapter introductory to their report, the commissioners, however, explained that in their assessment they had chosen to ignore the dependencies of Mauritius, namely Rodrigues, the Chagos Archipelago, Agalega and St. Brandon. They did not even consider a visit to these dependencies necessary. The reason for this deliberate omission is thus outlined in chapter 1:2 of the report. 'Unfortunately, we had no opportunity of visiting the dependencies and have not therefore included them within the scope of our report. We do not think this greatly detracts from our report, however, since the dependencies amount for only 12% of the colony's area and 3% of its population, and play little or no part in the economic life of the island of Mauritius itself.' (1)

This statement might have proved surprising at the time it was published in as much as it looked contradictory to the terms of reference of the Commission which invited the Commissioners, *inter alia*, to look for a definition of 'the broad lines of development policy in the future.' It is indeed unbelievable that, in that particular context, the unquestionable potentialities of the dependencies, including Rodrigues, in the framing of a new social and economic structure for Mauritius could not have attracted the attention of the experts who formed part of the Meade Commission.

The Select Committee is thus tempted, at this stage, to share Sir Rene's feelings that the deliberate assignment of the dependencies of Mauritius to purposes in no way connected with the economic and social interests of Mauritius, formed part of a definite and long term strategy on the part of the United Kingdom Government.

(1) J. E. Meade and Others—op. cit.

PART II

DOCUMENTARY EVIDENCE

VI — Preliminary Remark

30. At the very outset, the Committee wishes to report a most deplorable state of affairs. To an application for copies of correspondence exchanged between the Governor of Mauritius and the Secretary of State for the Colonies, pertaining to the years immediately preceding the independence of Mauritius, the Private Secretary and Comptroller, Le Reduit, replied that there were 'no record concerning the despatch of document from this office to other departments prior to 1970.' He further added: "I have also made searches in our Archives but have not been able to find any document where the information asked for could have been registered. I understand from Mr E. G. Goldsmith, former Private Secretary, that at the time of independence in 1968, a lot of documents were either destroyed or taken over by Mr Young, who was then Information Officer at the British High Commission."

The Committee deeply regrets that such valuable documents have not been allowed to form part of our archives. Their removal or destruction, in addition to being a national calamity, will be most harmful to the efforts of students in our local political history.

VII — The Anglo-American Survey

31. The first serious hint at the possibility of the United Kingdom Government using Mauritius and its dependencies, most particularly Diego Garcia, as a unit for its defence strategy in the Indian Ocean, came from Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in the course of an interview given on the B.B.C. in the programme 'London Calling Mauritius', on 21st February, 1964. (1). This opinion was subsequently carried by the written press overseas which made no mystery of the United Kingdom's choice of 'keeping Aden at all costs, enlarging Britain's fleet of aircraft carriers, or finding some territory in the Indian Ocean, if there is one, with natural facilities and a small, politically isolated population.' (2).

32. However, no allusion to any consultation between the United Kingdom Government and the local authorities was reported until the 31st July, 1964, when a local daily reproduced the following information from its London correspondent:

"Il y a eu à Maurice, une importante réunion du Cabinet des Ministres, présidée par Sir John Rennie, probablement le 13 ou le 14 juillet. Au cours de cette réunion, Sir John a tenu les ministres présents au courant d'un communiqué dans lequel le Secrétaire d'Etat aux Colonies, M. Sandys, révèle l'intention de Londres de faire de Maurice, des Seychelles et d'Agalega une importante base navale militaire." (3)

(1) Advance—22nd February 1964.

(2) The Economist—4th July 1964.

(3) Le Mauricien—31st July 1964.

33. The meeting of the Council of Ministers referred to in the press excerpt quoted at paragraph 32 above took place on the 14th July 1964. The Minutes of that meeting indicate that the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., O.B.E., made a statement on certain developments in the field of defence. The Select Committee regrets that the Governor's pronouncement cannot be reproduced as it, undoubtedly, forms part of the records which have either been destroyed or removed to the British High Commission as mentioned in paragraph 30 of this report. However, this situation does not deter the Select Committee in its opinion that Sir John's statement was of a nature which cannot but render absolutely misleading, both to the House and to the nation, the interjection made in the Legislative Assembly, on 10th November, 1964, by Honourable Satcam Boolell to the effect that the Government of Mauritius was not aware of any military project conceived by the United Kingdom Government for either Mauritius or any of its dependencies. (1) Indeed, in reply to a parliamentary question in the House of Commons on 5th April 1965, Mrs Eirene White, then Under-Secretary of State for the Colonies, revealed that consultation prior to the survey had in fact taken place both at the level of the Premier and of the Council of Ministers. She stated: "The Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or in Washington." (2) However, the Select Committee will establish hereunder (para. 34) that not only the Council of Ministers but the whole Legislative Assembly sitting in 1964 were informed, in unequivocal terms, of the British-American technical survey of the islands. The information was even released to the press on 14th December, 1964.

34. On 10th November, 1964, in the Legislative Assembly, at adjournment time, Honourable B. Ramlallah intervened lengthily on certain speculation to the effect that a joint Anglo-American survey was in progress in Diego Garcia and requested a full and prompt explanation from Government (Appendix 'H'). The reply came on 14th December, 1964, in the form of a letter from the then Chief Secretary, Mr Tom Vickers, C.M.G., addressed to Honourable Ramlallah, copied to all Members of the Legislative Assembly and released to the press. (Appendix 'I'). Confirmation is contained therein of (i) the presence of a joint British-American survey team 'on certain islands, including the Chagos Archipelago, Agalega, but not including Mauritius' and (ii) prior notification of this exercise having been given to the Council of Ministers. Such notification was no doubt contained in Sir John Rennie's statement to the Council of Ministers on 14th July, 1964. (paragraph 33) and

(1) Mauritius Legislative Assembly Debates No. 23 of 10th November 64 Col. 1574.
(2) House of Commons Debates—Vol. 710, Col. 26.

brings to naught all future submissions to the effect that any United Kingdom's project for the islands was first communicated to both the Premier and his Ministers *en marge* of the Constitutional talks of September 1965 and that the United States participation therein was unheard of prior to that conference.

35. The news of the Anglo-American survey of the islands met with protests from nearly all quarters of the Mauritian press which urged the then Government to combat the project. The danger of thus pushing the Indian Ocean into the zone of nuclear warfare was vehemently denounced in the Upper House of Parliament, India, on 18th November 1965, by the then Indian Minister of State for External Affairs, Mr Sardar Swaran Singh, and a no less energetic condemnation of the project was echoed in Sri Lanka by the then Prime Minister, Mrs Bandaranaike. And, at this stage, the Select Committee wishes to underline that, in the face of the complete indifference of the then Government, even a group of Mauritians living in the United Kingdom took the initiative of publishing in the British press their strong opposition to the Anglo-American venture. (1) Unfortunately, none of these outbursts of indignation succeeded in provoking from the then Premier of Mauritius and his Ministers a single note of protest.

36. On 15th June 1965, nearly on the eve of the Constitutional talks, Dr J. M. Curé, pressed Government to say whether the United States of America had any military interests in our dependencies. He urged Government to convey to the British Authorities 'the inadvisability of entering into any agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next' and to ascertain, in the first instance 'the presence of oil fields in our dependencies before alienating them'. (Appendix J) The reply again came from Mr Tom Vickers who referred the Legislative Assembly to the reply he made on 14th December 1964 to Honourable Ramlallah. (Appendix I) Hence, when the parliamentary vacations came on 29th June, 1965, the Ministers who formed part of the Mauritius delegation to the Constitutional talks of September of that year, prepared their trip to Lancaster House in a spirit which, as far as the lesser dependencies were concerned, bordered, in the Select Committee's opinion, on outright collusion. Indeed, Sir Seewoosagur Ramgoolam when he deposed before the Select Committee on 6th December, 1982, made no bones of submitting that his main concern at Lancaster House was the independence of Mauritius and that he was prepared to achieve that aim at any costs. He stated: 'A request was made to me. I had to see which was better—to cede out a portion of our territory of which very few people knew, and independence. I thought that independence was much more primordial and more important than the excision of the island which is very far from here, and which we had never visited, which we could never visit.' He added: 'If I had to choose between independence and the ceding of Diego Garcia, I would have done again the same thing.'

(1) Le Mauricien—29th September, 1964.

VIII — Outside the Conference Table, 1965

37. The Select Committee accepts the unanimous statements made by the participants at the Constitutional Conference of September 1965, and who deposed before the Select Committee (paragraph 25), to the effect that at no time was the question of the excision of any part of the Mauritian territory brought for discussion at the open Conference. Such decision of the United Kingdom Government was privately communicated to the then Premier, Dr the Honourable Seewoosagur Ramgoolam. But the Select Committee is not prepared to put on the sole shoulders of the latter the blame for acceding unreservedly to the United Kingdom's request. Evidence is not lacking to show that, indeed, the Premier shared with, at least, the leaders of the political parties present at Lancaster House, and with some independent participants, including Mr Paturau, D.F.C., the United Kingdom's offer of excision of the islands and the interests of the United States of America in the deal. So much so that, at one time during the Conference, a Mauritian delegation comprising MM Guy Forget (Labour), Jules Koenig (PMSD), Abdool Razack Mohamed (CAM) and Maurice Paturau (Independent) met the Minister in charge of Economic Affairs in the American Embassy in London in an attempt to secure, against the proposal for excision, a remunerative market in America for Mauritian sugar. The only surviving member of that particular delegation, Mr Maurice Paturau, D.F.C., informed the Select Committee that the American authorities turned down the proposition and stressed that all matters incidental to the Chagos Archipelago issue were meant for discussion between the United States and the United Kingdom and not with Mauritius.

38. The most decisive event in the history of the excision of the Chagos Archipelago occurred on Thursday, 23rd September, 1965, on the eve of the closing session of the Constitutional talks. On that day, discussions were officially held between a group of United Kingdom officials, headed by the Secretary of State for the Colonies, Mr Anthony Greenwood, and a number of Mauritian Ministers. Evidence produced before the Select Committee shows, without any possible doubt, that the following Ministers took part in the proceedings: The Premier (Dr Seewoosagur Ramgoolam), the Minister of Social Security (Mr Abdool Razack Mohamed), the Minister of Industry, Commerce and External Communications (Mr Maurice Paturau, D.F.C.), the Minister of Local Government (Mr Sookdeo Bissoondoyal). As regards Mr Koenig, the minutes do not refer to his presence (Appendix K). The Chief Secretary's memorandum (Appendix M) mentions his attendance at certain discussions, without specifically referring to the meeting held on 23rd September 1965. Sir Gaëtan Duval categorically affirmed that Mr Koenig did not attend that meeting and Mr Paturau stated that he had no recollection of Mr Koenig being present. Record of the proceedings (Appendix K) indicates (i) the eight conditions on which Dr the Honourable Seewoosagur Ramgoolam undertook to obtain the approval of the local Council of Ministers and (ii) the acceptance thereof, in principle, by MM Mohamed (CAM) and Bissoondoyal (IFB). As regards the other participant, Mr Paturau, he had expressed dissent about the amount (£ 3m) of final compensation offered, which he considered to be totally inadequate. (Paragraph 25).

IX—Before the Council of Ministers

39. The relevant parts of the minutes of the meeting held on 23rd September, 1965 (Appendix 'K') were transmitted to the Governor of Mauritius under cover of Colonial Office Despatch No. 423 dated 6th October 1965. (Appendix 'L'). The Select Committee notes that this document does not give any definite character to the proposals which Dr the Honourable S. Ramgoolam had undertaken to carry to the approval of his colleagues in the Council of Ministers. Hence, (i) defence and internal security would have to be negotiated, after independence (ii) projects to which the £3 m compensation would be devoted would be the subject of further discussions (iii) the British Government would use their good offices, without any firm guarantee of success, with the United States Government to secure concessions over sugar imports, supply of wheat and other commodities, to use labour and materials from Mauritius for construction works on the islands and (iv) to ensure that navigational and meteorological facilities, fishing rights and the possibility of using the air strip for emergency landing and refuelling of civil planes be made available to Mauritius. As regards the two other crucial points, namely, the return to Mauritius of the islands when no more needed and the exclusive right of Mauritius to 'the benefit of any mineral and oil discovered in or near the Chagos Archipelago', the United Kingdom Government simply took note, whilst stressing that the archipelago would remain under British Sovereignty.

40. The arrangements regarding defence and internal security appear, in more details, in the final communiqué issued at the end of the Conference, (para. 23) Hence, in the Memorandum (Appendix 'M') prepared by the Chief Secretary, Mr Tom Vickers, C.M.G., for the Council of Ministers and embodying the United Kingdom's reservations on the proposals agreed to in principle by the Premier, Mr Mohamed and Mr Bissoondoyal (Appendix 'K'), a significant change had occurred. Point (i) relating to the defence agreement had been replaced by the following: (i) the Chagos Archipelago would be detached from Mauritius and placed under British Sovereignty by Order in Council. And the last paragraph of the Memorandum invited the Government of Mauritius to give confirmation of his willingness 'to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago'. The Select Committee notes with concern that this unexpected proposition which had supposedly emerged from the discussions held on 23rd September 1965, but which is not contained in the original record of proceedings (Appendix 'K') did not strike the attention of any Mauritian Minister as being new and unwarranted.

41. The Council of Ministers met on 5th November 1965 and the names of the Ministers present are listed in Appendix 'N' of this Report. Telegram 247 from Mauritius to the Secretary of State (Appendix 'O') translates the views of the Council of Ministers on the Chief Secretary's memorandum (Appendix 'M') and reports the dissent of the P.M.S.D. Ministers, in relation to the inadequacy of the compensation offered. No dissentient voice was

recorded on the principle of (i) the detachment of the archipelago and (ii) the establishment of "defence facilities" thereon (Appendices 'P' & 'Q'). On the 11th November 1965, the P.M.S.D. Ministers resigned from the Coalition Government and in a press conference held the next day, they re-affirmed that their objection was not based on the principle of putting the islands at the disposal of the joint U.K./U.S. venture, but merely on the conditions under which such facilities have been granted, in complete indifference of the social and economic needs of Mauritius.

42. The United Kingdom's views on the last hour reservations of the Council of Ministers in regard to the excision came by way of telegram 313 dated 19th November 1965 (Appendix 'R'). It reasserts the hypothetical character of all future negotiations with the United States about sugar imports. The conditions under which the islands would be returned to Mauritius and prospecting for oil and minerals permitted, are worth quoting:

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.
4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

43. The latest development as regards the eventual return of the islands to Mauritius when no more required is contained in a reply made by the British Prime Minister in the House of Commons, on 11th July, 1980, and which is reproduced hereunder:—

I had a useful exchange of views on 7 July with the Prime Minister of Mauritius on political, economic and cultural matters. Diego Garcia was one of the subjects discussed. When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean Territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government. (1)

As regards the plea for employing Mauritian labour on construction works on the islands, the Select Committee is reproducing at Appendix 'S' of this report, an eloquent and self-explanatory exchange of correspondence between the Prime Minister of Mauritius and the British High Commissioner, as late as February/March 1971.

(1) House of Commons debates — Vol. 983, Col. 314.

44. The agreement of the Council of Ministers for the detachment of the Chagos Archipelago from Mauritius having been obtained at the sitting of 5th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addressed a confidential letter to Ministers on 10th November, 1965, conveying the substance of the public announcement to that effect that was to be made in the House of Commons later on the same day. Sir John's letter together with the text of a communique to be released immediately afterwards are herewith reproduced as annexures T and U respectively.

X—The Public Announcement

45. Before entering into the last stage of description of the circumstances which led to the excision of the Chagos Archipelago, the Select Committee wishes to summarize hereunder the sequence of events leading thereto and underline at the same time the responsibilities of the then Premier, Dr the Honourable Seewoosagur Ramgoolam and its Council of Ministers therein:—

- (i) In August 1964, an anglo-american survey of the islands takes place. On the 14th July preceding, the whole Council of Ministers is so informed by the then Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E. (Para. 33)
- (ii) In September 1965, the Mauritius Constitutional Conference is held in Lancaster House, London. *En marge* of these talks, the Premier is apprised in private of the joint UK/US project of using the islands for "defence" purposes. This information is conveyed by him to his fellow delegates and a delegation comprising the Deputy Leader of the Mauritius Labour Party, the Leader of the P.M.S.D., the Leader of the CAM and an Independent Member meets the Minister in Charge of Economic Affairs in the American Embassy, London, in an attempt to negotiate, in return for the use of the Chagos Archipelago, certain facilities from the United States of America. (Para. 37)
- (iii) On 23rd September 1965, the Secretary of State for the Colonies, Mr Anthony Greenwood, meets the Premier and certain Ministers of the Coalition Government. The discussions include the eventual detachment of the Chagos Archipelago. (Para. 38).
- (iv) On 5th November 1965, the Council of Ministers is invited to give *inter-alia*, its agreement to the detachment. The agreement is given, in principle. (Para. 41).
- (v) On 8th November, 1965, the British Indian Ocean Territory Order is issued. (Para. 10).
- (vi) On 10th November, 1965, the Governor of Mauritius, Sir John Shaw Rennie, K.C.M.G., C.B.E., addresses a confidential letter to Ministers informing them of the United Kingdom's Government final decision on the issue and attaching the text of a press release in that connection. (Para. 44).

The above catalogue of events is most important for the comprehension of the most undignified attitude of certain Labour Ministers of the last Government who deponed before the Select Committee. (Para. 25).

46. Evidence shows that Dr the Honourable Seewoosagur Ramgoolam came back from the London Constitutional Conference on 11 October 1965 and left again for the United Kingdom on 29 November 1965, for medical treatment. He returned on 3 January 1966.

47. As already indicated by Sir John Shaw Rennie, K.C.M.G., C.B.E. (para. 44), the Secretary of State for the Colonies, Mr Anthony Greenwood, made on 10th November, 1965, an announcement in the House of Commons regarding 'new arrangements for the administration of certain islands in the Indian Ocean.' The text of that communication was released in Mauritius by the Chief Secretary's Office on the same day. (Appendix 'U')

48. On 14th December 1965, a parliamentary question was put to the Premier and Minister of Finance requesting a comprehensive statement 'on the question of the sale or hire of the island of Diego Garcia to either the United Kingdom Government or the United States of America or to both jointly' and certain other related matters. (Appendix F.) Honourable Guy Forget, on behalf of the Premier and Minister of Finance, replied to the question and reproduced *verbatim* the reply made by the Secretary of State for the Colonies, in the House of Commons, on 10th November, 1965 (Appendix U).

49. On 6th December 1982, when Sir Seewoosagur Ramgoolam appeared before the Select Committee, he declared, to the Committee's astonishment and dismay, that the statement made in the Legislative Assembly, on 14th December 1965, by Mr Guy Forget, came as a surprise to him. 'Something was done mysteriously', he added. Indeed, he further stated: 'When I came back from the Conference to Mauritius, I was faced with the statement made to a question put in Parliament, by the late Mr Forget, which I said, as I still maintain, is a mystery to me.' And Sir Seewoosagur Ramgoolam went further as to declare that as late as 1972, when, as Prime Minister, he accepted on behalf of the Mauritius Government the receipt of a sum of £ 650,000 from the United Kingdom Government 'in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago' (Appendix W), he was still unwillingly bound by Mr Forget's statement.

When asked by the Select Committee to comment on Sir Seewoosagur Ramgoolam's observations that, "Mr Forget's statement came as a complete surprise to him and that there is a mystery surrounding Mr Forget's statement on the 14th December," Sir Veerasamy Ringadoo replied:—"If he had said that, then his recollection is as good as mine." Sir Veerasamy, who was then Minister of Education and Cultural Affairs, did not remember having seen the text of the communique (Appendix 'T') which the Governor of Mauritius addressed to Members of the Council of Ministers on 10th November 1965.

That element of surprise in the face of Honourable Forget's statement was also shared by Sir Harold Walter.

XI. The Displaced Ilois

50. On 3rd October 1980, the Public Accounts Committee, a Sessional Select Committee of the Legislative Assembly produced a detailed report on the "financial and other aspects of the 'sale' of Chagos Islands and the resettlement of the Displaced Ilois." The report is reproduced at Appendix 'Z'.

The Committee wishes to underline a new disturbing element in the question of the resettlement of the displaced population of the excised islands. Deponing before the Select Committee on 6th December 1982, Sir Seewoosagur Ramgoolam stated that the resettlement issue was "taken up here in Mauritius" after the Constitutional Conference of September 1965. He stated that the issue was so extraneous to the proceedings at Lancaster House that, when he wrote to the British High Commissioner, on 4th September 1972, acknowledging receipt of a sum of £ 650,000 from the British Government "in full and final discharge" of the United Kingdom's undertaking given in 1965 "to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8th November 1965, including those at present still in the archipelago" (Appendix 'W'), he was simply acting in the "context" of the unexpected reply made by Mr Forget in the Legislative Assembly on 14th December 1965 (Appendix 'F').

In the light of documentary evidence produced, the Committee cannot but reject Sir Seewoosagur's submission. Item (iii) of the Record of Meeting held at Lancaster House, on 23rd September 1965, (Appendix 'K') indicates that the question was raised with him on that occasion. And Colonial Office Despatch No. 423 of 6th October 1965 (Appendix 'L') reports that he agreed that the document under reference was an accurate report of the proceedings.

On 4th November 1965, a Memorandum by the Chief Secretary (Appendix 'M') conveying the points agreed upon at the meeting of 23rd September 1965, was circulated to the then Council of Ministers and item (iii) thereof again alluded to the resettlement question.

Hence, as far back as September 1965, documents relating to such a delicate issue were in Government files and the Committee, whilst deploring Sir Seewoosagur's inaccurate statement before the Select Committee, strongly condemns the then Government for its indifference towards the displaced Ilois. Although the amount of compensation had been paid into the public treasury as far back as 1972, it was not until January 1977, after Mr Prosser's visit to Mauritius as a result of strong public agitation that, as a measure preliminary to some sort of rehabilitation, a survey of the persons involved was conducted.

XII. The Latest Developments

51. The Committee feels much comfort in the Resolution contained in the Political Declaration voted at the Non-Aligned Movement's New Delhi Summit Meeting, 1983, about Diego Garcia. (Appendix 'X'). It fully concurs with the views expressed to the effect that "the establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other states". It sincerely hopes that this new Resolution, added to those already adopted by international organisations, such as the United Nations General Assembly (Appendix 'D') and the Organisation of African Unity (Appendix 'E') will contribute to the return to Mauritius of that part of its territory.

XIII. Conclusions

52. Five main themes emerge from the Committee's proceedings and they are set out hereunder as a concluding chapter to this report.

A. *The political climate prior to the Constitutional Conference, 1965*

All the political parties which appeared before the Committee, —with the exception of the P.M.S.D. whose stand will be commented upon in the subsequent sub-paragraph— were unanimous in their submission (para. 25) that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference of September 1965. So much so that none of them did think it appropriate to make their stand known before leaving for the Constitutional talks. Sir Seewoosagur Ramgoolam alleged that the proposition of the U.K. Government was first communicated to him in private talks while the Conference was in progress. Honourable Aneerood Jugnauth, Q.C., then a member of the I.F.B. delegation, stated to the Committee that before the different delegations to the 1965 Constitutional Conference parted, Sir Seewoosagur Ramgoolam had come to the desk where the I.F.B. delegation was and had informed them that he had had private talks with the British Government and had agreed, on behalf of the Government of Mauritius, to a request for communications facilities to be installed at Diego Garcia. He added:—"When he told us that, we took note and we had not much to say about it."

Evidence produced before the Committee does not support the claim that the question of the excision of the islands or their use for defence purposes did not occupy public opinion prior to the Constitutional Conference. Amongst others, the more

salient features indicative of the U.K. Government's definite plans for the militarization of the islands with United States involvement and their possible excision therefor are listed chronologically hereunder:—

1. On 21st February 1964, Mr David Windsor, of the United Kingdom Institute of Strategic Studies, in a broadcast styled "London Calling Mauritius" hinted, in most unequivocal terms, at the U.K.'s decision of using Mauritius and its dependencies as a unit for its defence strategy in the Indian Ocean (para. 31). Report of this broadcast was lengthily reproduced in the local press. (Appendix 'A 1').
2. On 4th July 1964, the *Economist*, reviewing the U.K.'s military strategy as a result of the political uncertainties in Aden, called for a "military effort" for the setting up of a new Indian Ocean base and stressed that "this way of thinking points unerringly to some kind of Anglo-American exercise." Again, this article was taken up in the local press. (Appendix 'A 2').
3. On 22nd July 1964, the Australian paper "Daily News" revealed that talks had been initiated between Washington and Whitehall for a joint military venture in the Indian Ocean and pointed Mauritius as a logical base for such operation both for reasons of strategy and political stability. This excerpt was also published in the local press. (Appendix 'A 3').
4. On 30th August 1964, Reuter confirmed that "high level discussions" were in progress for providing new American bases "on British islands in the Indian Ocean" and reported that a technical survey had already been effected. (Appendix 'A 4').
5. On 31st August 1964, the "Daily Telegraph" directly alluded to the possibility of using Diego Garcia as a Polaris communications centre. (Appendix 'A 5').
6. On 5th September 1964, the *Economist* carried a more direct allusion to the "present Anglo-American search for a communications centre (and may be something more) in the Seychelles or one of the Mauritius dependencies." (Appendix 'A 6').
7. On 23rd September 1964, a group of Mauritian nationals residing in London lodged in the British press a strong protest against the possible installation of "military bases on Mauritian territory and on other islands in the Indian Ocean." This denunciation was reproduced in the local press. (Appendix 'A 7').

8. On 10th November 1964, Honourable B. Ramlallah intervened rather lengthily on the question (Appendix 'H') in the Legislative Assembly. His intervention succeeded in obtaining from Government side two contradictory statements. On the same day, Honourable Satcam Boolell, then Minister of Agriculture and Natural Resources, interjected that Government was not aware of the project. This assertion will be contradicted on 14th December 1964 when the Chief Secretary will confess that indeed "a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius" had been in progress and that the Council of Ministers—of which Honourable Boolell was a member—had been duly informed. (Appendix 'I'). Such information was, indeed, communicated to the Council of Ministers by the then Governor-General on 14th July 1964. (Para. 33).
9. On 16th January 1965, the *Economist*, in an article headed "Strategies West and East" confirmed that a joint Anglo-American survey of the islands had been effected and, for the first time, hinted at the necessity of excising the Aldabra Group from the Seychelles and Diego Garcia from Mauritius, by an Order-in-Council. (Appendix A 8).
10. On 5th April 1965, Reuter made mention of a statement in the House of Commons by Mrs Eirene White, then Under-Secretary of State for the Colonies, who indicated that consultations about the joint Anglo-American survey of the islands had taken place with the Mauritian authorities, at two levels: namely, with Dr. the Honourable Seewoosagur Ramgoolam, in July 1964 and with the Council of Ministers in November of the same year. (Appendix 'A 9').
11. On 9th May, 1965, the Washington Post revealed that, as a result of the technical survey, Diego Garcia stood first on the priority list drawn by the American and British authorities as a recommended location for a joint Anglo-American military facility in the Indian Ocean and referred to the necessity of entrusting the administration of the island to London. The paper revealed that the United States had requested that the "entire archipelago be acquired" and that such exercise should be completed before the forthcoming Constitutional Conference. This

illuminating article even hinted at the U.S. idea "wherever possible, to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere." (Appendix 'A 10').

12. On 3rd June 1965, news broke out in the local press that the Anglo-American military base would, in fact, be installed on the dependencies of Mauritius and of the Seychelles and that a sum of Rs 135 m had been voted for the acquisition of the islands and the displacement of their inhabitants. (Appendix 'A 11').
13. On 15th June 1965, Dr. M. Curé, by way of a parliamentary question, urged Government to "express to the British Government the inadvisability of entering into any agreement with the United States of America" for the eventual acquisition of the dependencies of Mauritius, before the forthcoming Constitutional Conference. The Chief Secretary replied that he had nothing to add to the information communicated by him to Mr Ramlallah on 14th December 1964. (Appendix 'I').
14. On 19th June 1965, the local press carried information to the effect that the joint U.K./U.S. military project in the Indian Ocean was on the agenda of the Commonwealth Prime Ministers' Conference which was then in session and requested the prompt intervention of the Premier of Mauritius and of the Government. The appeal fell on deaf ears. (Appendix 'A 12').
15. On 27th July 1965, the local press again reported that the Government of Mauritius had been put in presence of the whole scheme, including the excision of the islands and that the Premier had offered, as a counter-proposal, the lease thereof. (Appendix 'A 13').

This long—but not complete—catalogue of events translates, in the Committee's opinion, the psychosis prevalent in the public mind, both in Mauritius and overseas, on the issue, prior to the Constitutional Conference of September 1965. It is a matter of regret therefore, that none of the political parties which, at that time, formed part of the Coalition Government, did think it fit to allay the fears of the population. Hence, the Select Committee strongly condemns the passive attitude of the political class represented in the then all-party Government and which formed part of the Mauritian delegation which attended the Constitutional Conference of September 1965. Their silence, in the light of such repeated warnings from responsible sectors of public opinion, bordered, in the Committee's judgment, on connivance.

Even more strongly, the Select Committee condemns the attitude of the then Ministers who, as will be commented upon at sub-paragraph (C), gave their agreement to the excision of the Chagos Archipelago and to its use for U.K./U.S. defence interests.

B. *The attitude of the Parti Mauricien Social Démocrate (P.M.S.D.)*

The position of the P.M.S.D. on the excision of the Chagos Archipelago was made known to the Select Committee by Sir Gaëtan Duval when he deposed on 12th November 1982. He claimed that the P.M.S.D. had not been against the use of the archipelago for a joint U.K./U.S. venture, but had been dissatisfied with the conditions attached to the deal. The sovereignty of Mauritius ought to have been preserved and negotiations for terms most beneficial to the social and economic betterment of the Mauritian population, subsequently conducted with any nation interested in the use of the islands. Sir Gaëtan explained that the then Leader of the P.M.S.D. even refused to attend the meeting held on 23rd September 1965, as a proof that the party was adamant on the excision issue. Referring to the reasons for the resignation of P.M.S.D. Ministers from Government, Sir Gaëtan had this to say: "*Je dois vous dire qu'à ce moment là nous démissionnons non pas parce que nous étions contre l'idée de la construction d'une base américaine, mais parce que nous étions contre l'idée de la cession d'une partie du territoire mauricien*". He will later state: "*Nous étions d'accord sur le principe de la base anglo-américaine à Diego Garcia mais nous refusions la cession.*"

The Select Committee regrets not being able to accept Sir Gaëtan's submission. On no less than three occasions, documentary evidence will establish without the least possible doubt that the P.M.S.D. was indeed agreeable, in principle, to the excision of the Chagos Archipelago but objected to the terms thereof. These occasions are listed hereunder:—

- (i) the Minutes of the Council of Ministers indicate that on 5th November 1965, the Council was called upon to give "their agreement that the British Government should take necessary legal steps to detach the Chagos Archipelago." On that day, the P.M.S.D. Ministers intimated that "while they were agreeable to detachment of the Chagos Archipelago they must reconsider their position as Members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate". (Appendix 'P'). These Minutes were approved without any amendment to that effect, on 12th November 1965, (Appendix 'Q') in the absence of the P.M.S.D. Ministers who had resigned the day before.

- (ii) Public confirmation of the Minutes of the Council of Ministers held on 5th November 1965 (Appendix 'P') was however given at a press conference held by the leaders of that party on 12th November 1965 to explain their resignation as Ministers. The following excerpts from press reports are worth quoting:—

Je tiens à déclarer de la façon la plus formelle que le P.M.S.D. n'est pas contre le principe de céder les Chagos ou que cet archipel devienne un centre de communications pour faciliter la défense de l'Occident. Le P.M.S.D. en approuve le principe; il est en désaccord sur les termes et les conditions de cette cession. (Mr Koenig) (1)
Nous ne sommes pas contre l'excision des îles pour les besoins militaires de l'Ouest. (Mr Koenig) (2)

- (iii) On 14th December 1965, Mr Duval, by way of a parliamentary question invited Government to give an opportunity to the Legislative Assembly "to discuss the detachment of the Chagos Archipelago from Mauritius and its inclusion in the British Indian Ocean Territory, specially in view of the stand taken by India and other Afro-Asian countries". Mr Forget, on behalf of the Premier and Minister of Finance, rightly referred Mr Duval to the press conference of the P.M.S.D. held on 12th November 1965 where no disagreement against the excision was expressed by the party. The supplementary question put by Mr. Duval re-affirmed that the P.M.S.D. was concerned by the conditions of the excision and not by the excision itself. (Appendix 'Y').

Hence, the plea of the P.M.S.D.'s opposition to the excision of the islands does not hold water.

C. The existence of documents

Both Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, when they deposed before the Select Committee (para. 25A) stated that at no time were they put in presence of any document relating to the excision of the islands. They argued that there never existed any agreement thereon nor any minutes of proceedings of possible discussions on the issue. This statement was made not only to the Committee but was very often repeated in the Legislative Assembly, in the past, in reply to interventions from all sides of the House.

(1) Le Mauricien—13th November 1965

(2) L'Express—13th November 1965

The Select Committee is in a position to reject these statements. In spite of Sir Seewoosagur's declaration to the effect that no Minutes whatsoever had been produced to him, the Select Committee has been able to obtain at least two documents from files kept at the Prime Minister's Office and which indicate the contrary. They are listed hereunder:—

- (i) The record of the meeting held at Lancaster House and which outlines the points agreed upon between the Secretary of State for the Colonies on one side and on the other Dr the Honourable Seewoosagur Ramgoolam, the Honourable Abdool Razack Mohamed and the Honourable Sockdeo Bissoondoyal. The document is reproduced at Appendix 'K' of this report.
- (ii) Colonial Office despatch No. 423, dated 6th October, 1965, which confirms that the contents of the record mentioned above had already been agreed in London with Dr the Honourable Seewoosagur Ramgoolam "and by him with Mr Mohamed, as being an accurate record of what was decided". (Appendix 'L').
- (iii) Furthermore, on 5th November 1965, the Council of Ministers, including Sir Seewoosagur Ramgoolam and Sir Veerasamy Ringadoo, gave their agreement to the effect that, "the British Government should take the necessary legal steps to detach the Chagos Archipelago." (Appendix 'P').

In these circumstances, the Select Committee cannot but record its indignation at the attitude of these Senior Ministers of the then Government who, before the Committee, in the Legislative Assembly, and in public pronouncements, denied the existence of any documents relating to the detachment of the islands. In the same breath, the Select Committee wishes to denounce the then Council of Ministers which did not hesitate to agree to the detachment of the islands.

D. *The United States Involvement and Defence Considerations*

The Select Committee again rejects the submission made by the then Leaders of the Mauritius Labour Party and the Independent Forward Bloc to the effect that, from information made available to them, in 1965, the islands would be used as a communications centre only with no United States involvement.

The United States interest in the deal was evident ever since 1964 when the technical survey of the islands was being carried out. The evidence is contained in the then Chief Secretary's reply to Mr Ramlallah, (Appendix 'I'). Again, at the Constitutional

Conference of September 1965, the United States involvement was such that a delegation headed by the Deputy Leader of the Mauritius Labour Party visited the Minister in Charge of Economic Affairs at the American Embassy, in London, in an attempt to secure, for Mauritius, some benefits in return for the excision. (Para. 37). And later, the record of the meeting held at Lancaster House on 23rd September 1965, will, in no uncertain terms, at items (iv) (v) and (vi) bear testimony of the U.S. presence in the deal. (Appendix 'K').

In addition, all documents exchanged between the Secretary of State for the Colonies and the Mauritius Government preceding and following the then Council of Ministers' agreement to the excision (Appendices 'L', 'M', 'O', 'R') bear reference to a joint U.K./U.S. venture. Some of the letters, including the memorandum submitted to the Council of Ministers by the Chief Secretary on 4th November 1965 (Appendix 'M') were even boldly headed "U.K./U.S. Defence Interests".

Here again, the Select Committee cannot but strongly denounce such deliberate misleading of public opinion on the matter.

E. The Blackmail Element

Sir Seewoosagur Ramgoolam's statement before the Select Committee is highly indicative of the atmosphere which prevailed during the private talks he had, at Lancaster House, with the British authorities. He averred that he was put before the choice of either retaining the archipelago or obtaining independence for his country, but refused to describe the deal as a blackmail. Sir Gaëtan Duval argued that the choice was between the excision and a referendum on independence. This contradiction is substantially immaterial to the Committee. What is of deeper concern to the Select Committee is the indisputable fact that a choice was offered through Sir Seewoosagur to the majority of delegates supporting independence and which attitude cannot fall outside the most elementary definition of blackmailing. Sir Harold Walter, deponing before the Select Committee on 11th January 1983, will even go to the length of stating that the position was such that, had Diego Garcia which "was, certainly, an important tooth in the whole cogwheel leading to independence" not been ceded, the grant of national sovereignty to Mauritius "would have taken more years probably".

The Declaration on the Granting of Independence to Colonial Countries and Peoples voted by the General Assembly of the United Nations on 14th December 1960 (Appendix 'C') clearly sets out at para. 5 that the transfer of power to peoples living in "Trust and Non-Self Governing Territories or all other Territories" should be effected "without any conditions and reservations". In addition, at para. 6, it expressly lays down that, "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

Hence, notwithstanding the blackmail element which strongly puts in question the legal validity of the excision, the Select Committee strongly denounces the flouting by the United Kingdom Government, on these counts, of the Charter of the United Nations.

1st June 1983.

JEAN-CLAUDE DE L'ESTRAC
Chairman

APPENDIX A

List of Persons who Deponed Before the Select Committee and Date of Hearing

1. Sir Charles Gaëtan Duval, Q.C.—Leader of the Opposition—12th November 1982.
2. Sir Seewoosagur Ramgoolam, G.C.M.G. — 6th December 1982.
3. Sir Veerasamy Ringadoo, Kt. — 13th December 1982.
4. Mr Maurice Paturau, D.F.C., C.B.E. — 13th December 1982.
5. Sir Harold Walter, Kt. — 11th January 1983.
6. Sir Satcam Boolell, Kt. — 11th January 1983.
7. The Hon. Aneerood Jugnauth, Q.C. — Prime Minister of Mauritius — 1st February 1983.
8. Sir René Maingard de la Ville-es-Offrans, C.B.E. — 8th February 1983.

APPENDIX B

STATUTORY INSTRUMENTS

1965 No. 1920

Overseas Territories

The British Indian Ocean Territory Order 1965

Made 8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1965

Present

The Queen's Most Excellent Majesty in Council

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

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

2. (1) In this Order—

Inter-
pretation.

“the Territory” means the British Indian Ocean Territory;

“the Chagos Archipelago” means the islands mentioned in schedule 2 to this Order;

“the Aldabra Group” means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948 and mentioned in schedule 3 to this Order.

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

3. As from the date of this Order—

British
Indian
Ocean Terri-
tory to be a
separate
colony.

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and

(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,

shall together form a separate colony which shall be known as the British Indian Ocean Territory.

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

Establish-
ment of office
of Com-
missioner.

APPENDIX B—*continued*

Powers and
duties of
Com-
missioner.

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

Oaths to be
taken by
Com-
missioner.

6. A person appointed to hold the office of Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the forms set out in Schedule 1 to this Order.

Discharge of
Commissioner's func-
tions during
vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such persons as Her Majesty may designate by instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section, he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section—

- (a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and
- (b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of
Commissioner's func-
tions by
deputy.

8. (1) The Commissioner may, by instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

APPENDIX B—*continued*

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instruments under the Official Stamp of the Territory.

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. Official Stamp.

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— Constitution of offices.

- (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.

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. Power to make laws.

(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.

APPENDIX B—*continued*

Commissioner's
powers of
pardon, etc.

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

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

Concurrent
appoint-
ments.

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.

APPENDIX B—*continued*

17. (1) Notwithstanding any other provisions of this Order but subject to any law made under section 11 thereof, Judicial proceedings.

- (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.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955 are amended as follows:—

- (a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1(1);
- (b) in the first schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964 is amended by the insertion of the following definition immediately before the definition of "the Gazette":—

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

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

APPENDIX B—*continued*

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

(sd) W. G. AGNEW

SCHEDULE I

Section 6

OATH (OR AFFIRMATION) OF ALLEGIANCE

I,do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF COMMISSIONER

I,do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

SCHEDULE 2

Section 2(1)

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

SCHEDULE 3

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

Note: The British Indian Ocean Territory Order 1965 was amended, as follows, by the British Indian Ocean Territory (Amendment) Order 1968:—

- (a) In the definition of "the Aldabra Group" in section 2(1) the words "as specified in the First Schedule to the Seychelles Letters Patent 1948 and" were omitted;
- (b) in schedule 2 for the words—
 "Trois Frères, including Danger Island and Eagle Island." there were substituted the words—
 "Three Brothers Islands
 Nelson or Legour Island
 Eagle Islands
 Danger Islands."; and
- (c) in schedule 3 the words "Polymnie Island" were inserted immediately after the words "Cocoanut Island".

APPENDIX B—*continued*
OVERSEAS TERRITORIES

The British Indian Ocean Territory Royal Instructions 1965

Dated 8th November 1965

Elizabeth R.

Instructions to Our Commissioner for the British Indian Ocean Territory or other Officer for the time being performing the functions of his office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

1. (1) These Instructions may be cited as the British Indian Ocean Territory Royal Instructions 1965. Citation, commencement and revocation.

(2) These Instructions shall come into operation on the same day as the British Indian Ocean Territory Order 1965 and thereupon the Instructions issued to Our Governor and Commander-in-Chief for Mauritius and dated the 26th February 1964, and the Instructions issued to Our Governor and Commander-in-Chief of the Colony of Seychelles and dated the 11th March 1948, and the Additional Instructions issued to the said Governor and Commander-in-Chief and dated the 2nd May 1960 and the 29th July 1963, shall, without prejudice to anything lawfully done thereunder, and in so far as they are, respectively, applicable to the islands comprised in the British Indian Ocean Territory as defined in the British Indian Ocean Territory Order 1965, cease to have effect in respect of those islands.

2. — (1) In these Instructions "the Commissioner" means the Commissioner for the British Indian Ocean Territory and includes the person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of his office. Interpretation.

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

3. — (1) These Instructions, so far as they are applicable to any functions of the office of Commissioner to be performed by such person as is mentioned in paragraph (1) of the preceding clause, shall be deemed to be addressed to, and shall be observed by, such person. Instructions to be observed by deputy.

(2) Such person may, if he thinks fit, apply to Us through a Secretary of State for instructions in any matter; but he shall forthwith transmit to the Commissioner a copy of every despatch or other communication addressed to Us.

4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:— Rules for the enactment of laws.

(1) All laws shall be styled Ordinances and the words of enactment shall be "Enacted by the Commissioner for the British Indian Ocean Territory".

APPENDIX B—*continued*

(2) Matters having no proper relation to each other shall not be provided for by the same Ordinance; no Ordinance shall contain anything foreign to what the title of the Ordinance imports; and no provision having indefinite duration shall be included in any Ordinance expressed to have limited duration.

(3) All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.

(4) All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

Certain Ordinances not to be enacted without instructions.

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say—

- (1) any Ordinance for the divorce of married persons;
- (2) any Ordinance whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (3) any Ordinance affecting the currency of the British Indian Ocean Territory or relating to the issue of bank notes;
- (4) any Ordinance imposing differential duties;
- (5) any Ordinance the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty;
- (6) any Ordinance affecting the discipline or control of Our Forces by land, sea or air;
- (7) any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced;
- (8) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;

APPENDIX B—*continued*

- (9) any Ordinance containing provisions which have been disallowed by Us;

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except an Ordinance the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to Us together with his reasons for so enacting the same.

6. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit to Us, through a Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance duly authenticated under the Official Stamp of the British Indian Ocean Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance. Ordinances to be sent through Secretary of State.

7. As soon as practicable after the commencement of each year, the Commissioner shall cause a complete collection to be published, for general information, of all Ordinances enacted for the British Indian Ocean Territory during the preceding year. Ordinances to be published yearly.

8. Every appointment by the Commissioner of any person to any office of employment shall, unless otherwise provided by law, be expressed to be during pleasure only. Appointments to be during pleasure.

9. (1) Before disposing of any lands to Us belonging in the British Indian Ocean Territory the Commissioner shall cause such reservations to be made therefrom as he may think necessary for any public purpose. Disposition of Crown lands.

(2) The Commissioner shall not, directly or indirectly, purchase for himself any land or building in the British Indian Ocean Territory to Us belonging without Our special permission given through a Secretary of State.

10. Whenever any offender has been condemned by the sentence of any court having jurisdiction in the matter to suffer death for any offence committed in the British Indian Ocean Territory, the Commissioner shall call for a written report of the case from the judge who tried it, and for such other information derived from the record of the case or elsewhere as he may require, and may call upon the judge to attend upon him and to produce his notes; and if he pardons or respites the offender, he shall as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reason for his decision. Power of pardon in capital cases.

Given at Our Court at St. James's this eighth day of November 1965 in the fourteenth year of Our Reign.

APPENDIX C

1514 (XV)

Declaration on the granting of Independence to Colonial Countries and Peoples
The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

APPENDIX C—*continued*

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly peaceful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.
2. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.
7. All states shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.

14th December 1960.

948th plenary meeting

United Nations General Assembly Resolution 2066

QUESTION OF MAURITIUS

The General Assembly,

Having considered the question of Mauritius and other islands composing the Territory of Mauritius,

Having examined the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius,

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Regretting that the administering Power has not fully implemented Resolution 1514 (XV) with regard to that Territory,

Noting with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof,

1. *Approves* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius and endorses the conclusions and recommendations of the Special Committee contained therein;

2. *Reaffirms* the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance with General Assembly Resolution 1514(XV),

3. *Invites* the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV);

4. *Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity;

5. *Further invites* the administering Power to report to the Special Committee and to the General Assembly on the implementation of the present resolution;

6. *Requests* the Special Committee to keep the question of the Territory of Mauritius under review and to report thereon to the General Assembly at its twenty-first session.

1398th plenary meeting, 16 December 1965

APPENDIX E

AHG/Res. 99(XVII)

RESOLUTION ON THE DIEGO GARCIA.

The Assembly of Heads of State and Government of the Organization of African Unity meeting at its 17th Ordinary Session in Freetown, Sierra Leone from 1 to 4 July, 1980.

Pursuant to article 1, para. 2, of the Charter of the Organization of African Unity, which stipulates 'The Organization shall include the continental African States, Madagascar and other islands surrounding Africa',

Considering that one of the fundamental principles of the Organization is the 'respect for the sovereignty and territorial integrity of each state',

Aware of the fact that Diego Garcia has always been an integral part of Mauritius, a Member State of the Organization of African Unity,

Recognizing that Diego Garcia was not ceded to Britain for military purposes,

Realising that the militarization of Diego Garcia is a threat to Africa and to the Indian Ocean as a zone of Peace,

Demands that Diego Garcia be unconditionally returned to Mauritius and that its peaceful character be maintained.

DIEGO GARCIA — SALE OR HIRE — (No. A/33) — Mr J.R. Rey (Moka)

asked the Premier and Minister of Finance whether he will make a statement on the question of the sale or hire of the Island of Diego Garcia to either the United Kingdom Government or to the Government of the United States of America or both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr. Forget on behalf of the Premier and Minister of Finance:—

I would refer the Honourable Member to the following communique issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(Communique)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME
WEDNESDAY 10th NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:—

"With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north east of Mauritius, and Aldabra, Farquhar and Desroches in the western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate."

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £3m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations.

APPENDIX G

MAURITIUS CONSTITUTIONAL CONFERENCE — 1965

Mauritius Delegation

The Mauritius Labour Party ...	...	Sir Seewoosagur Ramgoolam Hon. G. Forget Hon. V. Ringadoo Hon. S. Boolell Hon. H. Walter Hon. R. Jomadar Hon. R. Jaypal Dr the Hon. L. R. Chaperon Hon. V. Govinden, M.B.E. Hon. H. Ramnarain Hon. R. Modun Hon. S. Veerasamy Dr the Hon. J. M. Curé
The Parti Mauricien Social Démocrate ...	...	Hon. J. Kœnig, Q.C. Hon. L. R. Devienne Hon. C. G. Duval Hon. J. C. M. Lesage Hon. H. Rossenkhan
The Independent Forward Bloc	...	Hon. S. Bissoondoyal Hon. A. W. Foondun Hon. D. Basant Rai Hon. A. Jugnauth Hon. S. Bappoo
The Muslim Committee of Action	...	Hon. A. R. Mohamed Hon. A. H. Osman Hon. H. R. Abdool
Independent Members	...	Hon. J. M. Paturau, D.F.C. Hon. J. Ah-Chuen

APPENDIX H

Extract from Debates No. 23 of 10th November, 1964 — Adjournment

Mr. B. Ramlallah (Poudre d'Or) — *Anglo-American Military Base*

Sir, as we have been speaking of America and Americans, there is a very pertinent question which is in the air about the projected base in Mauritius or at Diego. I think if the Government is able to do so; if it is not going to reveal a secret, the sooner it makes a declaration about that projected base the better it will be. Even the British Press is writing about it. There is much wild talk going around it in Mauritius. In India, Pakistan, everywhere people are talking about it, and we do not know what is the foundation of the talk. I understand even Mrs Bandaranaike has said in a press interview that she is opposed to the base in this part of the world.

Anyway I think the sooner something is said about it, the better it will be for the Government because people think that Government is in a way connected with it. Probably £ 125m or £ 115m ...

Mr Boolell: The Government is not aware of it.

Mr Ramlallah: The Minister has come to my rescue. If this Government is not aware of it, I hope the Premier will stand up and say that we have not been consulted, that something is being done behind our back. There is something in the air there is no doubt about it.

Prospection is going on; we know that a lot of experts have come to Mauritius and surprisingly enough the Government has not been made aware. It is time the Government makes a declaration and says bluntly to the Imperial Government „ We have heard of that. You should tell us what is in store. " We have heard something very painful — that America wants to have the base at Diego, which was supposed to be our colonial territory and which would then be cut off from us. They want to do it in order not to give us the £ 125m or whatever it is. That is something which makes us think seriously and I hope Government will give it all the seriousness which it deserves.

APPENDIX I

No. 19085

14th December, 1964

On the adjournment of the Legislative Assembly on 10th November, you referred to speculation about defence installations.

The position is that a joint British-American technical survey of certain islands, including the Chagos Archipelago and Agalega but not including Mauritius, has been in progress. The results of the survey are still being examined and no decisions have been taken either by the British or by the American Government as to their respective requirements. The Council of Ministers was notified of the survey in advance and will be consulted about further steps in due course.

I am circulating a copy of this letter to other members of the Assembly and releasing it to the Press in the usual way.

TOM VICKERS
Chief Secretary

The Hon. B. Ramlallah, M.L.A.
c/o Mauritius Times
Port Louis.

Extract from Debates No. 15 of 15th June, 1965

Acquisition of Dependencies of Mauritius by the U.S.A.

(No. A/30) Dr J. M. Curé (Nominated Member) asked the Chief Secretary whether the Government has been approached for the acquisition of our dependencies or part thereof by the United States of America for military purposes. If so, will he make a statement thereon and state whether the Government will

- (a) express to the British Government the inadvisability of entering into an agreement with the United States of America before a change in our Constitution as envisaged by the London Conference of September next; and
- (b) ascertain the presence of oilfields in our dependencies before alienating them?

Mr Vickers: I have nothing to add to the information I conveyed to Hon. Members of the Legislative Assembly by the circulation of the copy of the letter which I addressed to the Hon. Member for Poudre d'Or on the 14th December, 1964, after he had raised the matter on the adjournment of the Legislative Assembly on the 10th November, 1964.

APPENDIX K

Extract from Record of Meeting held in Lancaster House
on Thursday, 23 September, 1965, between the Colonial
Secretary (Mr Greenwood) and Mauritian Ministers

Paragraphs 22 and 23

22. Summing up the discussion, the Secretary of State asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following :—

- i. negotiations for a defence agreement between Britain and Mauritius;
- ii. in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- iii. compensation totalling up to £ 3m, should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
- iv. the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
- v. that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
- vi. the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:
 - a. Navigational and Meteorological facilities;
 - b. Fishing Rights;
 - c. Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers;
- vii. that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;
- viii. that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. Sir S. Ramgoolam said that this was acceptable to him and Messrs Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

APPENDIX L

Colonial Office Despatch to Governor of Mauritius No. 423 dated 6 October, 1965

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of U.K./U.S. Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers. This record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)-(viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be 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,

etc.

C M (65) 183

APPENDIX M

4th November, 1965

COPY No. 19

COUNCIL OF MINISTERS

UK/US Defence Interests in the Indian Ocean

MEMORANDUM BY THE CHIEF SECRETARY

As Council is aware, the establishment of a communications centre and supporting defence facilities on Diego Garcia by the U.S. Government for joint UK/US use was further discussed in London in September by the Secretary of State for the Colonies with the Premier, the Minister of Social Security, the Minister of Industry, the Minister of Local Government and the Attorney-General. The Secretary of State explained that a lease would not be practicable from the point of view of the British and the American Governments. The Ministers were also informed of the difficulties in the way of obtaining a *quid pro quo* in the form of trading concessions, such as a bigger allocation of sugar in the American market, and on this point they had an interview with the Minister in charge of Economic Affairs in the American Embassy in London.

2. The proposals that eventually emerged from these discussions are as follows :—

- (i) the Chagos Archipelago should be detached from Mauritius and placed under British sovereignty by Order in Council;
- (ii) in the event of independence a defence agreement should be negotiated between Britain and Mauritius and there should be an understanding between the two Governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- (iii) the compensation totalling up to £3 million should be paid to the Mauritius Government to be devoted to agreed development projects over and above direct compensation to land owners and the cost of resettlement of others affected in the Chagos Archipelago;
- (iv) the British Government would also use their good offices with the U.S. Government in support of the request of Mauritius for concessions over sugar imports and the supply of wheat and other commodities;
- (v) the British Government would do their best to persuade the U.S. Government to use labour and materials from Mauritius for construction work in the Chagos Archipelago;
- (vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;
 - (a) navigational and meteorological facilities;
 - (b) fishing rights;
 - (c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers;

APPENDIX M—*continued*

(vii) if the need for the facilities in the Chagos Archipelago disappeared, sovereignty would be returned to Mauritius;

(viii) the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Mauritius Government.

3. The Secretary of State has said that as regards point (iii) he is arranging for consultations to take place with the Mauritius Government with a view to working out the agreed projects to which the £3 m. compensation will be devoted (Ministers present at the discussions in London will recall that the possibility of land settlement schemes was raised). As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the U.S. Government and will keep the Mauritius Government fully informed of progress in the matter. The Chagos Archipelago will remain under British sovereignty and the British Government have taken careful notes of points (vii) and (viii).

4. The Secretary of State has now asked for early confirmation that the Mauritius Government is willing to agree that the British Government should now take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated in paragraph 2 above.

T. D. VICKERS

APPENDIX N

(65)45

Copy No. 23

Council of Ministers

Minutes of Proceedings of the 45th Meeting held on Friday the 5th November 1965.

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)
 The Premier and Minister of Finance (Dr. the Honourable Sir See-
 woosagur Ramgoolam, Kt.)
 The Chief Secretary (The Honourable T.D. Vickers, C.M.G.)
 The Minister of Works and Internal Communications (The Honour-
 able J.G. Forget)
 The Minister of Education and Cultural Affairs (The Honourable
 V. Ringadoo)
 The Minister of Social Security (The Honourable A. R. Mohamed)
 The Minister of Agriculture and Natural Resources (The Honourable
 S. Boolell)
 The Minister of Health (The Honourable H. E. Walter)
 The Minister of Information, Posts & Telegraphs & Telecommunica-
 tions (The Honourable A. H. M. Osman)
 The Minister of Industry, Commerce & External Communications
 (The Honourable J. M. Paturau, D.F.C.)
 The Minister of Local Government & Co-operative Development
 (The Honourable S. Bissoondoyal)
 The Attorney-General (The Honourable J. Kœnig, Q.C.)
 The Minister of Labour (The Honourable R. Jomadar)
 The Minister of State (Development) in the Ministry of Finance
 (The Honourable L. R. Devienne)
 The Minister of Housing, Lands and Town & Country Planning
 (The Honourable C. G. Duval)
 The Minister of State (Budget) in the Ministry of Finance (The
 Honourable K. Tirvengadam)

APPENDIX O

TELEGRAM No. 247 FROM MAURITIUS TO THE SECRETARY OF
STATE FOR THE COLONIES SENT 5th NOVEMBER 1965

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

- (1) statement in paragraph 6 of your despatch „ H.M.G. have taken careful note of points (vii) and (viii) " means H.M.G. have in fact agreed to them.
- (2) As regards (vii) undertaking to Legislative Assembly excludes
 - (a) sale or transfer by H.M.G. to third party or
 - (b) any payment or financial obligation by Mauritius as condition of return.
- (3) In (viii) " on or near " means within areas within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also 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 the points (1), (2) and (3) in paragraph 1 above.

APPENDIX P

Extract from Minutes of Proceedings of the Meeting of the
Council of Ministers held on 5th November 1965

UK/US
Defence
interest in
the Indian
Ocean.

No. 553 Council considered the Governor's Memorandum CM (65) 183 on UK/US Defence Interests in the Indian Ocean.*

Council decided that the Secretary of State should be informed of their agreement that the British Government should take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated on the understanding that the British Government has agreed to points (vii) and (viii) that as regards point (vii) there would be no question of sale or transfer to a third party nor of any payment or financial obligation on the part of Mauritius as a condition of return and that „on or near“ in point (viii) meant within the area within which Mauritius would be able to derive benefit but for the change of sovereignty.

The Attorney General, the Minister of State (Development) and the Minister of Housing said that, while they were agreeable to detachment of the Chagos Archipelago, they must reconsider their position as members of the Government in the light of the Council's decision because they considered the amount of compensation inadequate, in particular the absence of any additional sugar quota, and the assurance given by the Secretary of State in regard to points (v) and (vi) unsatisfactory.

*reproduced as Appendix 'M'

APPENDIX Q

Extract from Minutes of Proceedings of the Meeting of the
Council of Ministers held on 12th November 1965

C. M. (65) 46

COPY No. 23

COUNCIL OF MINISTERS

Minutes of Proceedings of the 46th Meeting held on Friday the 12th November 1965

PRESENT: His Excellency the Governor (Sir John Rennie, K.C.M.G., O.B.E.)

The Premier and Minister of Finance
(Dr the Honourable Sir Seewoosagur Ramgoolam, Kt.)

The Chief Secretary (The Honourable T. D. Vickers, C.M.G.)

The Minister of Works and Internal Communications)
(The Honourable J. G. Forget)

The Minister of Education and Cultural Affairs
(The Honourable V. Ringadoo)

The Minister of Social Security (The Honourable A.R. Mohamed)

The Minister of Agriculture and Natural Resources
(The Honourable S. Boolell)

The Minister of Health (The Honourable H. E. Walter)

The Minister of Information, Posts & Telegraphs & Telecommunications
(The Honourable A. H. M. Osman)

The Minister of Industry, Commerce & External Communications
(The Honourable J. M. Paturau, D.F.C.)

The Minister of Local Government & Co-operative Development
(The Honourable S. Bissoondoyal)

The Minister of Labour (The Honourable R. Jomadar)

The Minister of State (Budget) in the Ministry of Finance
(The Honourable K. Tirvengadam)

Council met at 10.20 a.m.

The Governor announced that the previous afternoon he had received from the Honourable J. Koenig, M.L.A., the Honourable L.R. Devienne, M.L.A., and the Honourable C.G. Duval, M.L.A., their letters of resignations as appointed members of the Council of Ministers. These resignations took immediate effect, i.e. from Thursday the 11th November 1965.

Confirmation of
Minutes

The Minutes of the 45th Meeting held on Friday the 5th November 1965 were corrected and confirmed.

APPENDIX R

TELEGRAM No. 313 TO MAURITIUS FROM SECRETARY OF
STATE FOR THE COLONIES SENT 19th NOVEMBER 1965

Your telegram No. 254.

U.K./U.S. defence interests.

There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions oversugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

(Passed to Ministry of Defence for transmission to Mauritius).

No. 1138

APPENDIX S

18th February 1971

In connection with the proposed construction of an austere naval communications facility on Diego Garcia under the terms of a bilateral agreement between the United Kingdom and the United States of America, I should be grateful if consideration could be given to the possibilities of employing Mauritian labour.

As you know, Mauritius is faced with a severe unemployment problem, and the Mauritius Government is exploring all the possibilities of relieving the situation. Favourable consideration of request made will undoubtedly help the Mauritius Government while, at the same time providing the British and the U.S. Governments with readily available labour.

S. RAMGOOLAM
Prime Minister

His Excellency Mr P. Carter
British High Commissioner,
Port Louis.

BRITISH HIGH COMMISSION
Chaussée, Port Louis, Mauritius
22 March 1971

32/1

Dr the Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House
Port Louis.

Dear Prime Minister,

1. You will remember that in my letter of 18 February replying to yours of the said date, I said that I would consult my Government regarding your enquiry about the possibility of employing Mauritian labour on Diego Garcia.

2. I have now heard from my Government. They have asked me to say that they are, of course, well aware of the undertaking that they gave on this subject to the Mauritius Government in 1965, namely that they would do their best to persuade the American Government to use labour from Mauritius for works of construction on the Islands. They are also well aware of the provisions of sub-paragraph (7)(a) of the Anglo-American exchange of notes of 1966 (Cmnd 3231) on the British Indian Ocean Territory. Indeed, Her Majesty's Government did tackle United States Government and urged this proposition on them. However, Her Majesty's Government have now heard from the United States Government that it will not be possible for them to employ any Mauritians on the Diego Garcia facility.

3. I understand that the United States Ambassador in Mauritius is informing your Government of this decision.

Kindest regards,

Yours very sincerely,

PETER A. CARTER

APPENDIX T

GOVERNMENT HOUSE MAURITIUS

10th November, 1965

My Dear Minister,

In the light of the decision by the Council of Ministers last Friday and a similar decision by the Government of the Seychelles an Order in Council has been made to introduce new arrangements for the administration of the Chagos Archipelago, Aldabra, Farquhar and Desroches as a new territory to be called the British Indian Ocean Territory. The Secretary of State will be making a statement in Parliament in reply to a Parliamentary Question later today and I intend to issue thereafter the enclosed statement.

The Secretary of State has confirmed that the Chagos Archipelago will remain under British sovereignty but is nevertheless giving further consideration to the points raised in the Council of Ministers on Friday and the U.S. Government has been warned that certain points will be raised with them.

Yours sincerely,

J. S. RENNIE

Note :— The text of the question and reply is reproduced at Appendix 'V'

APPENDIX U

Embargoed for release until 2000 hours local time Wednesday, 10th November

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th :—

“ With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate.

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C.D. & W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

Chief Secretary's Office
Port Louis
10th November, 1965

APPENDIX V

WRITTEN ANSWERS TO QUESTIONS

Wednesday, 10th November, 1965

MAURITIUS AND SEYCHELLES

Defence Facilities

Mr James Johnson asked the Secretary of State for the Colonies what further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

Mr Greenwood: With the agreement of the Governments of Mauritius and Seychelles new arrangements for the administration of certain islands in the Indian Ocean were introduced by an Order in Council made on 8th November. The islands are the Chagos Archipelago some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their populations are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and United States Governments, but no firm plans have yet been made by either Government. Appropriate compensation will be paid.

APPENDIX W

British High Commission
Chaussée, Port Louis, Mauritius
26th June 1972

32/1

Dr the Rt Hon. Sir Seewoosagur Ramgoolam Kt, M.L.A.
Government House,
Port Louis.

My dear Prime Minister,

I refer to the meeting in London on 23 February, 1972, between yourself, Sir Harold Walter and Lord Lothian, and to your meeting with Baroness Tweedsmuir on 23 June, 1972, at which the Mauritius Government scheme for the resettlement of the persons displaced from the Chagos Archipelago was discussed.

2. The scheme has been fully appraised in London and I have been authorised to inform you that the British Government are prepared to pay £ 650,000 (the cost of the scheme) to the Mauritius Government provided that the Mauritius Government accept such payment in full and final discharge of my Government's undertaking, given at Lancaster House, London, on 23 September, 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Chagos Archipelago.

3. Accordingly, I should be most grateful if you would confirm that you are willing to accept the payment of £ 650,000 in full and final discharge of my Government's undertaking, and to agree that the British Government may state this in public, should the need arise.

4. When replying, perhaps you would indicate the date and manner in which the Mauritius Government wish payment to be made.

Yours very sincerely,
R. D. GIDDENS

4th September 1972

With reference to the communication No. 32/1 dated the 26th June, 1972, by the then Acting High Commissioner, I confirm that the Mauritius Government accepts payment of £ 650,000 from the Government of the United Kingdom (being the cost of the scheme for the resettlement of persons displaced from the Chagos Archipelago) in full and final discharge of your Government's undertaking, given in 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago since 8 November, 1965, including those at present still in the Archipelago. Of course, this does not in any way affect the verbal agreement giving this country all sovereign rights relating to minerals, fishing, prospecting and other arrangements.

In regard to the date and manner of the payment to be made I presume it will be in British pounds sterling made to the Government of Mauritius at the earliest date convenient to your Government.

The Government of 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,
S. RAMGOOLAM
Prime Minister

APPENDIX X

Extract from the Political Declaration of Non-Aligned
Movement's New Delhi Summit Meeting 1983

IX—MAURITIAN SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO,
INCLUDING DIEGO GARCIA

81. The Heads of State or Government expressed, in particular, their full support for Mauritian sovereignty over the Chagos Archipelago, including Diego Garcia, which was detached from the territory of Mauritius by the former colonial power in 1965 in contravention of United Nations General Assembly resolutions 1514(XV) and 2066(XX). The establishment and strengthening of the military base at Diego Garcia has endangered the sovereignty, territorial integrity and peaceful development of Mauritius and other States. They called for the early return of Diego Garcia to Mauritius.

APPENDIX Y

Debates No. 27 of 14th December 1965

Chagos Archipelago — Detachment from Mauritius

(B/245) Mr C. G. Duval (Curepipe) asked the Premier and Minister of Finance whether he will give an opportunity to the House to discuss the detachment of the Chagos Archipelago from Mauritius, and its inclusion in the British Indian Ocean Territory, especially in view of the stand taken by India and other Afro-Asian countries.

Mr Forget on behalf of the Premier and Minister of Finance :—

No, Sir, since I understand from the public statement made by the Leader of the Opposition on November 12th that there is no disagreement between the Opposition and the Government on the principle of the detachment and use for defence facilities of the Chagos Archipelago.

Mr Duval: Sir, in view of the reply of the hon. Minister replacing the Premier, and in view of the fact that there have been contradictory statements made by members of the Government at different moments about the conditions attached to the excision of the base, will the Minister say whether, at least, the correspondence exchanged between Her Majesty's Government and this Government will be released to the public?

Mr Speaker : This does not arise from the question.

APPENDIX Z

SPECIAL REPORT OF THE PUBLIC ACCOUNTS COMMITTEE
FOR THE 1980 SESSION**Financial and other aspects of the "Sale" of Chagos Islands and the
Re-settlement of the displaced Ilois****Introduction**

Your Committee investigated into the Revenue received by Government in 1975 for the "SALE" of the Chagos Archipelago and in 1972, for the re-settlement of the displaced Ilois and also into all the disbursements effected in relation to this matter. In the course of our inquiry we came across some disturbing facts which we have felt should be brought to notice.

£ 3 m cash compensation from U.K. in 1965

Your Committee was informed that financial compensation for the "SALE" of Diego Garcia was effected in two stages. The sum of £ 3 m was paid by the British Government in financial year 1965/66 and was credited to Capital Revenue, item L IV/4 — "Sale of Chagos Islands", as per the Accountant General's Financial Report for the financial year 1965/66. This item did not appear in the Estimates of 1965/66. Your Committee enquired whether the word "sale" had caused any problem at the time but was unfortunately unable to obtain any information on this matter. It has also not been possible to get any information on the basis on which the sum of £ 3 m was arrived at in the discussions with the British Government in 1965.

In an answer to a Parliamentary Question (PQ B/754 of 1979) the Prime Minister informed the House that the compensation of £ 3 m was meant for the implementation of development projects in Mauritius. The money was therefore credited to Capital Revenue and was not earmarked for any specific project.

Your Committee was also not able to ascertain whether any cash compensation was effected to the company exploiting the copra plantations in the Chagos at the time. We learned from the representative of the Prime Minister's Office that it was a Seychellois Company, namely Moulinié & Co.

£ 650,000 from U.K. in 1972 for Resettlement Scheme

The second payment of £ 650,000 by the British Government was effected on 28th October, 1972 and credited to Capital Revenue, item L 1/8 — "Financial Assistance for Resettlement Scheme" in the Financial Report of 1972/73. This item had not appeared in the Estimates for the year 1972/73. This figure was arrived at after discussions had taken place between the British and Mauritian Governments, on a special scheme "devised to build housing estates and establish pig-rearing co-operatives on land to be provided by the Government of Mauritius", (Forward to the Prosser Report submitted to Government in 1976) for the resettlement of persons displaced from Diego Garcia. Land at Roche Bois and at Pointe aux Sables was duly acquired for this purpose.

APPENDIX Z—continued

No details on how and when this initial scheme was worked out, were provided to your Committee.

In the Foreword to the Prosser Report the Prime Minister's Office states the following:

"Not long after, it became clear that the displaced persons concerned were not happy with the proposed scheme. An official survey confirmed that the majority was in favour of the simple expediency of sharing the financial assistance received from Britain among the workers, irrespective of their need for proper housing and for a planned means of future livelihood".

Your Committee has not obtained any information on the survey mentioned above although there was an official request for the details of how and when the displaced persons showed dissatisfaction with that initial scheme.

The Prosser Report

For 5 years after funds had been made available by the U.K. Government for the resettlement of the displaced Ilois, the Government of Mauritius was unable to arrive at a satisfactory decision on the manner in which the funds should be utilised. In 1976, the Prime Minister discussed the problems affecting the displaced Ilois with the British Government and it was decided that Mr A.R.G. Prosser, C.M.G., M.B.E., Adviser on Social Development in the Ministry of Overseas Development, would visit Mauritius in order to advise on an appropriate solution to the problem.

The major recommendations made by Mr Prosser were the following:

- (a) The immediate setting up of a Resettlement Committee with a first-class administrative officer attached to it on a full time basis. The Government did implement this recommendation. Its composition was in fact reinforced by the inclusion of the Secretary to the Cabinet as its Chairman. It was unfortunate however, that the Committee was not provided with an administrative officer on a full time basis. The Principal Assistant Secretary of the Ministry for Rodrigues was assigned this duty on a part time basis. Your Committee appreciates the fact that his normal duties as P.A.S. in his own Ministry must not have left him much time to deal with the Ilois problem.
- (b) Another important recommendation was an occupational training scheme for the unemployed. Mr Prosser even made the interesting suggestion that functional training could be combined with the building of houses necessary for the Resettlement Scheme. This scheme will be described later.
Mr. Prosser recommended that the sum of Rs 750,000 should be set aside for this purpose, immediately.
It is very unfortunate that Government never considered this interesting recommendation.
- (c) Welfare services. Mr. Prosser suggested that the Resettlement Committee should allocate Rs 60,000.— to the Social Welfare Commissioner so that the present Social Worker could be funded for a period of 3 years. We were informed that a primary school teacher was seconded for duty to the Social Welfare Division to work with the Ilois on a full time basis. But we obtained no information on the length of time for which she was thus employed.

APPENDIX Z—*continued*

- (d) The housing scheme proposed by Mr Prosser was in fact the most important recommendation in his report. As Mr Prosser rightly pointed out "the most intractable problem for the Ilois, has been housing". (Prosser Report — para. 4). He worked out that after deducting the sum of Rs 750,000 for training purposes and Rs 60,000 for the service of the Social Worker, the sum of Rs 18,500 would be available for each individual household of the 426 families. He suggested a scheme whereby each household in need of a house could be provided with a 15,000 rupee house which would be of "sound construction but.....slightly outside the high quality of building regulations which govern housing in Mauritius". (Prosser Report, para. 22) the remaining Rs 3,500 would be distributed to each household for basic furnishing purposes. In the Foreword to the Prosser Report, the Prime Minister's Office did not accept this recommendation to provide the Ilois with sub-standard houses. The Government went very far, by undertaking to allocate the necessary additional funds in order that the houses constructed for the Ilois are not below standards acceptable in the country. In a general way, the Government felt that the Prosser recommendations as amended were in the long term interest of the Ilois community.

Your Committee was informed by representatives of the Prime Minister's Office that Mr Prosser's recommendations for a housing scheme had been rejected by the representatives of the Ilois on the Resettlement Committee and that the latter had opted for cash compensation.

However, your Committee was seriously concerned by some of the facts that came to light in the survey carried out in January 1977 in specific relation to the housing issue. It is true that representatives of the Ilois did formally request that the money available be distributed in cash to the Ilois, at a meeting of the Resettlement Committee held on 4th December 1976. However, the survey carried out in January 1977 revealed that of the 557 families who had registered, 341 had opted for a house and 213 for cash compensation. 3 had not expressed any option. Of the 38 families in Agalega, 6 had opted for a house in Mauritius and 32 for cash payment with the possibility of continued employment there. It should also be well noted that representatives of the Ilois did enquire, at a meeting of the Committee held on 19th February 1977, whether there was any possibility of satisfying both options. According to the minutes of proceedings of that meeting, the Resettlement Committee felt that this proposal would not be feasible. However, the Chairman added that the views of the Committee would be submitted to the Government and a decision would be taken at a later stage. In spite of the fact that a majority of households, over 60% opted for housing, one year later, in December 1977, Government decided to effect cash compensation to all Ilois, irrespective of their date of arrival.

Your Committee wanted to know in very concrete terms, the way in which the proposal for a housing scheme was presented to the Ilois. We wanted to know whether Government had worked out in detail the type of houses to be built, the length of time it would take to construct them etc., and whether such information had been made available to the representatives of the Ilois. Your Committee was unfortunately, not provided with this information.

APPENDIX Z—continued

What your Committee found even more surprising was the fact that after it had been discovered in January 1977 that a majority had opted for housing and that the representatives of the Ilois had in February 1977, requested that both options, namely housing and cash compensation, be considered, the Prime Minister, in December 1977, stated the following in a reply to a Parliamentary Question (B/746 of 1977):

"The Government has finally given up hope to convince the families from Diego Garcia that it is in their best interests to have houses built for them rather than to have a cash compensation only. So steps are being taken to share the grant as well as the interest accrued thereon to the families".

Surveys of the Ilois

It has not been easy to establish the exact number of persons that were transferred from the Chagos Archipelago. In reply to a Parliamentary Question in the House of Commons in November 1965, in relation to defence facilities in the Indian Ocean, the Secretary of State referring to the Chagos Archipelago and Aldabra, Farquhar and Desroches islands said the following:

"Their population are approximately 1000, 100, 172 and 112 respectively". (See Annex I)

On 14 December 1965, in the Legislative Council, Mr Forget, on behalf of the Premier and Minister of Finance informed the House that:

"The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations". (See Annex I).

In Mauritius, two main surveys were carried out to establish the total number of Ilois families. The first survey was carried out by the Public Assistance Officers who collected relevant information from the displaced Ilois everytime a group landed in Mauritius. The survey revealed that 426 families had been transferred from the Chagos since 1965. This figure of 426 families was considered to be the correct one by Mr Prosser.

In 1976, when the possibility of the distribution of cash compensation to all Ilois, irrespective of their date of arrival, came up, the Resettlement Committee, set up in 1976, upon a recommendation made by Mr Prosser, decided that a registration of all Ilois settled in Mauritius should be carried out. This second major survey was carried out, in January 1977, by the Public Assistance Division of the Ministry of Social Security under the aegis of the Resettlement Committee. In this case, press and radio/Tv communiques were issued asking all displaced persons to register themselves. The figure arrived at in this second survey was 557 families.

Of these 557 families—

378 persons were under 5 years of age

543 persons were between 5–12 years of age

334 persons were between 12–18 years of age

1068 were adults

102 were above 60 years of age.

Over 150 persons had arrived before 1965. (See Annexures II & III)

The survey also indicated that there were 38 Ilois families in Agalega.

APPENDIX Z—*continued*

Although the Ilois were provided with facilities for their registration, a number of persons were left out for various reasons. The representatives of the Prime Minister's Office informed your Committee that there have been a certain number of complaints from those who claim not to have received any compensation; the Permanent Secretary of the Prime Minister's Office has even received letters from some Ilois in Rodrigues, Australia and South Africa. It should be noted that there was, in fact, no facilities provided for registration of the Ilois in Rodrigues, Agalega and St. Brandon, when the 1977 survey was carried out.

Government has now decided to proceed with a new survey of all those who had failed to register in 1977. Your Committee recommends that this facility should be extended to those Ilois residing in the Seychelles as well.

The Ilois in Agalega

Your Committee was informed that in the Resettlement Committee, a suggestion was made to the effect that a possibility existed for the families in Agalega to be given shares in the Agalega Corporation to the value of their allocation instead of being paid in cash. Your Committee was not provided with any information on the manner in which cash compensation was actually effected in Agalega.

Cash compensation

When Government finally decided to go ahead with cash compensation, payment was effected in March 1978 on the basis of the survey carried out in January 1977. The following payments were then made:

			<i>Rs</i>	<i>Total</i>
351 children under 5	...	...	1,000	351,000
459 children between 5 and 11	...	...	1,200	550,800
474 children between 11 and 18	...	...	1,500	711,000
1081 adults	...	...	7,590	8,204,790
109 old age pensioners (additional)	...	...	250	27,250
71 females with children (additional)	...	...	250	17,750
		TOTAL	...	9,862,590
Amount available (including interest)	...	...		11,167,604
Amount paid	...	...		9,862,580
		BALANCE	...	1,305,014

APPENDIX Z—continued

Disbursements as from 1972

Various disbursements were effected as from 1972 when funds were made available by the British Government. The total amount disbursed from 1972 to 1977 was Rs 155,773.33 (Annex IV). Apart from the cash compensation of Rs 9,858,827 effected in 1977/78, there was a further disbursement of Rs 18,605 in 1978/79. Your Committee has, however, not been able to obtain any details on the nature of all the disbursements effected, apart from the cash compensation of Rs 9,858,827 effected in 1978. It should also be noted that interest was, of course, not credited on the disbursements. Interest on the account was paid at 6% per annum between 28th October 1972 and 31st December 1977 although the Bank Rate had risen to 7% from March 1977 to January 1978, and to 9% from January 1978 to October 1979 and has been 10½% since then.

Your Committee fails to understand why interest was not credited to the Fund after December 1977. If accounts had been properly kept, a higher sum would have accumulated in the form of interest.

Further financial assistance from U.K. Government

At a meeting of the Resettlement Committee held on 19th February 1977, a representative of the Ilois wanted to know whether there was any possibility of obtaining further assistance from the British Government. The Committee according to the Minutes of Proceeding of that Meeting "agreed that there was little, if any, likelihood of such assistance forthcoming".

However, representatives of the Prime Minister's Office informed your Committee that it had always been the wish of the Mauritian Government that such further assistance should be provided by the U.K. Government. Your Committee has however, not been informed whether such request has been made formally and officially by the Government since March 1978.

In a reply to a Parliamentary Question in June 1980, (B/766 of 1980) the Prime Minister informed the House that:

"Regarding the additional compensation to be paid to the Ilois, the British Government has already offered a supplementary amount of £ 1.25 million for their resettlement but is unable to pursue the matter because of a court action in the United Kingdom. The matter being *sub-judice*, we have to wait for the outcome".

Your Committee is aware of the fact that the Prime Minister is referring to the court action entered by certain members of the Ilois community presenting legal claims to the U.K. Government. They are being represented by Mr. B. Sheridan who during his visit in Mauritius in November 1979 tried to make the Ilois sign a document (a deed of acceptance and power of attorney) the terms and conditions of which are reproduced in Annexure V.

In reply to a Parliamentary Question in November 1979 (P.Q. B/1033 of 1979) the Prime Minister informed the House that Government had spent Rs 2,015 on Mr Sheridan during his visit in Mauritius. This would imply that he was in Mauritius in an official capacity, to a certain extent.

APPENDIX Z—continued

General Comments

1. Your Committee feels that this whole problem of displaced persons which arose since 1965 did not receive the serious attention it deserved on the part of government until 1976 when Mr Prosser visited Mauritius. The first serious survey to establish the exact number of persons involved was carried out as late as in January 1977.

2. The compensation of £650,000 was linked to a specific scheme when it was made available in 1972. The money was distributed 5 years later when conditions of life had become very difficult due to rapid inflation during that corresponding period. Mr Prosser himself made a very pertinent remark in that respect in specific relation to the housing scheme:

"Unfortunately, from the time of the signing of the agreement between the Mauritius Government and the British Government the cost of housing in Mauritius has risen approximately 500%". (Prosser Report. Para 19)

Mr Prosser made that remark in 1976 and the money was distributed in March 1978.

3. Throughout his Report, Mr Prosser placed emphasis on the necessity to find an urgent solution to the problem, because of the terrible conditions in which he found the Ilois when he visited Mauritius. In para 24 of the Report he says:

"The fact is that the Ilois are living in deplorable conditions which could be immediately alleviated if action is taken on the lines I have suggested".

Cash compensation was effected almost two years after Mr Prosser had written his Report.

4. Your Committee feels that it is very unfortunate that Government promised that additional funds would be made available in the Resettlement Scheme being proposed by Mr Prosser but no such additional financial assistance has been forthcoming.

5. There is a serious lack of information on the nature of disbursements that were effected since the grant became available in 1972. The Ilois do not seem to be at all aware of the details of these disbursements.

Your Committee was also not at all satisfied with the approximate way in which interest on the account was worked out. In our opinion total interest accrued on the account, should have been much higher.

6. The survey carried out in January 1977 was not comprehensive enough. A number of Ilois were left out for some reason or another.

7. Your Committee feels that the Ilois were not presented with a housing scheme worked out in concrete terms nor were the advantages of such a scheme over straight cash payment sufficiently stressed. It is normal that for persons, who have been living in deplorable conditions for such a long time cash compensation represented immediate relief. But as it was rightly pointed out by the Prime Minister's Office in the Foreword to the Prosser Report, the recommendations in the Report, especially the housing scheme would have been "in the long term interest of the people concerned".

8. Finally, Your Committee is concerned that it has not been confirmed whether Government has so far made any *formal* and *official* request for further financial assistance despite the fact that the majority of the Ilois are still living in deplorable conditions.

V. NABABSING,

Chairwoman.

3rd October, 1980.

EXTRACT FROM DEBATES NO. 27 OF 14 DECEMBER 1965

DIEGO GARCIA — SALE OR HIRE (No. A/33) Mr J. R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the *sale or hire* of the Island of *Diego Garcia* to either the United Kingdom Government or to the Government of the United States of America or to both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

Mr Forget on behalf of the Premier and Minister of Finance :—

I would refer the Honourable Member to the following communiqué issued from the Chief Secretary's Office on 10th November on the subject of the Chagos Archipelago, a copy of which is being circulated. In discussions of this kind which affect British arrangements for the defence of the region in which Mauritius is situated, there could, in the Government's view, be no question of insisting on a minimum amount of compensation. The question of the sale or hire of the Chagos Archipelago has not arisen as they were detached from Mauritius by Order in Council under powers possessed by the British Government.

(COMMUNIQUE)

EMBARGOED FOR RELEASE UNTIL 2000 HOURS LOCAL TIME
WEDNESDAY 10TH NOVEMBER

Defence facilities in the Indian Ocean

In reply to a Parliamentary Question the Secretary of State made the following statement in the House of Commons on Wednesday November 10th:

"With the agreement of the Governments of Mauritius and the Seychelles new arrangements for the administration of certain islands were introduced by an Order in Council made on the 8th November. The islands are the Chagos Archipelago, some 1,200 miles north-east of Mauritius, and Aldabra, Farquhar and Desroches in the Western Indian Ocean. Their population are approximately 1,000, 100, 172 and 112 respectively. The Chagos Archipelago was formerly administered by the Government of Mauritius and the other three islands by that of the Seychelles. The islands will be called the British Indian Ocean Territory and will be administered by a Commissioner. It is intended that the islands will be available for the construction of defence facilities by the British and U.S. Governments, but no firm plans have yet been made by either Government. Compensation will be paid as appropriate."

The cost of compensating the Company which exploits the plantations and the cost of resettling elsewhere those inhabitants who can no longer remain there will be the responsibility of the British Government. In addition, the British Government has undertaken in recognition of the detachment of the Chagos Archipelago from Mauritius, to provide additional grants amounting to £ 3 m. for expenditure on development projects in Mauritius to be agreed between the British and the Mauritius Governments. These grants will be over and above the allocation earmarked for Mauritius in the next period of C. D. and W. assistance.

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour force, together with their dependents, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men employed on the plantations.

ANNEX II

SURVEY OF ILOIS

Year of Arrival

Locality	No. of families	30's	40's	50's	60's	70's	Unknown
1. Baie du Tombeau	5	—	—	4	1	—	—
2. Bois Marchand	2	—	—	—	2	—	—
3. Beau Bassin	9	—	4	3	1	1	—
4. Cassis	94	—	1	17	61	14	1
5. Cité La Cure	22	—	1	3	7	10	1
6. Docker's Flat	40	—	—	6	11	23	—
7. Grand River North West	5	—	—	2	3	—	—
8. Le Hochet	5	—	—	—	4	1	—
9. Les Salines	51	—	1	6	35	8	1
10. Pointe aux Sables	31	—	2	11	14	1	3
11. Pailles	16	—	2	—	10	4	—
12. Port Louis	4	—	—	—	2	2	—
13. Petite Rivière	26	—	—	9	12	3	2
14. Roche Bois	225	3	7	28	139	35	13
15. Ste. Croix	10	—	—	2	7	1	—
16. Other areas	12	—	1	—	10	1	—
TOTAL	557	3	19	91	319	104	21

SURVEY OF ILOIS

Population according to Age-Group

<i>Locality</i>		<i>No. of families</i>	<i>Under 5</i>	<i>5-12</i>	<i>12-18</i>	<i>Adults</i>	<i>Over 60</i>
1. Baie du Tombeau	5	3	7	3	7
2. Bois Marchand	2	—	1	—	5
3. Beau Bassin	9	3	6	15	22
4. Cassis	94	67	82	49	181
5. Cité La Cure	22	24	27	14	64
6. Docker's Flat	40	31	48	30	107
7. Grand River North West	5	1	2	5	10
8. Le Hochet	5	1	6	8	10
9. Les Salines	51	43	44	19	94
10. Pointe aux Sables	31	24	38	22	72
11. Pailles	16	14	8	8	22
12. Port Louis	4	3	8	1	8
13. Petite Rivière	26	14	22	28	55
14. Roche Bois	225	130	210	117	370
15. Ste. Croix	10	11	16	6	13
16. Other Areas	12	9	18	9	28
TOTAL		...	557	378	543	334	1068
							102

ANNEX IV

					<i>Rs</i>
Amount received on 28.10.72	...	...	...	...	8,666,666.67
Disbursed in 1972-73	...	...	...	...	83.33
Balance on 30.6.73	...	...	...	...	8,666,583.00
Disbursed in 1973-74	...	...	...	...	112,402.00
Balance on 30.6.74	...	...	...	...	8,554,181.00
Disbursed in 1974-75	...	...	...	...	15,175.00
Balance on 30.6.75	...	...	...	...	8,539,006.00
Balance on 30.6.76	...	...	...	...	8,539,006.00
Disbursed in 1976-77	...	...	...	...	24,103.00
Balance on 30.6.77	...	...	...	...	8,514,903.00
Disbursed July 77 to December 77	...	...	...	...	4,010.00
Balance on 31.12.77	...	...	...	...	8,510,893.00

<i>Interest at 6% per annum</i>					<i>Rs</i>
28.10.72 to 30.6.73 (246 days)	$246 \times \frac{6}{365} \times$	Rs 8,666,583	=		350,462
1.7.73 to 30. 6.74	$= \frac{6}{100} \times$	Rs 8,554,181	=		513,250
1.7.74 to 30. 6.75	$= \frac{6}{100} \times$	Rs 8,539,006	=		512,340
1.7.75 to 30. 6.76	$= \frac{6}{100} \times$	do	=		512,340
1.7.76 to 30. 6.77	$= \frac{6}{100} \times$	Rs 8,514,903	=		510,894
1.7.77 to 31.12.77	$= \frac{184}{365} \times \frac{6}{100} \times$	Rs 8,510,893	=		257,425

TOTAL ... 2,656,711

Amount received	...	8,510,893 (after disbursement)
Interest to 31.12.77	...	2,656,711
		<u>11,167,604</u>

31st December, 1977

M. NALLETAMBY
Accountant-General

ANNEX V

DEED OF ACCEPTANCE AND POWER OF ATTORNEY

This is the Deed of me (1).....
and the adult members of
 my family who have hereunto subscribed their names and seals.

I am an Ilois who left that part of British Indian Ocean Territory known
 as (2).....in the ship (3).....
on the.....day of.....19.....
 never to return. My family who came with me then are (4).....
and the following children:—

<i>Adult children's names</i>	<i>Addresses</i>	<i>Dates of Birth</i>
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<i>Infant children's names</i>	<i>Addresses</i>	<i>Dates of Birth</i>
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We know that the United Kingdom Government has already paid the Mauritian Government £650,000 for the resettlement of the Ilois people who came to Mauritius following the setting up of British Indian Ocean Territory and has offered to make available a further £ 1,250,000 for the purpose provided it is accepted by the Ilois in full and final settlement of all claims whatsoever upon the United Kingdom Government by the Ilois arising out of the following events:—the creation of British Indian Ocean Territory, the closing of the plantations there, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their prohibition from ever returning to the Islands composing British Indian Ocean Territory (the events) and of all such claims arising out of any incidents or circumstances occurring in the course of the events or out of the consequences of the events, whether past, present or to come ("their incidents circumstances and consequences").

So that this money may be paid to help the Ilois.

ANNEX V—*continued*

1. We appoint Bernard Sheridan of 14 Red Lion Square, London WC 1 as our Attorney in accordance with S. 10 of the Powers of Attorney Act 1971 and in particular we authorize him to receive the £ 1,250,000 on behalf on the Ilois in such instalments and amounts and subject to such conditions as he in his absolute discretion and without need to make further reference to us, may agree with the United Kingdom Government.
2. We appoint him as our solicitor to act on our behalf in relation to all matters connected with the payment of the £ 1,250,000 and I, (5)..... authorize him to act on ehalf of my infant children named above as their next friend.
3. We accept the money already paid to the Mauritian Government and the money to be paid to Mr Sheridan as aforesaid in such instalments as he shall agree in full and final settlement and discharge of all our claims however arising upon the United Kingdom Government (both upon the Crown in right of the United Kingdom and the Crown in right of British Indian Ocean Territory) and upon its servants, agents and contractors in respect of the events, their incidents, circumstances and consequences and we further abandon all our claims and rights (if any) of whatsoever nature to British Indian Ocean Territory.
4. We understand accept and agree that by entering into this Deed we shall not be able to sue the United Kingdom Government in respect of the events, their incidents, circumstances and consequences and hereby covenant not to do so.
5. We agree that all questions concerning the validity and construction of this Deed and any disputes arising upon it shall be governed by English law and justifiable only in English Courts.

-
- (1) Insert name and address of head of family
 - (2) Insert name of Island
 - (3) Insert name of ship and date of leaving BIOT
 - (4) Insert name and address of wife
 - (5) Insert name of head of family

(APPENDIX 'A 1')

L'île Maurice base de la Réserve Stratégique Britannique

Au cours d'une interview qui a été diffusée, hier soir, dans le programme "London Calling Mauritius", M. David Windsor, de l'Institut des Etudes Stratégiques de Grande Bretagne a parlé de la possibilité pour Maurice de servir de base à une brigade de la Réserve Stratégique du Royaume-Uni.

Les récents troubles en Est-Afrique, au Bornéo, à Aden ont mis en relief l'impérieuse nécessité pour le Gouvernement britannique d'avoir des troupes disponibles dans un rayon qui ne soit pas trop éloigné des foyers de troubles afin qu'elles puissent se porter le plus rapidement possible au secours des Gouvernements de ces territoires si ces derniers font appel à leur aide.

Il est difficile pour ces troupes de se rendre avec la rapidité voulue de la Grande Bretagne au Bornéo, par exemple. Si des bases peuvent être créées dans des régions assez rapprochées des centres possibles de troubles, la situation serait grandement améliorée.

Maurice est bien placé dans ce sens, située comme elle l'est, à un angle d'un triangle, dont les deux autres angles sont Aden et Singapour. Une brigade de la Réserve Stratégique, stationnée à Maurice, pourrait se rendre rapidement dans un pays membre de la Fédération de Grande Malaisie, à Aden ou dans les territoires est-africains. De plus, notre dépendance, Diego Garcia, possède un port naturel immense qui pourrait abriter des unités de la Marine Royale.

M. Windsor a dit que les autorités britanniques étudient attentivement cette possibilité. Le stationnement d'une brigade de la Réserve Stratégique à Maurice, de même que l'utilisation de la rade de Diego Garcia comme base pour la marine britannique, donnerait de l'emploi à un grand nombre de Mauriciens et aiderait à résoudre, du moins en partie, notre problème de chômage.

The Economist—July 4, 1964

So the search has properly been on for a well-situated, sparsely populated, politically unexplosive haven in the Indian Ocean. Eyes, logarithms and compasses have been turned to Mauritius and to the Seychelles; the pointers suggest that there is a good deal to be said for one of the island dependencies of Mauritius, one at least of which does have a natural harbour and was used during the second world war. Mauritius is politically calm: its party leaders have agreed to form an all-party government and to discuss internal self-government some time after October, 1965.

But even under these moderately propitious stars, is it up to Britain alone once again to set about the job of looking for a reasonably secure base east of Suez? There has been endless argument about what an Indian Ocean base is for: a stepping stone to south-east Asia; a mounting post for peace-keeping operations like the useful east African ones in January; a guard against Arab take-over bids like the Iraq-Kuwait incident in 1961; a warning eye on British oil interests. The point is not so much which of these functions survive scrutiny—the first and second look the sounder ones—but that Sir Alec Douglas Home, Mr Wilson and Mr McNamara all agree that collectively they justify a military effort.

(APPENDIX 'A 3')

L'île Maurice et la nécessité d'une base dans l'Océan Indien

Les alliés occidentaux sont à la recherche d'une base, d'un marchepied entre l'Europe et l'Australie et l'Extrême Orient.

Cette nécessité a donné lieu à un marchandage dans les coulisses entre Washington et Whitehall au sujet de l'établissement d'une base importante, sur une île de l'Océan Indien.

Le choix semble devoir se porter sur l'île Maurice, située à 500 milles à l'est de Madagascar.

Une des propositions britanniques serait à l'effet que les USA aident à établir une base importante dans l'Océan Indien dont le double but de servir de poste de relais aux Britanniques et de ravitailler une flotte américaine de porte-avions.

Les Américains, de leur côté, ont laissé entendre qu'un engagement américain dans l'Océan Indien pourrait être conditionnel à l'appui que la Grande Bretagne donnerait au plan américain pour une force nucléaire mixte au service de Nato.

L'île Maurice, ou l'une de ses dépendances est le choix le plus plausible —non seulement pour des raisons logiques et stratégiques: ce pays jouit d'une certaine stabilité politique. Il a une population de 550,000, faite en grande partie d'Indiens introduits par les Français et les Anglais, et qui a atteint un stade d'harmonie politique et multiraciale tel que l'indépendance pourrait lui être accordée demain n'étaient le manque de devises étrangères et un lourd problème de chômage. En fait, c'est exactement le genre de pays qui bénéficierait de l'argent et de l'emploi additionnels qu'une base militaire importante y déverserait.

(APPENDIX 'A 4')

London. (00.55) August 30. New American bases being sought on British islands in the Indian Ocean were "purely and simply to provide radio-communication link," official sources said here tonight.

"But," the sources added, "they could, of course, be extremely useful as forward staging points for troops."

High-level discussions are now taking place between the United States and British Governments to consider the usefulness of various islands which might be used. A British survey ship is in the Indian Ocean and experts are studying the possibilities.

The sources said they were looking for a small island on which to set up a small American relay station. This would provide better communications between United States forces in the.....

"If we find one big enough and if we could lay down a runway without spending millions on it, we could have a first-class base for troops," an authoritative source said.

(APPENDIX 'A 5')

London (08.33) Aug. 31 The Daily Telegraph stated here today that co-operation between Britain and America over the use of remote but, by modern requirements, strategically based islands as defence posts of various kinds, was long overdue.

This Conservative daily said it would be 'short-sighted' to limit the co-operation to the Mauritius dependency of Diego Garcia—"the use of which by the American Navy as a Polaris communications centre is under discussion between the two countries."

The Telegraph continued: "There are several reasons why America now needs these posts in parts of the world, such as the Indian Ocean, where at present she has none.

"Her Polaris fleet is expanding fast. She wants to be better equipped for getting forces and military aid very quickly to possible trouble spots.

"One contingency might be a renewed Chinese attack on India. Others might arise from increasing Russian and Chinese activities in Africa.

"Britain has the islands strewn about. America has the forces and the money. Britain is over extended and cannot take full responsibility for new commitments just because the only possible bases happen to be British islands. The case for co-operation in some form is overwhelming."

The Telegraph stated that no doubt a howl of indignation against "Anglo-American imperialism" would arise from the Communist countries at "any such precautionary measures."

It added: "This will be joined by most of the Afro-Asian countries, although perhaps with less conviction by those who are aware of Communist activities and their own need for disinterested help in a crisis.

"In fact the islands in question are inhospitable, with populations of a couple of hundred people, who would certainly welcome and benefit from an American presence."

The Economist**A Vacuum to fill**

.....

The east African operations of last January, which saved the governments of Kenya, Tanganyika and Uganda from their mutinying armies, were models of what can be done. It does not take much imagination to think of three or four places in this rickety reach of the globe where the same call for help may be heard again. This may give offence, but is it not possible in Ceylon, or Persia, or somewhere in the Persian Gulf, or somewhere on the east coast of Africa again?

This is presumably the thought that lies behind the present Anglo-American search for a communications centre (and maybe something more) in the Seychelles or one of the Mauritius dependencies. The difficulty lies in winning Afro-Asian acceptance of the British share in this operation.

The Indian Ocean is the only large part of the world where the United States does not already bear the main burden of looking after western interests. It cannot be expected to bear the whole extra weight of trying to preserve stability between Nairobi and Singapore too; and British knowledge of the area, and the present deployment of British forces, make it common sense for Britain to help out. But Britain's surviving colonial entanglements—particularly the Aden entanglements in the north-west—still cause suspicion. This is why it is essential to explain as clearly as possible the distinction between the colonial period, which is now very near its inevitable end, and the quite different aims Britain and America hope to pursue together in the vastly changed conditions of the post-colonial period.

.....

Des Mauriciens à Londres protestent

There are persistent reports in the London press that joint consultations are at present being held between the British and American Governments for the setting up of certain bases in the Indian Ocean. Allegedly the Government of Mauritius is being consulted on the question. We are being told that these bases will be used for a communications system, but the implication is so serious that Mrs Bandaranaike of Ceylon has felt it necessary to issue a statement expressing concern about the matter and the Indian Government has deftly proposed a nuclear-free zone in the Indian Ocean.

I feel sure that the Governments of India and Ceylon would not have been unduly worried if the discussions were merely for the installation of innocuous communication centres. I draw the conclusion, and voice the apprehension of hundreds of Mauritians in London, that the Anglo-American discussions are a conspiracy to find surreptitious ways for inaugurating a cluster of military bases on our soil and on other islands in the Indian Ocean with all the cold war concomitants that these entail.

The danger inherent in the presence of military bases in any part of the world cannot be ignored and there are too many glaring examples for us to be apathetic to the situation. The attitude of our leaders has not yet been made public but I have a strong suspicion that somehow the British Government will attempt to link this question of bases with the granting of Independence.

Let us make it clear to our elected representatives that we are not going to allow Mauritius to become a pawn on the Chessboard of the Big Powers. The presence of military bases on our soil will endanger our national security, for in the event of any war there is not one single military installation that will be immune from retaliatory measures. If it is true, as has been openly suggested in the London press, that in reality these bases will be used mainly for operations in Malaysia and South East Asia, then we shall find ourselves involved in an unholy alliance which tends to exacerbate an already tense situation fraught with unprecedented danger.

There will undoubtedly be sophisticated arguments in favour of allowing these bases to operate, on the grounds that they would bring employment and foreign capital to help us out of our present economic plight. These arguments would banish morality from the field of politics and must be rejected as despicable pragmatic logic in the most repulsive form of Machiavellism.

We are not prepared to pawn our lives for the benefit of a few crumbs of bread.

APPENDIX 'A 7'—*continued*

If our leaders consider that the affairs of our country can only be administered by leasing our land for doubtful military enterprises then they ought to say so to the people and in no uncertain terms. I trust our people will not be easily duped.

We do not wish to become a partner in the gigantic conflict between East and West. What we require from all the nations of the world is to be allowed to pursue our destiny in peace and friendship. Our internal problems are exacting enough and we will have to pool all the energy we can muster to bring about their solution.

I call upon all responsible citizens and particularly the intellectuals, writers, journalists and artists who have a special responsibility, being the guiding light of our nation, to do everything in their power to awaken and arouse the national consciousness to this dangerous threat.

Tell our political leaders that if it is their intention to mortgage our national security for questionable economic advantages, then we shall not rest at all until the danger is removed.

The Economist—January 16, 1965

Strategies West and East

Here the Indian Ocean has been a relative gap, and it happens that Britain still possesses in it and in the south Atlantic various islands which might be made into useful staging-posts. A joint Anglo-American survey has been made of a possible chain of such posts on Ascension Island, Aldabra or another island in the Seychelles, Diego Garcia in the Chagos Archipelago, and an island in the Cocos group, the administration of which was prudently transferred some years ago from Singapore to Australia. This scheme would give British and American forces convenient access to Singapore and Australia, either by way of Aden or across, or round, southern Africa, by a route relatively immune to political hazards. There are, however, one or two possible political hazards to be surmounted first. The islands are insignificant bits of sand or coral and barely inhabited; still Aldabra is administered from the Seychelles and Diego Garcia from Mauritius, and each would need to be detached by, presumably, an Order in Council and administered from London, to make the investment of putting runways and other installations on them seem a reasonable bet.

(APPENDIX 'A 9')

London. 23.55 April 5. (1965) The Government was asked in the House of Commons today what approaches had been made to the Government of MAURITIUS regarding certain facilities for an Anglo-United States base in the Indian Ocean.

Mrs Eirene White, Colonial Under-Secretary, replied that the Premier of MAURITIUS (Dr S. Ramgoolam) was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin.

She added: "In November, the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before an announcement was made in London or in Washington."

MAURITIUS, an island in the Indian Ocean, was ceded to Britain by France in 1814.

THE WASHINGTON POST

Sunday, May 9, 1965

ENGLAND, U.S. PLAN BASES IN INDIAN OCEAN

by Robert Eastabrook

Washington Post Foreign Service

London, May 8. Plans for developing a series of joint Anglo-American military facilities on largely uninhabited islands in the Indian Ocean have received preliminary approval by Britain's Labor Government.

The initial outlay for acquiring necessary real estate in remote island dependencies of the British Colonies of Mauritius and the Seychelles has been estimated at \$28 million.

This would include the cost of buying out and moving the few indigenous inhabitants.

Discussions have been under way for a year about a chain of communications and staging sites, relatively invulnerable to anticolonial agitation, to assist peacekeeping operations in South and Southeast Asia as well as Africa if necessary.

In January the United States relayed a list of six to eight recommended locations based upon a survey made by an American team aboard a British ship last summer.

Navy Seeks Site

First on the priority list is Diego Garcia, a Mauritius dependency in the Chagos Archipelago 1000 miles south-west of Ceylon. Funds are already assured for a Navy communications relay station on Diego Garcia. The American request, however, is that the entire Chagos Archipelago be acquired.

Before plans can be carried further, Britain must approach local authorities in Mauritius and the Seychelles in order to transfer administrative responsibility to London for the Chagos and other faraway dependencies.

Some urgency attaches to this step because constitutional talks looking to possible early independence for Mauritius are scheduled for this fall, and it will be necessary to complete the transfer beforehand.

APPENDIX 'A 10'—*continued*

Any fears that the British Labour Government might not be enthusiastic about the Indian Ocean scheme have been delayed by the enthusiasm with which new ministers have taken up the idea. It dovetails with the "East of Suez" defence concept of Prime Minister Wilson.

Foreign Secretary Michael Stewart, Defence Secretary Denis Healey and Navy Minister Christopher Mayhew are particularly impressed with the possibilities. The government is under heavy pressure, however, to economise on military expenditures.

No precise arrangement has been made for sharing the initial cost, but Britain reportedly expects the United States to bear the larger portion. How much Britain can devote to development of the actual military facilities will be determined in part by a broad defence review now under way.

Inadequate Water

Such development may be relatively expensive in some instances because some of the islands lack adequate water or are surrounded by coral. But whatever the eventual American share, many diplomats as well as military men consider the cost well warranted because the opportunity to obtain such secure sites may never recur.

In addition to the Chagos Archipelago, other sites under consideration include the Aldabra islands, a dependency of the Seychelles 300 miles north-west of Madagascar, where Britain wants an air field; the Farquhar Islands, also a Seychelles dependency 150 miles north-east of Madagascar; the Agalega Islands, a Mauritius dependency 500 miles north-east of Madagascar, and the Australian-owned Cocos Islands 500 miles south of Sumatra.

American officials emphasize that the Indian ocean facilities would be primarily logistical and would not be intended as full-scale bases with garrisons. They could nevertheless be used for servicing or staging conventional air, sea and ground forces.

In response to a recent question in Parliament, Wilson denied that any submarine basis are contemplated in the area. Even though the Indian Ocean facilities would not be large, however, their presence would be potential reassurance to governments that might be intimidated by Chinese nuclear weapons.

APPENDIX 'A 10'—*continued*

Although no one likes to talk about abandonment of the big British base at Aden, some planners are thinking about an alternative. The official position is that the question of the future of the Aden base will be negotiated when the Federation of South Arabia becomes independent in 1968.

Present thinking is that either Britain or the United States would assume individual responsibility for the operation of each particular site, but that all such facilities would be available for use by both countries.

No Formal Request

No formal request for transfer of the dependencies has yet been made to the governments of Mauritius or the Seychelles, although officials were advised of the military survey.

Similarly the Australian government has not yet been approached for facilities in the Cocos Islands, but no difficulty is anticipated in view of the extensive Australian cooperation with Britain and the United States.

In the case of Mauritius the situation becomes delicate because of internal political disagreement over whether the 720 square mile territory with a population of 700,000 should opt for full independence or some lesser status in the Commonwealth.

Transfer of the dependencies could become a bone of contention, although some Mauritians believe that the military facilities would benefit the area.

Actually the far-removed dependencies are attached to Mauritius only for convenience of administration. The total population of all such lesser dependencies is under 2000.

With the Seychelles there is less of a problem because the 45,000 people are not so far advanced towards independence. This colony (where Archbishop Makarios of Cyprus spent a period in exile during the mid-1950s) lacks air connections.

Officials here suggest that agreement to build an airport as an aid to communications and tourism might ease the transfer of the dependencies.

APPENDIX 'A 10'—*continued*

The idea of American planners has been wherever possible to buy out indigenous inhabitants of the islands selected for military use and move them elsewhere. British or American nationals would then be brought in to staff the facilities.

In the case of Diego Garcia it would be necessary to purchase one foreign-owned coconut plantation. Transfer of the 664 residents of the Cocos Islands is not contemplated, however. Cocos already has a civil airport that is a stop on the route between South Africa and Australia.

Perhaps because of cost, British authorities have regarded the transfer of population as less important. Although they acknowledge that military facilities on the Indian Ocean islands might stimulate new "colonialism" propaganda charges, they believe that it probably would be possible to operate them with the local production remaining.

Les U.S.A. proposent Rs 135 m pour militariser les dépendances de Maurice et des Seychelles

Les Etats Unis sont fin prêts pour l'installation de bases militaires dans les dépendances de l'île Maurice et les Seychelles. Des fonds ont déjà été votés pour une station de relais télégraphiques destinée à la marine. La station serait située à Diego Garcia. Des experts sont arrivés à une estimation précise: Rs 135 millions, pour le coût initial de l'acquisition des terres nécessaires et le déplacement (avec dédommagement) des habitants de ces terres. Ils sont au nombre de 2000.

Toutefois, les Etats Unis ne peuvent aller de l'avant. Il faut d'abord obtenir des gouvernements mauricien et seychellois le transfert du contrôle administratif des territoires convoités au gouvernement de Londres. Dans les milieux américains on pousse à la roue pour que le transfert ait lieu avant la conférence constitutionnelle de septembre prochain.

Londres d'accord

Le gouvernement travailliste britannique a donné son accord préliminaire au projet de création d'une chaîne d'installations militaires anglo-américaines dans des îles de l'Océan Indien. C'est Robert H. Estabrook du Washington Post Foreign Service qui l'a affirmé récemment.

Il déclare par ailleurs que le nouveau gouvernement a accepté cette idée avec enthousiasme et que Michael Stewart (Affaires Etrangères), Denis Healey (Défence) et Christopher Mayhew (Marine) ont été impressionnés par les perspectives du plan. Il précise que le gouvernement britannique, sous la pression de difficultés économiques, voudrait économiser sur le budget militaire et s'attend à ce que les U.S.A. financent en grande partie le projet.

Un chapelet de stations

1. La première priorité militaire est Diégo Garcia, dépendance mauricienne de l'archipel des Chagos à 1,000 milles au sud-ouest de Ceylan. Mais les conseillers U.S. voudraient que l'archipel entier soit acquis. Les autres possibilités sont: 2. les îles Aldabra, dépendances des Seychelles, à 300 milles au nord-ouest de Madagascar, où la Grande Bretagne voudrait créer un aéroport. 3. les îles Farquhar, dépendances des Seychelles, à 150 milles au nord-est de Madagascar, 4. les îles Agaléga (Maurice) à 500 milles au nord-est de Madagascar et 5. les îles Cocos, possession australienne à 500 milles au sud de Sumatra.

APPENDIX 'A 11'—*continued***La menace chinoise**

Robert Eastabrook rapporte que les bases ne seraient pas dotées de garnisons mais serviraient au transit et au déploiement des forces de l'air, de mer et de terre. Même des installations de deuxième ordre seraient une garantie tangible de protection pour les pays qui pourraient être intimidés par la force nucléaire chinoise.

Aden abandonné en 1968

Personne ne parle ouvertement de l'abandon de la grosse base britannique à Aden mais certains conseillers en stratégie pensent à une alternative. Ce n'est qu'en 1968, lorsque la fédération de l'Arabie du Sud deviendra indépendante, que l'Angleterre négociera l'avenir de la base d'Aden.

La tactique américaine

A en juger par ce que rapporte ce correspondant américain, la tactique américaine consiste à minimiser la nature des liens entre Maurice et ses dépendances. Ainsi, il est allégué que ces îles dépeuplées ne représentent rien. Les U.S.A. ont évidemment intérêt à sous-estimer la valeur de nos dépendances.

La procédure préconisée par les "cerveaux" américains est d'acheter les droits des habitants d'îles choisies pour leur valeur militaire et les transférer ailleurs pour faire du repeuplement anglo-saxon.

Une base en deux temps

Par ailleurs, de source britannique, on croit savoir que M. Robert McNamara, Secrétaire d'Etat américain à la défense, est tombé d'accord pour commencer la construction des installations à Diégo. Celle-ci, d'abord une station de communications américaine, pourrait devenir éventuellement une base d'arrière-garde anglo-américaine, si la base d'Aden est perdue.

(APPENDIX 'A 12')

Un gros morceau à la conférence du Commonwealth: le dilemme des bases.**Wilson décidera-t-il sans Ramgoolam?**

La question de l'installation de bases dans l'Océan Indien (à Diego Garcia notamment) sera soulevée à la conférence des Premiers ministres du Commonwealth qui se réunit actuellement.

L'installation d'une base militaire dans une de nos dépendances touche de près notre pays. Or, Sir Seewoosagur Ramgoolam, Premier, n'assiste pas à la conférence des Premiers ministres du Commonwealth. L'île Maurice, colonie, n'a pas été invitée par le gouvernement britannique.

Toutefois, nous pensons que Sir Seewoosagur ou un délégué averti de notre gouvernement comme M. Maurice Paturau devrait, pour une fois, être à Londres afin de pouvoir discuter à l'échelon individuel de cette importante question avec les représentants des gouvernements du Commonwealth qui participent à la conférence.

Notre correspondant particulier à Londres rapporte dans une dépêche en date du 17 juin, date de l'ouverture de la conférence des Premiers Ministres du Commonwealth:

"La Grande Bretagne discutera avec ses partenaires du Commonwealth de la possibilité de l'installation de bases militaires dans les îles de l'Océan Indien".

Il poursuit et dit que la presse britannique de dimanche dernier a fait mention de consultations que M. Harold Wilson, Premier Ministre britannique, a eues ce jour-là avec ses *senior ministers* à Chequers, pour préparer la voie.

"For straight talking later this week to Prime Ministers Conference on Britain defence dilemma".

La Grande Bretagne demandera à l'Australie et à la Nouvelle-Zélande de l'aider dans sa tâche de défendre le monde libre. Ces deux pays ont intérêt à la défense de l'Extrême Orient et de l'Asie en raison de la menace nucléaire chinoise.

Les points suivants seront soulevés avec les membres qui participeront à la conférence du Commonwealth et qui ont été mis en avant par M. Denis Healey, ministre de la Défense de Grande Bretagne.

(1) La défense du Sud Est asiatique et de l'Inde peut être assurée par une force mobile dépendant d'avions de transport ou par une chaîne de bases militaires dans l'Océan Indien. Les bases sont-elles moins chères et meilleures?

APPENDIX 'A 12'—*continued*

(ii) Un avion de transport coûte £ 60 millions et un investissement de £ 25 millions est nécessaire tous les 5 ans, pour lui permettre d'être opérationnel.

(iii) Pour les bases militaires dans les îles, les avions F 111 seraient choisis.

(iv) Le nombre de soldats nécessaires pour maintenir une base.

Notre correspondant particulier précise qu'une des inquiétudes exprimées par la presse britannique est la suivante:

"Can Island bases in Indian Ocean cover the oil rich Sheikdoms of the Persian Gulf and enable Britain to close the costly and politically difficult base at Aden?"

Il faut toutefois préciser ici que la question militaire sera traitée "as a side line issue" avec les ministres du Commonwealth.

Le progrès des territoires britanniques vers l'indépendance et leur admission dans le Commonwealth est un des sujets qui sera discuté au cours de la 14e réunion des chefs de gouvernements du Commonwealth, qui a commencé à Londres avant-hier (jeudi 17 juin 1965).

Cette question ainsi que certaines autres sont inscrites sur l'agenda. Elles furent toutes acceptées par les représentants des 21 pays membres; après qu'ils aient été reçus par le Premier ministre britannique, M. Harold Wilson.

Les autres sujets à l'ordre du jour consistent en une revue de la situation politique et économique dans le monde et la création du secrétariat du Commonwealth. La question de l'immigration sera aussi soulevée.

(APPENDIX 'A 13')

BASE BRITANNIQUE DANS L'ARCHIPEL DES CHAGOS

**La Grande Bretagne veut retrancher les Chagos
de l'administration de Maurice**

**Opposition de Sir Seewoosagur Ramgoolam qui propose une location
La défense à l'Est d'Aden**

Pour ceux qui ont suivi de près l'évolution de la situation politique et militaire en Arabie du Sud, la déclaration faite à Londres par le Secrétaire d'Etat aux colonies, M. Anthony Greenwood, annonçant que l'Arabie du Sud doit être indépendante avant la fin de 1966, n'a pas été une surprise.

La presse britannique avait fait état de l'évolution de cette situation. Un journal britannique, l'ECONOMIST, avait même conclu que, pour pouvoir contenir la Chine en profondeur à l'Est d'Aden, la métropole pourrait être amenée à porter son choix sur "une île de l'Océan Indien".

Nous sommes en mesure d'annoncer, aujourd'hui, que ce projet britannique a pris corps.

Le gouvernement de Maurice a été mis en présence, tout récemment, d'une proposition formelle de Londres à ce sujet.

Cette proposition est la suivante:

La métropole offre de faire acquisition de l'Archipel des Chagos pour y établir des bases aériennes. Nos dépendances deviendraient ainsi une zone d'atterrissage.

Une condition importante est attachée à cette proposition: l'île Maurice accepterait que l'Archipel des Chagos soit retranché de sa dépendance.

Londres a offert de déplacer à ses frais les habitants de ces îles—trois cents ou quatre cents familles—pour les replacer, en les dédommageant, à Agaléga.

Le gouvernement britannique n'a encore présenté aucun prix ferme de dédommagement au gouvernement mauricien. On en ignore le montant exact.

APPENDIX 'A.13'—*continued*.**Ramgoolam: pas de retranchement**

A ces propositions, Sir Seewoosagur Ramgoolam a objecté que l'archipel des Chagos soit retranché de la dépendance de Maurice. Le Premier, leader du Parti Travailliste, veut plutôt d'un bail, condition qui, à ses yeux, viendrait grossir les revenus de Maurice.

A cette objection de Sir Seewoosagur, Londres opposerait, croyons-nous savoir, une objection de taille pleine d'enseignement: non retranché de la dépendance de Maurice, l'archipel des Chagos, devenu base aérienne britannique, continuerait à dépendre des aléas d'un gouvernement mauricien.

La métropole pourrait donc être bientôt placée devant une alternative fort embarrassante pour elle: (a) ou bien imposer sa décision en la déguisant, comme il convient en pareille circonstance, d'une procédure *ad hoc*; (b) ou bien céder à l'objection de Sir Seewoosagur et reviser toute la question.

Sir Seewoosagur se trouve, de ce fait, dans une situation clé. Il est peu probable qu'il puisse abandonner ainsi des dépendances mauriciennes et ses objections, il faut l'en féliciter, sont, cette fois, celles d'un esprit avisé dont la circonspection est pleine de sagesse. Aucun Mauricien ne pourrait lui donner tort en la conjoncture.

Annex 130

Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (17 June 1983)

RESTRICTED

(16)

Handwritten: *pl 22/6*
 Please arrange for DEC to
 make 10 copies of the attached
 report



Handwritten: *23/6*
 Mr Campbell (O.F.)

Mr Wombour Smith.

BRITISH HIGH COMMISSION
 PORT LOUIS

Handwritten: *22/6*

063/1

The Report seems to be well written
 and well argued, up until S2 E with
 its blunt allegation of blackmail.

Mr. Wombour Smith is looking carefully
 into the background to the blackmail
 allegation and I think we should then
 formally send a Note of protest
 covering our principal objections.

P L Hunt Esq
 EAST AFRICAN DEPARTMENT
 F C O

17 June 1983

Mr Watts

Handwritten: *Legal Advisers* - information
 CC *Mr Walawalkat*

(Research Dept)

with copy of report.

Handwritten: *27/6*

Dgt.

Handwritten: *23/6*

Handwritten: *24/7*

Re x; I am. It will have to
 be handled carefully. When is
 publication date? We should be ready

Handwritten: *27/6*

My dear Peter,

SELECT COMMITTEE REPORT ON THE EXCISION
 OF THE CHAGOS ARCHIPELAGO

1. I attach a copy of the Select Committee Report as promised
 in my telegram number 64. I also attach a note of my meeting
 with the Minister of External Affairs (my telegram number 68)

2. I will report further when I have seen the Speaker (Mr Ganoo).
 Mr Ganoo is, of course, sympathetic to the MMM and for us to seek
 to delay publication of the Report would be counter-productive. No
 doubt the MMM will make what they can of it to besmear Sir Seewoosagur
 Ramgoolam and his mates. I do not in fact think we will come out
 of this too badly since the Report shows that we did indeed consult
 those concerned before the excision.

Handwritten: *For me, J.*
 J N Allan

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Annex 131

Letter from P. Hunt of the East African Department to J. N. Allan of the British High Commission in Port Louis, FCO 31/3834 (14 July 1983)



RESTRICTED

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01- 233

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RECEIVED	19 JUL 1983
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J N Allan Esq CBE
PORT LOUIS

Your reference

Our reference

Date 14 July 1983

*Dft to Mr
Watts, Deputy
Legal Adviser.
PA #15/7*

Dear James,

SELECT COMMITTEE REPORT ON THE EXCISION OF THE CHAGOS ARCHIPELAGO

Thank you for your letter 063/1 of 17 June enclosing a copy of the Select Committee Report and a note of your meeting with the Minister of External Affairs.

2. We think that you struck just the right note with Gayan and picked out all the points which are objectionable to us. Our view here is that the Report is reasonably well written and well argued, at least until paragraph 52E with its rather blunt and emotional allegation of blackmail. We would wish however to put in a formal Note listing our principal objections. We are putting a draft to our Legal Advisers and hope to let you have it shortly.

3. We look forward to hearing what sort of impact the Report makes locally when it is circulated.

Yours ever,

Peter.

P L Hunt
East African Department

RESTRICTED

Annex 132

African Section Research Department, *Detachment of the Chagos Archipelago: Negotiations with the Mauritians (1965)* (15 July 1983)

SECRET

DETACHMENT OF THE CHAGOS ARCHIPELAGO: NEGOTIATIONS WITH THE MAURITIANS (1965)

Negotiations in Mauritius

1. A joint Anglo-US survey of a number of Indian Ocean islands with a view to their suitability for defence use was carried out from June to August 1964. The Premier of Mauritius, Dr Seewoosagur Ramgoolam, and the Executive Council of Seychelles, were consulted first, and raised no objection. An approach was also made to Dr Ramgoolam about the possibility of detaching the Chagos Archipelago from Mauritius, but his reaction to this was guarded.

2. The Governor of Mauritius was instructed on 19 July 1965 (CO Secret and personal telegram number 198) to open discussions with Mauritius Ministers on the detachment of Chagos and on compensation:

"In putting the matter to your unofficials you should indicate that as regards Diego Garcia there is a firm requirement for the establishment of a Communications Station and supporting facilities including an airstrip. As regards the remainder of the islands (incl. the remainder of the Chagos Archipelago) you should indicate that the requirement for these is in the nature of an insurance for the future, that no firm plans exist for early defence developments on them but that it is possible that air and/or naval facilities may be required in future years...."

He was further instructed that:

"You should explain that it would be intended that the island in question should be constitutionally separated from Mauritius and Seychelles and established, by Order in Council as a separate British Administration. The Americans would not be prepared to go ahead on any other basis. Any suggestion of the islands required being made available on the basis of either leases or defence agreements with Mauritius or Seychelles must therefore be ruled out."

3. On 23 July the Governor informed Ministers of what was proposed and found that whilst not ill-disposed to the idea of a defence facility in Chagos they asked for time to consider the idea further. Both Ramgoolam (Labour Party) and Gaetan Duval (of the Parti Mauricien Social Democrat - PMSD) expressed dislike of detachment and the Governor commented that it was clear that any attempt to detach without agreement would evoke strong protest. Ramgoolam raised the question of mineral or other rights that might arise in the future and referred to the reversion of the islands to Mauritius if their use for defence purposes was abandoned. Ministers also mentioned the possibility of an increased US sugar quota for Mauritius but were told that this would raise difficult problems, and that HMG would favour the payment of lump sum compensation.

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4. A week later, the Council of Ministers, with Ramgoolam speaking for the Ministers as a whole, gave the Governor their response: they were sympathetically disposed to providing the Chagos Archipelago for Anglo-US use and prepared to play their part in the defence of the Commonwealth and the free world. They would like any agreement over the use of Diego Garcia to provide also for the defence of Mauritius. Ministers objected however to detachment, which would be unacceptable to public opinion in Mauritius. They asked therefore that consideration might be given to how UK/US requirements might be reconciled with a long term lease, eg for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius. As regards compensation, they suggested that the United States might purchase annually from Mauritius 300,000 to 400,000 tons of sugar at the Commonwealth negotiated price against the purchase by Mauritius from the United States of 75,000 tons of rice and 50,000 tons of wheat; an American market for up to 20,000 tons of frozen tuna would also be of interest. The United States might also be helpful about immigration. In addition there should be a capital sum towards development. They also hoped that some use might be made of Mauritius labour in construction work. Ramgoolam suggested discussions with representatives of the British and American Governments either on the occasion of, or before, the Constitutional Conference to be held in London in September.

5. Speaking on instructions, the Governor explained to the Mauritian Ministers on 13 August that the United States Government was firm that the islands chosen for the development of defence facilities must be made available directly by HMG and that a leasehold arrangement therefore would not do: if on reconsideration Ministers were prepared to accept detachment, HMG would do their utmost in negotiations with the US Government to secure the various trade and other benefits requested, but Ministers were warned that chances of success were limited by the fact that some of their suggestions involved difficult issues of domestic politics in the US (eg the sugar quota, which was controlled by Congress). The Governor invited them to discuss other elements of compensation within the direct power of HMG to grant. The Ministers responded by renewing their call for discussion in London between representatives of the Governments concerned, and both Ramgoolam and Duval said that they were sure that agreement could be reached in this way.

Negotiations in London

6. The Defence and Overseas Policy Committee (OPD) considered the detachment of the Chagos islands and also a defence agreement with an independent Mauritius, on 31 August 1965. (Independence for Mauritius appears to have been the constitutional solution at the forefront of Ministerial thinking here, although the final decision between a referendum on independence and some form of special association with Britain—claimed by the PMSD—and for

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elections followed by full independence - claimed by the Labour Party - rested with the Mauritius Constitutional Conference due to take place in September.* The Deputy Secretary of State for Defence, supported by the Foreign Secretary, Mr Stewart, urged that "The Agreement of the Mauritius Ministers to the transfer should be obtained if possible but in any event the decision to detach the islands should be taken before the end of the Mauritius Constitutional Conference. In response to the request of Mauritius Ministers we might accept responsibility for the external defence of Mauritius, but there was strong objection to our similarly accepting a continued responsibility for internal security after Mauritius became independent, since this might embroil us with opposing racial groups on the Island. If agreement on the detachment of the Chagos group could not be obtained, we should nevertheless transfer them to direct United Kingdom sovereignty by Order in Council." The Colonial Secretary, Mr Greenwood, said however that he "was not in agreement with these proposals. The Mauritius Constitutional Conference would in any case be difficult. When the Committee had last discussed detaching the islands, they had agreed that the proposed compensation should be increased and that the agreement of the Mauritius Government was essential. Their Ministers would be very disappointed at our not agreeing to accept a 99 year lease and also if the United States did not accept their proposals on sugar. The offer to accept responsibility for their external defence would be useful in negotiations. However, our acceptance of responsibility for internal defence would be the main issue. Minority guarantees would be a most important part of the Conference and could probably only be satisfactorily resolved by an assurance that we would provide forces for internal security at the request of the Mauritius Government. At least we should therefore agree that a request from the Mauritius Government after independence for assistance in internal security would be sympathetically considered. Mauritius Ministers would, on this basis, probably accept the detachment of the islands but to threaten to go ahead with this by Order in Council regardless of their agreement would undoubtedly wreck the Conference." Summing up the discussion, the Prime Minister (Mr Wilson) said "that at the forthcoming Conference we might if necessary agree to "consider sympathetically" the provision of United Kingdom forces for purposes of internal security at the request of the Mauritius Government after independence A decision on whether or not we should detach the islands in question by Order

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- * The main objects of the Conference were described in FO Guidance telno.401 as being: "to decide whether full independence or some form of special association with Britain should be the ultimate goal towards which Mauritius should move; to settle the timing of the transition to this goal and to decide what (if any) prior population consultation should be stipulated; and to secure the maximum possible measure of agreement between the Mauritian political parties on the provisions of the new Constitution."

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in Council if the agreement of Mauritius Ministers could not be obtained to this course need not be taken at this stage, and until we could see how the forthcoming Conference progressed. It was, however, essential that our position on the detachment of the islands should in no way be prejudiced during its course and the Colonial Secretary should bring the matter back to the Committee in good time for a decision to be reached on this issue before the Conference reached any conclusion."

7. The Constitutional Conference took place in London from 7 - 24 September 1965. Completely separate side-meetings attended by the Colonial Secretary and Mauritian Ministers and Party leaders dealt with the question of the Chagos Archipelago. The records of the Constitutional Conference and the records of the meetings on Chagos both show that there was no confusion between the issues discussed in the two fora, and no "carry-over" of subject matter - except inasmuch as a possible Anglo-Mauritian Defence Agreement was mentioned in both.

8. As the Colonial Secretary's initial, exploratory, talk on Monday 13th September with Ramgoolam (now Sir Seewoosagur) revealed, the Mauritians had come to London with their sights still firmly fixed on a lease arrangement for Chagos and a trade agreement with the US. At a meeting immediately afterwards attended also by Koenig of the PMSD, Mohammed (Committee of Muslim Action - CAM), Bissoondoyal (Independent Forward Bloc - IFB), and Paturau, an Independent Minister, the Colonial Secretary stressed that the subject of their discussions was quite separate from that of the Conference proper. He pointed out the objections to the terms proposed by the Mauritians, (ie the lease, increased sugar quota and immigration to the US) and emphasised the link between the existence of defence facilities in the Chagos islands built by the US but available for joint UK-US use and Britain's ability to give defence help to Mauritius. Having, however, failed to shake Mauritian hopes of extracting some form of continuing advantageous financial deal with the Americans, Mr Greenwood undertook to arrange for them to meet with an appropriate official at the US Embassy in London. At the meeting, which took place on Wednesday, 15th September, Mr Armstrong (US Embassy Minister-Economics) did his best to persuade the Mauritian Ministers that there was no chance of the US increasing Mauritius' sugar or immigration quotas.

9. The Colonial Secretary reported to the OPD on Thursday 16th September that:

"... he had discussed with the Mauritian leaders the detachment of the islands in the Chagos Archipelago. They were disappointed that the United States Government was not prepared to consider the lease of the islands or to meet their requests over sugar purchases and emigration. They had however had discussions with the United States Embassy and the latter had agreed to consider their suggestions as regards trade. They had also discussed with the Colonial Development Corporation the possibility of a land settlement scheme. It had been previously envisaged that we might offer a maximum of £3 million as

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compensation for the detachment of the islands. He had made an initial offer of £1 million and this had not been badly received. If it would help to secure agreement we might consider making available a further £1 million to finance development schemes over a period of years. We might also consider a provision that after, say, 99 years, the islands would revert to Mauritius if they were no longer required by the United Kingdom and United States. There had been some discussion about a continuing British responsibility for internal security, but this had been in the context of future constitutional development rather than of the detachment of the islands. Of the two main Mauritius Parties one favoured independence while the other preferred a form of association with the United Kingdom. Both would want some assurance of continued British assistance in maintaining internal security but it might not be necessary for us to go beyond an agreement to consult at the request of the Mauritius Government.... There had been no detailed discussion as yet about a defence agreement. The Constitutional Conference should end by the middle of the following week and he was hopeful that by then agreement on the detachment of the islands would have been secured. He had not pressed for an immediate decision both because this might prejudice agreement on the constitutional issues and because the Mauritian leaders were aware of the strength of their bargaining position and undue pressure might only induce them to put up their price."

In discussion it was pointed out that an urgent and satisfactory decision for the detachment of the islands was necessary both in HMG's own defence interests and in order to maintain good political and military relations with the US. Summing up, the Prime Minister said that the Committee would wish to take note of the Colonial Secretary's statement and to express the hope that agreement would be reached urgently, and in any case by the end of the Constitutional Conference. A decision on whether or not HMG should detach the islands in question by Order in Council if the agreement of Mauritius Ministers could not be obtained should still be deferred.

10. The next meeting between the Colonial Secretary and Mauritius Ministers on the excision of the islands took place on Monday 20th September. Once again, Mr Greenwood emphasised his desire to keep the discussion of the proposal to establish defence facilities in the Mauritius dependencies separate from the Constitutional Conference. At this point all Ministers present (Ramgoolam, Koenig, Mohamed, Bissoondoyal and Paturau) were still pushing for a lease and some form of continuing aid from the Americans. Indeed, Ramgoolam told the Colonial Secretary that "the sort of compensation that had been suggested was of no real interest to the Mauritius Government. The United States was spending vast sums of money elsewhere in the world on bases that were not secure. Admittedly Diego Garcia was not being used at present; but in future it might be of great strategic significance. Mauritius must obtain some significant benefit from making it available. He did not pretend to know the military significance of Diego Garcia but, in considering compensation for Mauritius,

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the scale on which the United States has accepted expenditure on bases elsewhere had to be borne in mind." On this occasion Ramgoolam did, however, admit for the first time, in an oblique manner, of the possibility of the detachment of Chagos, whilst continuing to envisage some agreement with the Americans ("... an alternative arrangement might be to calculate what benefit Mauritius would have derived from the sort of sugar quota and other trade arrangements that they had been suggesting and for the United States Government to make yearly payments to Mauritius of that amount He was talking in this connection in terms of a lease but if the islands were detached then different figures could easily be calculated; [it should in any case be provided that if the islands were detached then different figures could easily be calculated;] it should in any case be provided that if the islands ceased to be needed for defence purposes they would revert to Mauritius.")

11. Meanwhile, the Constitutional Conference was reaching deadlock on the issue of Mauritius' future status. At a meeting between the UK delegation and PMSD representatives on the morning of 23rd September it became clear to PMSD leader Koenig that BMG were not going to accept his Party's proposal for a referendum on independence and he withdrew the Party from the Conference. This withdrawal was unconnected with the Chagos issue, but Koenig also stayed away from the meeting on the afternoon of 23 September at which Ministers gave agreement, in principle, to detachment (para.13) and later the PMSD used the pretext of inadequate compensation secured in the negotiations to withdraw from the all-party Government in Mauritius (para.17).

12. At 10 a.m. also on 23rd September the Prime Minister, Mr Wilson, held a private meeting with Ramgoolam. He emphasised that the question of the detachment of Chagos was a completely separate matter from the question of Mauritius' constitutional future. He warned that because of American interest, the Mauritians might be raising their bids too high and went on to say that: "On the Defence point, Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point."

13. At 2.30 p.m. on that afternoon the Colonial Secretary met Ramgoolam and other Ministers (minus Koenig) and a tentative agreement was reached. Early in the discussion the Colonial Secretary said: "This [ie compensation, the offer of a defence agreement etc] was the furthest the British Government could go. They were anxious to settle the matter by agreement but the other British Ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council."

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14. Some days after the meeting on 23rd September, and prior to departure overseas, the Secretary of State asked officials in the Colonial Office to get the final record of the meeting agreed with the Mauritian Ministers before they left London. One Minister (Paturau) had already left for Mauritius. Ramgoolam was due to visit the Colonial Office on 30th September, and the opportunity was taken to clear the minutes with him and see if he could clear the record with Mr Mohamed and Mr Bissandoyal. Ramgoolam took away the draft and after consulting Mr Mohamed wrote a letter dated 1st October agreeing the draft record with certain amendments. On 4th October, Sir Hilton Poynton and Mr Trafford Smith saw Ramgoolam and Ringadoo to clear up various matters, including the final draft. Puzzled by Ramgoolam's reference to "two islands" in his letter of 1st October, they sought clarification from him. Trafford-Smith later minuted: "It turned out that the 'two islands' point was probably due to a misunderstanding - at least he did not press it, and I wonder whether, confronted with a map showing the islands in the Chagos group, he had in fact previously realised that there were so many."

As regards the other points, the two Ministers agreed to our revised presentation which effectively said that we would do our best to negotiate these facilities with the Americans."

15. The amendments were incorporated into the final agreed record of the 23rd September meeting, the relevant paragraphs of which read:

"22. Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

- (i) negotiations for a defence agreement between Britain and Mauritius;
- (ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
- (iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
- (iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
- (v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

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- (vi) the British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:
 - (a) Navigational and Meteorological facilities;
 - (b) Fishing Rights;
 - (c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.
- (vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius
- (vii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. SIR S RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues."

16. At the same time it had been agreed within the C.O. on the advice of the Governor (Sir John Rennie) that the right way to proceed was to send a secret despatch (in the non-personal series) which could be shown to the Mauritian Ministers asking for formal confirmation of the revised record as finally agreed by Sir S Ramgoolam and Mr Ringadoo, and effectively by Mr Mohamed, whose consent Ramgoolam had secured. This despatch was sent on 6th October (no.423).

17. With certain provisos (regarding the eventual return of the islands to Mauritius, and regarding minerals and oil) the Mauritian Council of Ministers confirmed their agreement, which was notified to HMG in the Governor's secret telno.247 of 5th November 1965. (The provisos mentioned above were acknowledged by CO secret telno.298 of 8th November, which made clear that the Chagos Archipelago would remain under British sovereignty, and that the islands were required for defence purposes, and that there was no intention of permitting prospecting on or near them). PMSD Ministers dissented however: Paturau (Independent) supported the agreement on defence grounds, but expressed sharp dissatisfaction with the amount of compensation. On 11 November Koenig, Duval and Devienne (PMSD) resigned from the Government. The following day they gave a press conference at which they gave as their reason for this action the inadequacy of compensation for the loss of Chagos and the insufficiency of efforts to improve it, especially in regard to sugar exports and immigration to the United States; however the PMSD also publicly declared that the Party had no objection in principle to detachment or to defence facilities.

African Section
Research Department
15 July 1983

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Annex 133

Letter from D. A. Gore-Booth to W. N. Wenban-Smith of the East African Department, FCO
58/3286 (15 July 1983)

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Mr. Campbell

Mr. Dyer
For advice
Draft ~~can~~ please
by 1 Sept or later
la. W2United Kingdom Mission to the United Nations
845 Third Avenue New York NY 10022

UN POUVOIR

RECEIVED IN AMBASSY

25 JUL 1983

W N Wenban-Smith Esq	REGISTRY
East African Department	Letter taken
FCO	

La Diego Garcia

Your reference

Our reference 063/1

Date 15 July 1983

Pl. also copy
to VAS.

My dear Nigel,

MAURITIUS' CLAIM TO BIOT

1. In part 5 of his letter of 26 April about Diego Garcia and the NAM Summit, Mig Goulding promised a further letter on what we say about relinquishing Diego Garcia when we no longer require it for defence purposes. Mig's departure, my arrival and the fact that the papers have languished in assorted trays in the interim have conspired to delay our doing so. My apologies. However, with Mauritius in the middle of an election campaign and a new government taking office in August, now is probably a good time to focus once again on what, in UN terms at least, could become a very tricky subject if not handled properly.
2. Your letter of 25 March to Martin Williams in New Delhi implied that, depending on the circumstances, all three terms, "return", "cede", "revert", are all acceptable. While this may be true as far as Parliament is concerned, it would be a mistake for us to rely on such loose definitions at the UN where precise terminology has been elevated to the status of a high art form and where any sovereignty battles over Diego Garcia are likely to be fought. Moreover you will have seen (Mike MacLay's letter of 8 April to Peter Hunt) that the Mauritian Permanent Representative here was sufficiently sensitive to the question to comment to the Ambassador that he found it difficult to believe Mrs Thatcher had told Ramgoolam that we would "return" Diego Garcia to Mauritius when we no longer needed it.
3. What is required I think is a new locus classicus on Diego Garcia, perhaps in reply to an inspired PQ to the Secretary of State or the Prime Minister, made in such a way as to expunge the ambiguities and inconsistencies that have appeared in previous Ministerial pronouncements. These simply do not square with the policy we are under instructions to defend (Mr Ennals' 1975 statement and the Prime Minister's answer in July 1980 are I think particularly unfortunate examples). Once made we should stick to whatever term has been agreed and draw on it as necessary in explanation of our position. Failure to get this right would store up no end of trouble for us at the General Assembly (Diego Garcia is not at present inscribed on the agenda, but IOPZ is and could well provide a forum for raising the sovereignty question).

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4. As for the wording we should use, I am afraid that notwithstanding your views, we consider "revert" less than acceptable since it clearly implies that Mauritius did at one time exercise sovereignty over the territory. For the same reasons we question too the use of the term "return", even subject to your proviso. We cannot readily foresee circumstances in which the proviso would be realisable, and, even if it were, it would make plain that we were weaselling. My own feeling is that to talk of a "return" of Diego Garcia to Mauritius is essentially incompatible with our claim that the Chagos were never part of Mauritius.

5. I should be most grateful to know what you think. This might be an appropriate point to remind you of paragraph 4 of Mig Goulding's letter of 26 April suggesting a piece of paper setting out our case on Diego Garcia which we could leave with selected NAM Missions in New York and also send to capitals. No doubt you are already giving some thought to this. If you agree to the idea of a new Ministerial statement it might be as well to leave the paper until the terms of that statement can be included.

D A Gore-Booth

cc: J N Allan Esq CBE, Port Louis

M J Williams Esq, NEW DELHI

S J Gomersall Esq, Washington

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Annex 134

Note from A. Watts to Mr Campbell, FCO 31/3836 (received 23 Aug. 1983)

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Reference.....

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M. Campbell (EAD)Mr. Hunt
PS 16/8

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RECEIVED	11/7
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Bot: "Return", "cede", etc.

I don't much like either 'revert' or 'return'. Both suggest the Cypriots were previously 'Mauritius', and that that state of affairs will be resumed: the first limb of that proposition is, of course, not one we would readily go along with, at least without a lot of supplementary explanation about 'administrative convenience' and so on.

'Cede' or 'transfer' both seem to me much better, since they carry no implication of previous Mauritius rights over Bot. And 'cede' implies that we do now possess sovereignty, while 'transfer' points in the same direction.

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Annex 135

Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (13 Mar. 1986)

TITLE TO TERRITORY IN AFRICA

International Legal Issues

MALCOLM SHAW

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raises the question of the authoritativeness of such interpretations. Whereas an amendment by subsequent practice will be binding, whether a particular interpretation of a Charter provision contained in one or more resolutions of the General Assembly possesses a persuasive quality, and to what extent, will be determined on the basis of the numbers and identity of States voting for the proposed interpretation. Thus, Charter interpretation in this narrow sense constitutes one element of Charter modification by practice and is subsumed under the generally recognized heading of Charter interpretation. The advantage of this latter process is that it enables the majority of States to modify the Charter to accord with contemporary conditions, while imposing certain limitations as to the quantity of States proposing the change, and thus providing some protection to minorities. It is also necessary for the proposed modification to be directly referable to a particular provision of the Charter.

Such changes may be, and generally will be, accomplished by Assembly resolutions, which may either be related to a specific situation or be more generally framed. Thus, Charter interpretations may occur other than as responses to particular disputes. Not all such resolutions will be of the same persuasive nature and a series of resolutions over a period of time will usually be required.

(b) Self-Determination

1. *General Approach*

At this point we shall turn to examine the question of whether the right of self-determination can be regarded as established through the medium of Charter interpretation as a result of practice subsequent to the creation of the UN Organization. As an introduction, one should note the Universal Declaration of Human Rights. This was adopted on 10 December 1948, in the form of an Assembly resolution by 48 votes to 0, with 8 abstentions. It built upon Charter provisions regarding human rights (for example, Articles 1, 55, 56, 62, and 76) and enumerated a list of human rights and fundamental freedoms 'as a common standard of achievement for all peoples and all nations'.¹⁰⁴ Although the principle of self-determination was not referred to in this Declaration, which concentrated upon the elucidation of individual rights, its path forward was cleared in the same way in that democratic rights seemed to lead inevitably in international society to consideration of the rights of peoples to define their own cultural and national status.¹⁰⁵

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The Declaration was not legally binding as such in view of the terms in which it is expressed and the circumstances surrounding its adoption,¹⁰⁶ but has come to have a significant effect within the international community. Some of its provisions might be taken as reflecting general principles of law, others as relatively new international stipulations. However, it can be regarded in essence as an influential interpretation by the General Assembly of the relevant Charter provisions upon human rights and fundamental freedoms, and as such of legal value as part of the law of the United Nations.¹⁰⁷

There have been a number of resolutions dealing with self-determination both generally and with regard to particular situations, and it is possible to point here to what appears to be a significant distinction. Resolutions and declarations that posit principles of law may be regarded as valid interpretations of the Charter if the necessary requirements of unanimity (or near-unanimity) and referral have been met. However, resolutions and other UN and State practice referable to the specific situations are often limited by two factors. Firstly, such practice in concentrating upon a particular situation is of restrictive value since it deals only with one aspect of the principle under discussion which may be modified or even distorted by virtue of other principles, deemed relevant in that particular situation,¹⁰⁸ and secondly by the greater likelihood of opposing votes and behaviour that will rob the practice of its claim to universality.¹⁰⁹ However, it is possible for such defects to be remedied by a consideration of the temporal element. In other words, a series of resolutions, for example calling for self-determination in different colonial territories, may be regarded as subsequent practice relevant to the interpretation of the particular Charter provisions in question. Examples of such practice will be noted in the following section,¹¹⁰ but it will be useful in this context to recall the views of the ICJ regarding Article 27 of the Charter. The court declared that 'the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the position taken by members of the Council . . . have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions This procedure followed by the Security Council . . . has been generally accepted by members of the United Nations and evidences a general practice of that Organization.'¹¹¹

A similar process can be seen with regard to Article 2(7) of the Charter, concerning domestic jurisdiction, which has over the years been increasingly restrictively interpreted¹¹² while the General Assembly has

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progressively widened the scope of its jurisdiction under Chapter XI of the Charter by asserting its competence both to request political information on non-self-governing territories under Article 73(e) and to decide which territories may be regarded as non-self-governing.¹¹³ The Assembly has also proclaimed its authority to decide between competing aspirations of the right to self-determination and to declare whether territories have exercised or should exercise the right to self-determination.¹¹⁴

In all of these instances State practice over a period of time has been consolidated into Charter interpretation. Whether such practice can be treated as a valid interpretation will depend on all the circumstances of the case, but the presumption would be that the larger the number of resolutions, for instance applying the principle of self-determination to different territories, and the longer the period during which such practice has been operating, the greater would be the likelihood that a persuasive or even binding view of the Charter term has been expressed.

Resolution 421 (v) of 4 December 1950 embodied the request of the General Assembly for a study of the ways and means 'which would ensure the right of peoples and nations to self-determination', and this was taken further by resolution 545 (vi), which stated that the proposed article on self-determination in the International Covenants on Human Rights should be expressed in the terms that all peoples have the right to self-determination. It also noted that the article should stipulate that all States should promote the realization of the right in conformity with the principles and purposes of the United Nations. Resolution 637 (vii) proclaimed that self-determination was a fundamental human right.¹¹⁵ This resolution also declared that UN member States 'shall recognise and promote the realization of the right' with regard to the peoples of trust and non-self-governing territories under their administration 'according to the principles and spirit of the Charter of the United Nations'.¹¹⁶ The Commission on Human Rights considered the concept of self-determination over a number of sessions¹¹⁷ and submitted recommendations to the UN Economic and Social Council, including a suggestion for the establishment of a Special Commission to examine situations resulting from alleged denials or inadequate realizations of the right to self-determination in certain circumstances.¹¹⁸ This was, however, opposed and the matter was referred back to the Commission on Human Rights for reconsideration.¹¹⁹ During the reconsideration a number of representatives pointed out that self-determination was only a principle and not a right. It was declared that the Charter had not granted

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the General Assembly competence to implement self-determination, although by way of contrast, implementation of Article 1(1) was provided for by Article 11 and that of Article 1(3) by Article 13.

Such objections were overridden, as was the view that the realization of self-determination fell essentially within the domestic jurisdiction of States, and the Commission reaffirmed its previous recommendation which was sent to the General Assembly.¹²⁰ The General Assembly at its eighth session asked the Commission to give priority to recommendations regarding international respect for the right of self-determination,¹²¹ and by the next session the Assembly already had before it the draft International Covenants on Human Rights prepared by the Commission and transmitted by the Economic and Social Council.¹²²

The Commission suggested that both International Covenants should have an identical first article¹²³ and this article, according to the draft of the Third Committee of the Assembly, read as follows:

1. All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development . . .

3. All States parties to the Covenant including those having responsibilities for the administration of non-self-governing and trust territories shall promote the realization of the right of self-determination and shall respect that right in conformity with the provisions of the UN Charter.¹²⁴

At the Twelfth Session, the Assembly declared in resolution 1188 (XII) that member States were to give due respect to the right of self-determination. From this point, the proposed Covenants became enmeshed in UN discussions from which they were only to emerge nine years later.

At this point we shall turn to two General Assembly declarations that might be treated as authoritative interpretations of the Charter.¹²⁵

The Declaration on the Granting of Independence to Colonial Countries and Peoples (the Colonial Declaration) was adopted by the General Assembly of 14 December 1960 in resolution 1514 (XI) by 89 votes to 0 with 9 abstentions. This has had a profound impact upon international affairs and has been treated with particular reverence by the States of the Third World. It has been regarded by many as the 'second Charter' of the United Nations drawn up for the subjugated peoples of Africa and Asia.¹²⁶ Indeed, Parry has written that the Declaration by itself has had the effect of modifying that part of international law that deals with territorial sovereignty.¹²⁷

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The Declaration emerged after a debate in the Assembly initiated by the Soviet premier¹²⁸ and was drafted by forty-three States.¹²⁹ The preamble noted that 'all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory' and proclaimed the necessity of 'bringing to a speedy and unconditional end colonialism in all its forms and manifestations'. The Declaration laid down seven principles, stressing that 'all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. Inadequacy of political, economic, social, or educational preparedness was not to serve as a pretext for delaying independence. Immediate steps were to be taken to transfer power to the peoples of non-independent countries, but attempts aimed at the partial or total disruption of the national unit and territorial integrity of a country were deemed incompatible with the purposes and principles of the UN Charter.

The Declaration has been treated by a number of countries as constituting a binding interpretation of the Charter, or a restatement of principles enshrined in the Charter,¹³⁰ and it has been similarly regarded by some writers.¹³¹ However, there are others who dispute this. One view already discussed is that any action by the General Assembly could only be recommendatory in such circumstances and that therefore the Declaration could be nothing more than a general statement of objectives.¹³²

But the most significant criticism of the Declaration as an authoritative interpretation of the Charter is concerned with the inconsistencies that are noticeable between the two instruments. Paragraph 1 of the Declaration proclaimed that 'the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations'. However, this is not too clear in the Charter itself, for Chapters XI and XII legitimize certain relationships of dependence regarding non-self-governing and trust territories,¹³³ subject to defined conditions.

The Declaration in paragraph 3 notes that 'inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence', while Article 73(b) declares that States administering non-self-governing territories must 'assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement' and Article 76(b) underlines that among

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the basic objectives of the trusteeship system is the 'progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples'.

Paragraph 5 of the Declaration emphasizes that 'immediate steps' should be taken in all non-independent territories to transfer power to the people, and this seems inconsistent with Articles 73 and 76. However, the call by the USSR, in particular, for immediate independence or the proclamation of a date at the end of 1961 for this to be achieved was not accepted¹³⁴ and this provision should perhaps be regarded rather as a change of pace than as a change of essence. The Declaration also blurs the distinction between trust and non-self-governing territories by positing the same provisions for all territories that have not yet attained independence. In addition, the Declaration in paragraph 5 appears to regard independence as the only legitimate goal of the whole process. This latter provision runs counter to a number of UN resolutions, for example those recognizing the exercise of self-determination involved in the relationship of dependence between the USA and the Commonwealth of Puerto Rico,¹³⁵ and between New Zealand and The Cook Islands¹³⁶ and Niue¹³⁷ after elections had been held in the respective dependent territories. In fact, the UN Secretary-General noted in 1963 that 'the emergence of dependent territories by a process of self-determination to the status of self-government either as independent sovereign States or as autonomous components of larger units has always been one of the purposes of the Charter and one of the objectives of the United Nations'.¹³⁸

Such inconsistencies have led Bokor-Szego¹³⁹ and Martine,¹⁴⁰ for example, to deny that the Colonial Declaration is an authoritative interpretation since it appears actually to amend the Charter, the argument turning on where the line between interpretation and amendment should be drawn. Fifteen years of State practice in the process of decolonization formed the background to the Colonial Declaration and enabled it to bring up to date the relevant Charter provisions in a way marking contemporary consensus views as to, for example, the effect of inadequacy of political, social, economic, or educational preparedness. All interpretations refine and develop the concept under consideration, in a manner acceptable to those concerned, and may be no less influential or binding because of that.¹⁴¹

However, it does not follow that everything contained in the Declaration (or in similar resolutions, for that matter) constitutes a

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binding obligation. Some elements would remain upon a purely hortatory level, for example the solemn proclamation in the preamble to the Declaration stressing 'the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations'. On the other hand, there may be statements which are inconsistent with instruments interpreting the Charter—for instance, the apparent acceptance in the Declaration that independence is the sole object of self-determination. This contrasts with UN practice, as noted above, recognizing other relationships, and with the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (resolution 2625 (xxv)), which noted that 'the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people'.¹⁴²

It would therefore seem that where one is faced by conflicting interpretations of equal standing, resort must be had to the intentions of the members of the United Nations, as revealed in their practice, and upon this basis it would seem that the stipulation in the 1960 Declaration restricting self-determination to the attainment of independence must be regarded as only a suggestion and not an authoritative interpretation of the Charter. Nevertheless the core of the Declaration does constitute an interpretation of the Charter and one that has underpinned the end of colonialism.¹⁴³

Higgins has noted that it 'must be taken to represent the wishes and beliefs of the full membership of the United Nations'.¹⁴⁴ As to the juridical character of the Declaration, Higgins stresses that in it the right of self-determination is regarded 'as a legal right enforceable here and now'.¹⁴⁵

This approach is underlined by the action taken by the United Nations to implement the Declaration. On 27 November 1961 the General Assembly created a subsidiary organ entitled the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence,¹⁴⁶ which was enlarged from seventeen to twenty-four member States the following year.¹⁴⁷ It has gradually widened its sphere of activity so that, apart from the Trusteeship Council (which is only concerned now with the trust territory of the Pacific Islands), it is the only organ responsible for issues dealing with dependent territories. The Committee has been very active and has done much to

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pressure the colonial powers and the administering powers.¹⁴⁸ It has also stressed the position that the United Nations intended the Colonial Declaration to act as a juridical signpost to complete decolonization and not merely as a solely hortatory pronouncement.

Virtually all UN resolutions proclaiming the right to self-determination of particular peoples expressly refer to the 1960 Declaration.¹⁴⁹ Judge De Castro particularly noted in the *Western Sahara* case how the African group at the United Nations that prepared a draft resolution on the Sahara problems for discussion in the Fourth Committee was at pains to refer four times to resolution 1514 (XV) in reaffirming the right of the people of Western Sahara to self-determination.¹⁵⁰ The International Court has specifically referred to the Colonial Declaration as an 'important stage' in the development of international law regarding non-self-governing territories,¹⁵¹ and as 'the basis for the process of decolonization'.¹⁵²

On 16 December 1966 the General Assembly adopted the International Covenants on Human Rights, which consisted of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the latter. Both Covenants have an identical first article which declares *inter alia* that 'all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' and that 'the States parties to the present Convention including those having responsibility for the administration of non-self-governing and trust territories shall promote the realization of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations'.

The inclusion of the right to self-determination in the International Covenants occurred because the General Assembly in resolution 545 (vii) recommended that the proposed Covenants should incorporate such a provision and in resolution 637 (vii) declared that the right to self-determination was a 'fundamental human right'. It is to be noted that the preambles to both the Covenants refer to the 'obligation of states under the Charter of the United Nations to promote universal respect for and observance of human rights and freedom'.¹⁵³

The International Covenants came into force in 1976¹⁵⁴ and are thus binding as between the parties, but it would seem that they are of legal value over and above that, not only as practice leading to or reflecting a customary rule, but also as a persuasive interpretation of the notion of human rights as embodied in the Charter.¹⁵⁵

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status of the Declaration since it was effected at the merely organic or institutional level rather than on a formal, legally binding inter-State level¹⁵⁸ and concludes that 'there can hardly be any doubt . . . that the Declaration embodied in Resolution 2625 (XXV) . . . is to be considered from a legal point of view as an instrument of a purely hortatory value'.¹⁵⁹ This approach, however, cannot be supported. The Declaration was intended to act as an elucidation of certain important Charter provisions, although not as an actual amendment of the Charter, and was adopted by member States on that basis.¹⁶⁰

State practice within and outside the United Nations also supports the view that the right to self-determination exists in international law. State practice, other than resolutions and declarations purporting to express principles of law, can be important in the process of Charter interpretation provided it is linked to particular Charter stipulations and provided over a period of time sufficient practice has accumulated for it to be treated as a valid and general interpretation rather than as strictly limited conduct specifically related to a particular situation.

It is realized that this formulation may fail to provide an adequate guide as to whether a proposition can be accepted as an authoritative Charter interpretation in a number of instances, but it is clearly impossible to lay down firm conditions as to the time that should be encompassed or the number of relevant resolutions that must be adopted. In each case much will depend upon acceptance and acquiescence by an increasing number of States regarding the propositions involved in particular situations constituting general principles interpreting the Charter.

One must be careful not to deny the members of an organization the capacity to harmonize its constitution with contemporary needs by means of their subsequent practice. After all, the aim of interpretation is to enable the overwhelming majority to determine the nature and extent of the obligations and rights they have agreed to in circumstances minimizing adverse effects upon dissentient members.¹⁶¹

State practice that does not fall within the categories mentioned may nevertheless be relevant in the process of Charter interpretation as evidence of recognized interpretations, and thus may be of value in emphasizing the form and content of a particular interpretation. It may also play a vital role in pointing out which interpretations are to be regarded as valid, binding ones, much as State practice may also constitute evidence of particular rules of customary law. State practice, of course, may also lead to a new customary law. One should note that those member States that abstain with regard to such interpreting resolutions as

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the 1960 and 1970 Declarations discussed above may well still be bound by them.¹⁶²

2. Specific Approach

State practice, particularly as manifested in the United Nations, concerning the status and application of self-determination in specific situations exceeds the abstract, general expression of self-determination as a right, in terms of both frequency and diversity, and accordingly must be considered as a significant factor.

General Assembly resolutions proclaiming that specific territories should be entitled to the exercise of the right of self-determination are ultimately founded upon the established competence of the Assembly to determine which territories are non-self-governing. This is partly because self-determination has been deemed non-applicable to independent territories and partly to side-step the doctrine of domestic jurisdiction.

Article 2(7) of the Charter declares that 'nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State' and the history of the first decade and a half of the UN Organization largely centres around attempts to establish a balance between this provision and the perceived need to end colonialism. This latter aim was achieved, at least as far as the United Nations was concerned, through establishing a clear division between the administering State and its administered territories, contrary to the wishes of a number of colonial powers, particularly France with regard to Algeria and Portugal with regard to its African possessions. Having instituted this division and provided an exception to Article 2(7), the Assembly proceeded to make recommendations regarding the future of these non-self-governing territories.¹⁶³ Based upon its recognized competence to decide which territories were non-self-governing territories, the General Assembly successfully asserted its competence to determine whether or not a non-self-governing territory had attained a full measure of self-government as referred to in Chapter XI of the Charter, and to this end a series of resolutions were adopted expressing the Assembly's views as regards specific cases.¹⁶⁴ Despite the objections of the colonial powers, the doctrine of domestic jurisdiction as declared in Article 2(7) has been interpreted by the subsequent practice of the UN Organization and its members so that the affairs of non-self-governing territories may be discussed within the Organization and rendered subject to UN resolutions and declarations as to their political status.

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The competence of the Assembly was initially founded upon Chapter XI of the Charter, but later resolutions disregarded this Chapter and concentrated instead on the concept of self-determination as the basic relevant principle.

The large number of Assembly resolutions calling for self-determination in specific cases represents international practice regarding the existence and scope of a rule of self-determination in customary law. They also constitute subsequent practice relevant to the interpretation of particular Charter provisions. For example, resolutions proclaiming that an obligation exists under Article 73(e) of the Charter to transmit information in a particular case may be regarded as a binding interpretation of the Charter provision in that specific instance since the competence of the General Assembly to determine such matters has been clearly recognized.¹⁶⁵ The change from Chapter XI to self-determination with the Colonial Declaration as the juridical basis for the process marks the stronger line taken by the Assembly as a whole but the effect remains broadly similar—that is, the determination by the General Assembly of a factual situation within which the declared norm will be deemed to operate. By such methods, of course, the outlines of the norm itself will be elucidated, and to that extent factual determinations by the Assembly will be juridically relevant.

However, unlike Assembly resolutions of a general nature, they cannot themselves authoritatively interpret a principle as a legally binding norm; their function in this sphere rests rather upon delimitation,¹⁶⁶ though such determinations may also provide for the application of non-legal principles to a particular situation.

The Algerian problem¹⁶⁷ was first included on the agenda of the assembly in 1955, and it was claimed that France had broken the provisions of the Charter on self-determination.¹⁶⁸ The Assembly, however, decided not to pursue the matter¹⁶⁹ and the Security Council did not place it upon its agenda.¹⁷⁰ In succeeding sessions, resolutions proclaiming the right of the Algerian people to self-determination failed to be adopted although support for the proposition was growing.¹⁷¹ In fact, it was only in 1960 that a resolution was adopted which referred to the right of the Algerian people to self-determination.¹⁷² Despite this hesitant start, and in view of the changed climate of opinion in France itself, the Assembly passed without opposition in the following session resolution 1724 (xvi) which called for the implementation of 'the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria'.

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This resolution, which significantly referred to the Colonial Declaration of 1960, also asserted that the United Nations had a part to play in the fulfilment of this right.

A large role has been performed in this process by the Special Committee established after the adoption of the Colonial Declaration.¹⁷³ For example, the Special Committee was requested to study the situation in Southern Rhodesia by General Assembly resolution 1745 (xvi) and its report formed the basis of an Assembly resolution criticizing the failure of the United Kingdom to carry out the Colonial Declaration, and affirming that Southern Rhodesia was a non-self-governing territory.¹⁷⁴ The Assembly adopted resolution 1755 (xvii) proclaiming the right of the people of Southern Rhodesia to self-determination, and the problem has been discussed at the United Nations at great length.¹⁷⁵ The claim of the United Kingdom that the problem was an internal matter and that therefore the United Nations could not consider it, was clearly rejected, and resolution 1747 (xvi) affirmed that 'the territory of Southern Rhodesia is a non-self-governing territory within the meaning of Chapter XI of the Charter of the United Nations'.¹⁷⁶ This situation was altered, at least as far as the United Kingdom was concerned, by the unilateral declaration of independence by the government of Southern Rhodesia, but the General Assembly vigorously attacked 'any agreement reached between the administering power and the illegal racist minority regime which will not recognise the inalienable rights of the people of Zimbabwe to self-determination and independence in accordance with General Assembly resolution 1514 (xv)'.¹⁷⁷

In its first six years, the Special Committee considered some seventy territories,¹⁷⁸ and in 1974, for example, it discussed thirty-nine territories, the majority being Pacific or Atlantic islands.¹⁷⁹ In virtually all cases the Special Committee has recommended that the territory become independent in the light of its right to self-determination, although in some instances association with another State was accepted, for example, Niue and the Cook Islands.

Throughout the years of the existence of the UN Organization a great number of resolutions have been adopted calling for self-determination in particular situations and these constitute State practice and international practice of overwhelming importance. The majority of such resolutions have referred specifically to the 1960 Colonial Declaration, thus strengthening its claim to be the fount of legality as far as the right to self-determination is concerned. It has been noted that 'if this right [of self-determination] is still not recognized as a juridical norm in the practice of

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a few rare States or the writings of certain even rarer theoreticians, the attitude of the former is explained by their concern for their traditional interests, and that of the latter by a kind of extreme respect for certain long-entrenched postulates of classical international law'.¹⁸⁰

It is submitted in conclusion that the right to self-determination has been accepted by the United Nations by virtue of the process of Charter interpretation as a basic principle in the law of the United Nations, and that from this proposition certain legal effects flow with regard to, for example, the definition of the determining unit, the capacity of the people of the territory in question to decide its political, economic and social status, the role of force in the process, and the *locus standi* of the colonial power.¹⁸¹ Some of these notions will be examined in later chapters.¹⁸²

III. CUSTOMARY INTERNATIONAL LAW

The practice supporting the right of self-determination as emanating from Charter interpretation may also be of relevance in establishing the existence of a right to self-determination as a rule of customary law. Custom differs from treaty interpretation in a number of vital ways. It is founded on State practice, whereas treaty interpretation relates to practice construed with reference to a treaty provision, and it is dependent upon the *opinio juris*, the belief or expression of an accepted legal obligation. This, as we have seen, is not necessarily the case with respect to the interpretation of treaty-charters, for practice not amounting to custom may have the effect of interpreting a particular stipulation.

The International Court of Justice is directed by Article 38(1) of its statute to apply 'international custom as evidence of a general practice accepted as law' and Brierly emphasized this in terms of a 'usage felt by those who follow it to be an obligatory one'.¹⁸³ Oppenheim notes that 'whenever and as soon as a line of international conduct frequently adopted by States is considered legally obligatory or legally right, the rule which may be abstracted from such conduct is a rule of customary international law'.¹⁸⁴

Precisely how one is to interpret and balance the two factors of State practice and *opinio juris* is subject to conflicting analyses,¹⁸⁵ but it is commonly recognized that both elements are required. Usage is needed as the source material delineating the content and scope of the proposed rule, while the *opinio juris* is essential in differentiating norms of customary international law from State behaviour embarked upon for

existed, it avoided the necessity.⁴⁵ On the other hand, the tenor of the court's opinion appeared to favour the supremacy of self-determination and therefore the rejection of the Moroccan thesis concerning territorial integrity.⁴⁶

The principle of self-determination itself was defined by the court as 'the need to pay regard to the freely expressed will of peoples'⁴⁷ and this was clearly accepted as the crucial point, although consultation could be dispensed with in limited instances.⁴⁸ Judge Nagendra Singh regarded consultation on the decolonization process as 'an inescapable imperative',⁴⁹ while Judge Dillard referred to the 'cardinal restraint which the legal right of self-determination imposes . . . it is for the people to determine the destiny of the territory and not the territory the destiny of the people'.⁵⁰

II. THE NATURE OF THE 'SELF' AND TERRITORY

The relevant instruments of the United Nations have consistently referred to the application of self-determination to 'all peoples'. Accordingly, some discussion of a 'people' is merited. Sociological discussions of the nature of a people centre around certain common characteristics, which are reinforced by an awareness of a distinct consciousness. Deutsch writes that by 'peoples' one means groups of individuals bound together by certain complementary habits and characteristics, including language, customs, and history.⁵¹ Scelle noted that the term indicated that legal rights 'may be exercised collectively by any group of nationals of a State without further prerequisites as regards such group than that of the common wish of the individuals of which it is composed',⁵² while Cobban held that 'any territorial community, the members of which are conscious of themselves as members of a community and wish to maintain the identity of their community, is a nation'.⁵³ Although this may be acceptable as a guide-line in socio-political theory, it does not necessarily follow that the same concepts should govern the legal definition of a people, since the additional perspective of an international community founded upon the basis of a finite number of territorially based entities called States is involved. This extra factor argues for certainty and stability in the process of State formation as in the protection of the integrity of existing States.

Part of the problem lies in the confusion for terminology apparent in Article 1(2) of the UN Charter. This called for 'friendly relations among

nations based on . . . self-determination of peoples', and the question arose as to whether these terms were interchangeable. Certain delegates to the Commission on Human Rights replied in the affirmative,⁵⁴ but others emphasized that 'peoples' was wider than 'nations' since it could comprise all or part of the population of a State or indeed the inhabitants of several States.⁵⁵ However, by referring to 'nations' in Article 1(2), the Charter is in essence concerned with States, since this would provide the only likely explanation of Article 1(4), whereby the United Nations was to be 'a centre for harmonizing the actions of nations in the attainment of . . . common ends'.

A trend emerged in later discussions in favour of restricting the notion of 'peoples' to the inhabitants of a particular State or colony, that is, to clearly defined political units.⁵⁶ Johnson regarded the use of the term as signifying the desire to ensure that a narrow application of 'nations' would not prevent the extension of the principle of self-determination to peoples who might not yet qualify as nations.⁵⁷ However, such discussions failed to reach a clear conclusion and one must turn to State practice to determine the juridical definition of a people.

In Europe, the principle of self-determination centred around recognized nations such as the Magyars, Germans, Poles, and Italians, the aim being to create a sophisticated political structure upon the basis of the nation and thus to ensure the emergence of the national-State and the demise of the multinational empires. As Cobban noted, 'the history of self-determination is a history of the making of nations and the breaking of States'.⁵⁸ In actual fact, very few of the colonial borders in Africa coincided with ethnic lines. Each territory tended to contain a multitude of different tribal groupings and each border to split tribes amongst different administrative authorities. For example, the frontiers of Ghana cut through the areas of seventeen major tribes.⁵⁹ The Bakongo Kingdom was partitioned between the Belgian Congo, the French Congo, and Portuguese Angola, while the Ewes were to be found in the British Gold Coast, British Togoland, and French Togoland. On the other hand, Kenya included over 200 tribes and Nigeria comprised hundreds of separate groups.⁶⁰ All this has meant that in Africa, with few exceptions, one could not establish a newly independent State emerging from within colonially drawn frontiers upon the basis of a unified ethnic self.

Mazrui has attempted to get around this problem by stressing the notion of 'pigmentational self-determination' as the basis for sovereignty in Africa. He has written that 'the right to sovereignty was not merely for nation-States recognizable as such in a Western sense, but for "peoples"

recognizable as such in a racial sense, particularly where differences of colour were manifest'.⁶¹ This approach leads to the notion of 'racial sovereignty' rather than national sovereignty in discussions of self-determination problems in the States of Africa and Asia. However, it confuses more than it elucidates, for it appears to ignore questions of domination by one people over another of the same race and the dilemma of secession. It has also been contradicted in State practice, in cases of the alleged denial of self-determination to a minority racial group within an independent State, as for example in Southern Sudan.⁶² Mazrui's thesis can also lead to severe definitional problems with respect to 'pigment' and 'race'. In any event, it is far too simplistic as a legal tool for analysing the nature of self-determination in Africa.

Umozurike defines the concept of 'people' for the purposes of self-determination in very wide terms indeed. He notes that 'the legitimate "self" . . . is a collection of individuals having a legitimate interest which is primarily political, but may also be economic, cultural or of any other kind'⁶³ and continues by stating that 'individuals, as peoples, are entitled to exercise rights and enjoy a commensurate share in determining their political, cultural and economic future'.⁶⁴ To reconcile this broad approach with reality, he is impelled on the one hand to extend the concept of self-determination to include self-government, local autonomy, merger, association and other forms of participation in government⁶⁵ and on the other to declare that the mere assertion of a right to self-determination does not *ipso facto* make the claim a question of self-determination in international law.⁶⁶ It is a matter of degree depending upon all the circumstances of the case, particularly the seriousness of the 'abuse of sovereign power, to the detriment of a section of the population'.⁶⁷ In other words, whether the claim is one of international law appears to be dependent upon a prior contravention of the principle by the government complained of, i.e. the legal right of self-determination arises upon the abuse of the political principle of self-determination. It is clear that this approach confuses the political and legal principles and appears also to misunderstand the nature of self-determination as developed through international practice. Part of the problem may have occurred because of the linking of self-determination of peoples with individual human rights in the world community, something which tended to downgrade the importance of human rights by the focus upon self-determination as a fundamental human right.

In determining the nature of the 'self' in self-determination, it must be realized that the relevant definition of 'peoples' is not the sociological one

but the legal one. There is a difference, and upon that difference the legal concept of self-determination is predicated. The International Court has pointed to this by noting that the fact that the General Assembly has not consulted the inhabitants of a particular territory in relation to self-determination may be due to the consideration that 'a certain population did not constitute a "people" entitled to self-determination'.⁶⁸ International instruments have consistently maintained that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the UN Charter⁶⁹ and this would appear to rule out the right of secession from an independent State. In addition, practice reveals that not every 'people' is deemed to have the right in law of self-determination. The legal concept of self-determination is founded upon a particular definition of the 'self' that has emerged in doctrine and in practice this definition is centred upon the non-self-governing territories (and the mandated and trust territories as well). Whether or not the political concept has been infringed may be relevant in a broad political sense, but it has no bearing upon the legal issue. The concept of self-determination has been the legal instrument in the process of ending colonialism.⁷⁰

An early attempt to extend the doctrine of self-determination in international law to all countries occurred in the so-called 'Belgian thesis'. This was a move spearheaded by the Belgians to widen the obligations under Chapter XI of the Charter to include 'colonial situations' within independent States. As was noted, many States oppress groups within their own frontiers by a variety of discriminatory measures, and there seemed to be no reason, it was argued, why such groups could not count as 'peoples [who] have not yet attained a full measure of self-government'.⁷¹ However, this proposition was strongly rejected by the non-colonial powers, who argued that the term 'non-self-governing territories' clearly referred to entities distinct from the metropolitan State.⁷²

The terms in which UN resolutions have been expressed have also manifested the rejection of the Belgian thesis. Resolution 1514 (xv), the Colonial Declaration, emphasized the necessity to end colonialism and called for immediate steps to be taken in non-independent territories to transfer power to the people, while resolution 1541 (xv) noted that 'the authors of the Charter . . . had in mind that Chapter XI should be applicable to territories which were then known to be of colonial type'⁷³ and declared that 'prima facie' there is an obligation to transmit information in respect of a territory which is geographically separate and

is distinct ethnically and/or culturally from the country administering it'. Once this has been established, then under Principle V other elements may be brought into consideration. These elements 'may be *inter alia* of an administrative, political, judicial, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under article 73(e) of the Charter.' To make the point even clearer, the 1970 Declaration on Principles of International Law (resolution 2625 (XXV)) stipulated that 'the territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter.'⁷⁴

The provisions of Article 1 of the International Covenants on Human Rights are, however, more problematic. It is noted that 'all peoples have the right of self-determination'. There exist here a number of possibilities. It may be argued indeed that every group that regards itself as a 'people' may be entitled under international law to 'freely determine their political status and freely pursue their economic, social and cultural development'. But in the sense of permitting such groups to secede from independent States, such an interpretation is not acceptable under international law. If it is understood to mean that such groups are entitled to play a part within the internal structures of States to resolve their own domestic status, this may be acceptable even if in practice grave doubts must exist as to the efficiency of such a principle, particularly where a number of groups exist within any one State. It could be argued that the phraseology of Article 1 is intended to relate only to non-self-governing territories in the sense that 'peoples' could only be interpreted in such a context. The Indonesian representative, for example, noted that it was perfectly clear that in a discussion of the right of self-determination 'the peoples concerned were the inhabitants of colonies administered by foreign peoples, absolutely different in race, culture and geographical habitat. Academic discussions of the definition of such peoples were therefore superfluous, since everyone, especially the administering Powers, knew perfectly well which peoples were aspiring towards self-government.'⁷⁵

Within the context of his study on the historical and current development of self-determination for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN

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Commission on Human Rights, Cristescu notes that it would be premature and even presumptuous to provide a definition that would be comprehensive. However, one could point to certain elements of a definition that have been emerging in UN discussions.

These elements are:

- (1) that the term 'people' denotes a social entity possessing a clear identity and its own characteristics;
- (2) the term implies a relationship with a territory, even if the people in question have been wrongfully expelled from it and artificially replaced, for example by another population;
- (3) a people should not be confused with ethnic, religious, or linguistic minorities, whose existence and rights are recognized in Article 27 of the International Covenant on Civil and Political Rights.⁷⁶

These elements, however, raise many questions. In particular, the lack of guide-lines by which to measure a 'social entity', a 'clear identity', and 'its own characteristics'; the lack of any kind of restriction of time or circumstances with regard to the wrongful expulsion of a people from a territory and artificial replacement, a factor which, if taken seriously, could have momentous consequences; and the lack of a proper analysis of the concept of minorities. With respect to the latter point, it may be pointed out that in some cases whether or not a 'people' is a 'minority' depends upon where one draws the territorial line and this is at the heart of many self-determination claims, for example the Somali situation. The problems associated with this may be illustrated by noting the definition given by Capotorti in his 1979 Study on the *Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁷⁷ He analysed the issue in terms of groups

numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

While the minority issue has been clearly differentiated from the self-determination issue in UN practice, the difficulty remains of drawing the line firmly between the two and in many cases it is not really possible. Certainly, many claims to self-determination are met with the response

that the group in question constitutes only a minority and thus is entitled only to this lower-level right.

UN practice on a number of occasions has discussed the right to self-determination in the context of 'colonial domination', 'alien occupation', and 'racist regimes',⁷⁸ and it could be argued that the right itself is to be so qualified, but this again raises many definitional problems, particularly relating to the concepts of 'alien occupation' and 'racist regimes'. The confusion inherent here is taken a step further by Gros-Espiel's view in his Report that if 'beneath the guise of ostensible national unity, colonial and alien domination does in fact exist, whatever legal formulation may be used in an attempt to conceal it, the right of the subject people concerned cannot be disregarded without international law being violated'.⁷⁹

This appears to require a probing behind the veil of State independence and sovereignty that would not appear to be acceptable in the current situation of international law.

The current situation would appear to be that, as a legal right, self-determination as leading to modifications in the international status of a territory applies only to an accepted non-self-governing territorial situation. All groups may be entitled to self-determination in the sense of fully participating within the internal constitutional structure of a particular State, but they will not thereby acquire a right under international law to self-determination in the former sense.⁸⁰ The possibility exists of developments in the interpretation of self-determination, both in the twilight areas of territories occupied by foreign powers where a basic sovereignty dispute exists and of States where a minority oppresses a majority of a different 'people', and generally with regard to all States, but certainly in the latter case one must pay heed to international practice and accept that that is clearly not the situation at the moment. The people-territory dialectic may open the way in the future for modifications of the basic principle, but that is yet to come.⁸¹

The problem of defining a 'people', which so engrossed UN delegates in the 1950's in particular, has currently resolved itself for legal purposes, therefore, in a territorial sense. A people in a sociological sense would only be accepted as a people in legal terms for the purposes of self-determination if it inhabited a particular type of territory. The distinction between trust and non-self-governing territories was fundamental in the UN Charter, with differing provisions for each and emphasis upon the former, but it has been of decreasing importance in practice. The call for self-determination has been made regarding both types of territory and the right has been accepted as being equally applicable to both. State

practice reveals that the clarification of the 'self' has been made in clear territorial terms and within a particular temporal framework, i.e. in terms of pre-independent territories. The former proposition will be examined in the light of practice relating to Africa in the following section, and the latter in Chapter 5.

III. THE SPATIAL FACTOR—STATE PRACTICE

The determination of the self in terms of a defined territorial framework raises the question also as to inviolability of the territorial unit as colonially determined prior to independence, since the date at which the territorial 'self' crystallized is of crucial importance, and thus the relationship between self-determination and territorial integrity in the pre-independence situation.

(a) Namibia (South-West Africa)

South-West Africa was awarded to the Union of South Africa as a mandated territory after the First World War under the League of Nations system.⁸² In 1946 the League adopted a resolution recommending the termination of its functions as regards mandated territories and noting that Chapters XI, XII, and XIII of the United Nations Charter corresponded to Article 22 of the Covenant of the League, which had dealt with the creation of the mandate system.⁸³ Following this recommendation and the dissolution of the League, the United Nations requested in resolution 61 (1) that South-West Africa be placed under the trusteeship system and rejected in resolution 65 (1) South African proposals to incorporate the territory into the Union of South Africa. The issue was eventually referred to the International Court which held that South Africa alone was not competent to modify the international status of the territory. That competence rested with South Africa acting with the consent of the United Nations.⁸⁴ Liberia and Ethiopia as the two black African member-States of the League sought a declaration from the court that South Africa had broken the terms of the mandate and was thus in breach of international law.⁸⁵ The Court decided in 1962 that it had jurisdiction to decide the case on its merits, but in 1966 it held that individual League members had no *locus standi* to sue the mandatory power in respect of its treatment of the inhabitants of the mandated territory and dismissed the case.⁸⁶ The problem then reverted to the political organs of the United Nations.

One of the primary objectives of the United Nations in this situation

has been to preserve the territorial integrity of South-West Africa and prevent South Africa annexing or partitioning it. Assembly resolution 65 (I) firmly rejected any attempt at annexation and this was reinforced by the stand of the International Court in 1950, when the principle of non-annexation was declared to be of paramount importance. However, over the years, South Africa has sought to divide the territory on racial and tribal grounds on a number of occasions. In 1958 the Good Offices Committee, established by the Assembly the previous year in resolution 1143 (XII), issued its Report in which it suggested that some form of partition of the territory involving annexation of part by South Africa and the establishment of a trusteeship over the remainder might provide the basis for an agreement with South Africa.⁸⁷

This was quickly rejected by the General Assembly, which called for full discussion for an agreement 'which would continue to accord to the mandated territory of South-West Africa *as a whole* an international status'.⁸⁸ In 1961 the Assembly proclaimed 'the inalienable right of the people of South-West Africa to independence and national sovereignty' and established a UN Special Committee for South-West Africa.⁸⁹ However, the government of South Africa proceeded with preparations to divide the territory. The report of the Odendaal Commission was tabled early in 1964 and advocated a series of ten separate homelands for the Africans, three coloured townships, and a white area. However, the bulk of the industrial and mineral wealth would be situated within the European areas.⁹⁰ In discussions before the UN Special Committee against Apartheid, it was reported that the objective of the plan 'was seen to be to divide the territory on tribal lines, create Bantustans with small populations and integrate the territory more closely with the Republic (of South Africa)'.⁹¹ The South Africa government in a White Paper of April 1964 accepted the report and endorsed the view that 'it should be the aim as far as practicable to develop for each population group its own homeland in which it can attain self-determination and self-realisation'.⁹²

This view was not accepted by the United Nations, which strove to emphasize the territorial integrity of South-West Africa. The Odendaal Report was criticized by the Special Committee on Decolonization as a device to prolong the control of the South African authorities⁹³ and condemned by the General Assembly in 1965.⁹⁴ In 1966, following the decision of the International Court, the Assembly adopted a resolution reaffirming the inalienable right of the people of South-West Africa to self-determination, freedom, and independence and proclaiming that the territory had an international status which it would retain until

independence.⁹⁵ The resolution reaffirmed the applicability of resolution 1514 (xv) and terminated the mandate. The intention was that thenceforth South-West Africa would come under the direct responsibility of the United Nations, and to this end an *ad hoc* Committee for South-West Africa was established.

In resolution 2248 (xxii) the Assembly re-emphasized the 'territorial integrity of South-West Africa' and the right of its people to freedom and independence in accordance with the UN Charter, resolution 1514 (xv), and all other resolutions concerning the territory. A UN Council for South-West Africa of eleven members was established to exercise various powers and functions.⁹⁶ The Assembly declared in resolution 2325 (xxii) that South Africa's continued presence in the territory was a 'flagrant violation of its territorial integrity and international status as determined by General Assembly resolution 2145 (xxi)'. However, in 1968 the South African parliament adopted the Development of Self-Government for Native Nations in South-West Africa Act, which was intended to implement the Odendaal Report,⁹⁷ and accordingly the Act established certain areas for the different nations and provided for various administrative machinery in each homeland. In pursuance of this policy, legislative and executive councils were created between 1969 and 1972 for the Ovambos, Kavangos, and the inhabitants of the Eastern Caprivi.⁹⁸ In April 1968 the Assembly resolved to change the name of the territory to Namibia and condemned the Pretoria government for consolidating its illegal control and destroying the unity of the people and the territorial integrity of the country. Following the Development of Self-Government Act, the Assembly adopted resolution 2403 (xxiii) attacking South Africa for destroying the territorial integrity of Namibia. At this point, the Security Council by resolution 264 (1969) recognized the termination of the mandate by the General Assembly and declared that the actions of the South African government 'designed to destroy the national unity and territorial integrity of Namibia through the establishment of Bantustans are contrary to the provisions of the United Nations Charter'. By resolution 269 (1969), the Council declared that the continued occupation of Namibia by South African authorities constituted an 'aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia'. It also called upon South Africa to withdraw its administration from the territory immediately.⁹⁹ By resolution 284 (1970), the Council requested an advisory opinion from the International Court on the legal consequences for States of the continued presence of

South Africa in Namibia. In its opinion, the court emphasized that the principle of self-determination was applicable to all non-self-governing territories¹⁰⁰ by virtue of the 'subsequent development of international law', in particular resolution 1514 (xv), and the subsequent independence of all but two of the trust territories. The opinion of the court was that the continued presence of South Africa in the territory was illegal and should be terminated. UN members were obliged to recognize this illegality and refrain from actions and declarations implying recognition or lending support to such presence and administration.¹⁰¹ The opinion was approved by the Security Council in resolution 301 (1971), which also reaffirmed the national unit and territorial integrity of Namibia and condemned all measures by the government of South Africa to destroy that unity and integrity, including the establishment of Bantustans.

South Africa, however, continued to maintain its policy of separate development with the proposed partition of the territory into separate black and white States.¹⁰² In 1973 the South African Foreign Minister appeared to suggest that Namibia might become independent in about ten years,¹⁰³ while the United Nations continued to adopt resolutions proclaiming the right of the people of the territory to self-determination and independence and reaffirming the national unity and territorial integrity of Namibia, as well as criticizing the Bantustan proposals.¹⁰⁴

In 1975 a Constitutional Conference opened in Windhoek in Namibia with delegates from eleven ethnic groups, but without the participation of SWAPO, the UN-recognized national liberation movement.¹⁰⁵ The aim was to establish a multiracial government to run the territory until independence, which was intended to be the end of 1978, according to a committee of the conference.¹⁰⁶ The conference ended in the spring of 1977, with proposals for a draft constitution with a three-tier system based on ethnicity, not on separate Bantustans. The principle of the territorial integrity of Namibia was thus accepted by the South African-supported conference.¹⁰⁷ However, the ethnically based proposals were rejected by the UN Council for Namibia, which reiterated its support for the struggle of the people under SWAPO's leadership to achieve self-determination and independence and called upon the Security Council to take action.¹⁰⁸ In resolution 31/146, the General Assembly criticized the convening of the conference as an attempt by South Africa to 'perpetuate its colonial exploitation of the people' and impose upon the people a 'bogus constitutional structure aimed at subverting the territorial integrity and unity of Namibia'. This resolution also expressed support for the

armed struggle of the people, led by SWAPO, to achieve self-determination, freedom, and independence in a united Namibia. The International Conference in Support of the Peoples of Zimbabwe and Namibia held in Maputo, Mozambique, in May 1977 rejected all attempts by South Africa to dismember the territory of Namibia.¹⁰⁹ The plan for an interim administration on multi-ethnic lines as envisaged by the Windhoek conference was, however, abandoned by South Africa, and Judge Steyn was appointed instead as Administrator-General for Namibia during the transition period.¹¹⁰ Assembly resolution 32/9D reaffirmed the terms of resolution 31/146, in particular as regards the need for maintaining the territorial integrity of Namibia.¹¹¹

In the spring of 1978 South Africa announced its acceptance of Western proposals¹¹² for a settlement in Namibia involving a UN peace-keeping force. However, concern for the territorial integrity of Namibia was evident in the Ninth Special Session of the General Assembly,¹¹³ and in resolution S-9/2, containing the Declaration on Namibia and a Programme of Action, South Africa was urged to respect the integrity of the territory. Namibia was declared to be the direct responsibility of the United Nations until genuine self-determination and independence, and the mandate given to the Council for Namibia as the legal Administering Authority until independence was reaffirmed.

Since 1978 negotiations have continued between the five-nation Western contact group, South Africa, and SWAPO. A variety of proposals have been discussed, with some problems eliminated and other problems, for example the Cuban presence in Angola, appearing.¹¹⁴ In April 1981 the security Council failed to adopt four draft resolutions which would have imposed comprehensive and mandatory sanctions against South Africa because of its actions regarding Namibia, on account of negative votes cast by the USA, United Kingdom and France.¹¹⁵ The UN Council for Namibia, however, in June 1981 issued the Panama Declaration, condemning South Africa for its attempts to impose an 'internal settlement', reaffirming free support for SWAPO as the sole and authentic representative of the Namibian people, and stating that Namibia's accession to independence must be with its territorial integrity intact, including Walvis Bay and the offshore islands.¹¹⁶

It has been accepted by all parties that the territorial integrity of Namibia prior to independence is to be maintained and that the appropriate 'self' for the exercise of self-determination is to be defined in terms of a united territory of Namibia. It could be argued that Namibia as

a mandated territory was a special case in this respect, but practice seems to show that the same principle operates with respect to other non-governing territories.

*(b) Pre-Independent Kenya and Somali Claims for Self-Determination*¹¹⁷

Any examination of the Kenya colony and protectorate in relation to its minority Somali population must centre on the strong desire to maintain the territorial integrity of the colony that was clearly manifested both by the British administration and by the colony's emerging African rulers.¹¹⁸

The Northern Frontier District (NFD) of Kenya consisted in 1962 of some 102,000 sq. miles in six administrative areas and a population of 388,000, including approximately 240,000 Somalis. These people had gradually migrated southwards over the years and displaced the majority of the Galla tribes, themselves representatives of an earlier Hamitic invasion. In the years preceding 1939 there were many disputes between those of Somali origin and the non-Muslim Gallas which necessitated much stricter military control than was exercised in southern Kenya. After the Second World War there were increasing signs of Somali nationalism, and with the creation of the Somali Republic in July 1960, the Somalis of the NFD began demanding the right to secede from the Kenyan colony and join their brethren.¹¹⁹ The British Prime Minister, however, declared in April 1960 that 'Her Majesty's Government does not and will not encourage or support any claim affecting the territorial integrity of French Somaliland, Kenya or Ethiopia. This is a matter which could only be considered if that were the will of the Governments and peoples concerned.'¹²⁰ This clearly appeared to define such 'governments and peoples' in terms of the whole of the territories involved and not parts of them.

Nevertheless, a delegation from the NFD consisting of pro-secessionist members was invited to the Kenyan Constitutional Conference in London in 1962. They requested autonomous status for the area so that upon Kenya's independence it could join the Somali Republic.¹²¹ A UN plebiscite in the area was suggested, but the idea was rejected. However, a commission was appointed to discover the views of the area's population to various constitutional proposals. This commission reported that the majority of the population supported the secessionist approach.¹²² But at the same time, the Regional Boundaries Commission visited the area and a new system of regions was proposed for Kenya, which would split the NFD into three regions: the north-eastern region and parts of the eastern and coast regions. The commission declared that they would have

recognized the SADR and that this constituted admittance by virtue of simple majority. Nineteen States walked out of the conference and the stability of the OAU was gravely threatened.²⁸³

(m) The British Indian Ocean Territory

The issue of the territorial integrity of the colonial unit in the period prior to independence was also raised with regard to the creation of the British Indian Ocean Territory in 1965. The arrangements were introduced by Order in Council made on 8 November 1965. The territory was to consist of the Chagos archipelago, formerly administered by the government of Mauritius, and the islands of Aldabra, Farquhar, and Desroches, formerly governed by the Seychelles authorities. The aim of the creation of the new colony was the establishment of defence facilities by the UK and USA governments and an Exchange of Notes between the two governments on this subject occurred in December 1966.²⁸⁴

Compensation was to be paid to the Mauritius and Seychelles governments, and the figure mentioned with respect to the former was in the region of £3 million. The issue of the level of compensation and the problem of the deportation to Mauritius of the one thousand or so inhabitants of the Chagos archipelago caused considerable controversy, as did the construction of a large American base on the island of Diego Garcia in the archipelago,²⁸⁵ but the problem to be considered here revolves around the territorial integrity of colonial units prior to independence.²⁸⁶

In 1965 the UN General Assembly considered the Mauritius situation and several States emphasized that the proposed arrangement with regard to the Chagos archipelago would be contrary to the 1960 Colonial Declaration and the principle of self-determination. The suggested creation of military bases in particular aroused opposition. The UK representative denied that any question of splitting up national territorial units was involved since the islands concerned had been uninhabited when acquired and had been attached to the Mauritius and Seychelles administrations as a matter of administrative convenience.²⁸⁷ However, this argument misses the point about the evolution of territorial units as colonially determined and the consequent right of the inhabitants of that entity as it has developed over time to concretize its existing political status and proceed to self-determination and independence.²⁸⁸ To disrupt the territorial integrity of colonial units at the pre-independence stage on the basis of the haphazard nature of their original constitution

would be to undermine the viability and meaning of the principles of territorial integrity and self-determination as they have developed. The General Assembly ultimately adopted resolution 2066 (xx), without opposition, in which it noted that 'any step taken by the administering power to detach certain islands from the territory of Mauritius for the purpose of establishing a military base' would contravene the Colonial Declaration and in particular paragraph 6 thereof. This provision stipulates that any attempt aimed at the partial or total disruption of the national unit and territorial integrity of a country is incompatible with the UN Charter.

The resolution also invited the United Kingdom not to dismember the territory of Mauritius and violate its territorial integrity. A number of succeeding General Assembly resolutions reiterated the proposition that any attempt aimed at the partial or total disruption of the national unit and territorial integrity of colonial territories and the establishment of military bases in such territories was incompatible with the UN Charter and the Colonial Declaration of 1960.²⁸⁹

The issue resurfaced in 1980 in response, it would seem, to the growth of the American military presence on the Chagos islands. On 26 June 1980, forty-eight of the seventy-member parliament of Mauritius called for the return of Diego Garcia and this prompted the Mauritius government to take up the issue.²⁹⁰ At the OAU summit of July 1980 a resolution on the issue, unanimously adopted, declared that Diego Garcia 'had always been an integral part of Mauritius, a member State of the OAU' and that the island be unconditionally returned to Mauritius and its peaceful character be maintained.²⁹¹ The British attitude has been that the Chagos islands were under British sovereignty and that once they were not required for defence purposes they should revert to Mauritius.²⁹²

On 7 July 1982 an agreement relating to compensation for families moved to Mauritius from the Chagos archipelago was signed by the United Kingdom and Mauritius, in which both sides maintained their respective positions on the sovereignty issue.²⁹³

The issue raised within the context of decolonization and self-determination is whether the colonial power may alter the territorial composition of the unit concerned prior to independence. It is clear that historically States have been regarded as having sovereignty over their colonial territories and that this would include the competence to modify the extent of the territory of a given unit. Many colonial rearrangements attest to this. However, the development of the right of self-determination clearly introduced constraints upon the authority and capacity of the

colonial power. To permit the administering authority to alter the territorial composition of the colonial entity upon independence would be to undermine the concept of self-determination and would allow the colonial power to affect the choice to be made by a process of territorial severance, irrespective of the potential economic consequences of such a policy.

The Chagos case raises the temporal factor, since the episode took place some three years prior to independence. However, it is clear that the event was part of the process leading to Mauritian independence. Madeley claims that Mauritian independence was made conditional upon agreement to the Chagos archipelago removal from the territorial framework concerned.²⁹⁴ It could, therefore, be argued that, in the light of the evolution and status of the principle of self-determination by the mid 1960s, the United Kingdom was under an obligation to maintain the existing territorial framework of the colonial unit until independence and that any defence arrangements with regard to Diego Garcia should have been made after Mauritian independence. The one mitigating factor in this case to be noted relates to the apparent acceptance of the arrangement by the Mauritian government from independence and until 1980. A map of Mauritius was prepared during 1980, with the help of an expert from the British Ministry of Defence, which excluded the Chagos archipelago, and an opposition amendment to include the islands was rejected in the Legislative Assembly. Indeed, the Minister for Foreign Affairs was reported as arguing that 'Diego is legally British. There is no getting away from it. This is a fact that cannot be denied.'²⁹⁵ Following talks with the British Prime Minister on 17 July 1980, the Mauritian Prime Minister in a press conference acknowledged British sovereignty over Diego Garcia (and thus presumably over the whole of the Chagos archipelago) at present.²⁹⁶

These factors, coupled with the apparent lack of protest prior to 1980, weaken to some extent the Mauritian case, since they would suggest that they had adopted the 1965 arrangement and might therefore be stopped from subsequently denying the legality of the transaction. Although this would appear to lay a heavy burden upon a poor, newly independent State, it is an important factor to be considered.²⁹⁷

(n) The Malagasy Islands

Issues similar in essence to those involved in the Chagos archipelago dispute and in the same geographical region have been raised with regard to the Malagasy Islands of Glorieuses, Juan de Nova, Europa, and Bassas

da India. These islands are situated in the Indian Ocean between Madagascar and Mozambique.²⁹⁸

The Glorieuses islands were acquired by France in 1892 and were administered at first in conjunction with the colony of Mayotte and then together with the Comoros archipelago (including Mayotte) as part of Madagascar. Ultimately the Comoros archipelago was removed from Madagascar in 1946, leaving the Glorieuses islands as a dependence of the latter.²⁹⁹ The other islands constituting the Malagasy islands complex were acquired in 1897 and were regarded as dependencies of the colony of Madagascar from that time.³⁰⁰

On 14 October 1958 the overseas territory of Madagascar became an autonomous State within the French community and on 26 June 1960 it became a fully independent State. However, on 1 April 1960, during the course of independence negotiations, France issued a decree in which it placed the Malagasy Islands (and the island of Tromelin)³⁰¹ under the authority of the Minister dealing with overseas *départements* and territories and thereby revoked all earlier and contrary dispositions.³⁰² In other words, the territorial integrity of the colonial unit was altered and at a very late stage indeed. Since 1960, the islands have not comprised part of an overseas territory or *département* of France, although they have been administered by the Prefect of the Département of Reunion.³⁰³

France has argued in addition that Madagascar has, since 1960, acquiesced in French sovereignty over the islands, and particularly noted the transmission to it by Madagascar in 1962 of various administrative documents or 'dossiers domaniaux' relating to the islands, Bardonnet's opinion is that the transmission amounted to an implicit recognition of French sovereignty³⁰⁴ and certainly such a presumption would appear to be raised, particularly since Madagascar did not raise the issue until after a change in government in 1972.

From the mid 1970s, Madagascar began to assert its claim and a telegram in such terms was sent to the UN Secretary-General on 10 February 1976. Recourse was had to both the OAU and the United Nations. In July 1979 the OAU Assembly discussed the issue and called for the return of the islands to Madagascar.³⁰⁵ In December 1979 the General Assembly of the United Nations adopted resolution 34/91 inviting France to initiate negotiations with Madagascar without delay for the reintegration of the islands in question arbitrarily separated from Madagascar. The Assembly also called upon the French government to repeal the measures which infringed upon the sovereignty and territorial integrity of Madagascar. This resolution was adopted by 93 votes to 7,

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with 36 abstentions. The following year, resolution 35/123 was adopted, by 81 votes to 13, with 37 abstentions, calling upon France as a matter of urgency to initiate the negotiations envisaged in resolution 34/91. France refused to recognize the competence of the General Assembly in the matter, stating that the Assembly did not have the power to distribute territories or remodel existing boundaries. The islands had never had an indigenous population and had been acquired during the last century at a time when they were *res nullius*. For Madagascar, the issue was one of incomplete decolonization as well as one of sovereignty, national unity, and territorial integrity.³⁰⁶

Thus, a similar question to the Chagos archipelago matter is posed, although the time factor was more drastic in this case. Islands of relatively tiny populations were detached from the colonial units within which they had been administered in the period leading up to independence and after a short period of silence the independent state concerned asserted a claim based essentially on self-determination. As a rule, the need to maintain the colonial unit during the period leading up to independence is clearly a crucial element in the viability of the concept of self-determination, and the arguments based on separate acquisition in the colonial era cannot be permitted to override the territorial integrity of the entity as established in the practice of the colonial State. Further factors may be introduced to modify this and they will be considered briefly in the 'Conclusions' section of this Chapter.

IV. COLONIAL ENCLAVES

One important exception to the proposition that the inhabitants of a non-self-governing or trust territory should have the right to determine their own political structure and future within the colonially defined borders is afforded by that category of small territories known as colonial enclaves. The normal definition of an enclave refers to an area totally surrounded by the territory of other States or the territory of one other State.³⁰⁷ However, in the case of colonial enclaves, the framework for discussion relates to a relatively small area totally surrounded on the landward side by the territory of one other State, thus allowing for a stretch of coast. This type of enclave is a territory detached by a colonial power from the surrounding territory and placed under the administration of a separate party from that governing the dismembered State. In such cases, the United Nations has adopted the doctrine that the country

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Richard Edis, *Peak of Limuria: The Story of Diego Garcia* (1993)

PEAK OF LIMURIA

The Story of Diego Garcia

Foreword by
HRH the Duke of York

Richard Edis

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BUCKINGHAM PALACE

I was delighted to be given the opportunity to read this excellent book about Diego Garcia by Richard Edis who was Commissioner for the British Indian Ocean Territory from 1988 until 1991. It makes fascinating reading for anyone who has sailed the Indian Ocean and especially for those who have been fortunate enough to visit the island, as I was when I was serving in HMS Edinburgh in 1988.

I can testify to the remoteness of the Chagos Archipelago and to the low profile of its coast line. When bound for Diego Garcia and after a few days at sea it is a testing moment for a young navigation officer of a warship when confirmation of the accuracy of his work is received barely an hour before the established time of arrival. The low lying terrain is never quite able to express itself as an island paradise but there are rich compensations in the abundance of marine and birdlife. And I am glad to say that the expansion of the military facilities, while adding immeasurably to the strategic role and economy of the island, has not been allowed to interfere with the precious balance of nature.

The sea and maritime affairs have always been and always will be the prime factors in shaping the island's destiny. It is now over twenty five years since the birth of the British Indian Ocean Territory and Richard Edis' eloquent account of the history of Diego Garcia is a timely and informed contribution to the island's records.

A handwritten signature in dark ink, appearing to read 'Andrew', written in a cursive style.

x *Peak of Limuria*

the sea, maritime expansion and naval power which have shaped the island's story, as this book will show.

Originally I had in mind only a short booklet but I soon became absorbed in the surprisingly rich amount of original material available about this small island, especially in the archives of the Foreign and Commonwealth Office and the India Office Library, and decided to produce a more comprehensive work. Essential for anyone who wants to go deeply into the history of the area as a whole is Sir Robert Scott's beautifully written book *Limuria*, which was published in 1961 in Britain and reprinted in the USA in 1974. Sadly it is now out of print but should be available in good reference libraries.

Although my book touches only briefly on natural history, the bibliography mentions several works on this subject, an appreciation of which can considerably enhance enjoyment of the island. The most comprehensive of these is *The Geography and Ecology of Diego Garcia* by Stoddart and Taylor. Although not specifically about Diego Garcia, David Bellamy's *Half of Paradise* about two scientific expeditions to other islands in the Chagos Archipelago is very readable.

This study is dedicated to all those whose lives have been touched in some way by this wonderful island. The proceeds from the sale of this book will go to the protection and promotion of Diego Garcia's natural and historical heritage.

RICHARD EDIS

June 1993

Preface

The idea for this book came to me when I was out for a run, a practice I have pursued with pleasure along jungle paths on my frequent visits to Diego Garcia. During such visits I found among the people who were working there an appetite for knowledge about the island's past, which I hope that this modest study will help to satisfy. I hope it will also serve as a souvenir of time spent there for the thousands of men and women who have lived on or visited the island. Now that the name Diego Garcia has become known internationally because of the present military facility, there may be wider interest too.

It might be assumed that, apart from the area developed as a naval facility in recent years, the Chagos Archipelago is a paradise largely untouched by human hand. While it is true that the reef and marine life surrounding the islands is uniquely rich and unspoiled, the land itself and the wildlife on it have been altered drastically by human agency over several centuries. From the dawn of the modern age the islands, and Diego Garcia in particular, have been washed by the tide of world events and touched by the ebb and flow of empires. Not surprisingly in view of their location it has been

x *Peak of Limuria*

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Originally I had in mind only a short booklet but I soon became absorbed in the surprisingly rich amount of original material available about this small island, especially in the archives of the Foreign and Commonwealth Office and the India Office Library, and decided to produce a more comprehensive work. Essential for anyone who wants to go deeply into the history of the area as a whole is Sir Robert Scott's beautifully written book *Limuria*, which was published in 1961 in Britain and reprinted in the USA in 1974. Sadly it is now out of print but should be available in good reference libraries.

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RICHARD EDIS

June 1993

I

A Laurel on the Sea

Diego Garcia is the largest of more than 50 islands that make up the Chagos Archipelago, which constitutes the present extent of the British Indian Ocean Territory (BIOT). The Territory is the sole remaining dependency of the Crown in the region and is situated near the geographical centre of the Ocean from which it takes its name.

The Chagos Archipelago is one of the most far-flung areas of the globe outside the polar regions. Diego Garcia lies roughly 7 degrees south of the Equator and 72 degrees east of Greenwich. The Chagos are separated from the nearest land by huge expanses of ocean, 'utterly lost in the great water wastes: star land in sea space', as the writer Alan Thompson poetically described them.¹ The southernmost Maldives lie 400 miles to the north, the Cocos-Keeling islands 1500 miles to the east, the Seychelles 1000 miles to the west and Mauritius 1200 miles to the south-west. Over 2000 miles to the south lie the bleak windswept islands of Amsterdam and St Paul. All these islands are themselves outposts in the immensity of the Indian Ocean.

The remoteness of the Chagos is best appreciated when the approach is made by sea. Yachtsmen, fishermen and the crews of warships and supply vessels still make the trip.

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Whether by sail or steam this involves a voyage of many days with nothing but ocean and only seabirds, dolphins and flying fish for occasional company. Another vessel is a rare sight indeed. Otherwise, there is only the long swell, the approaching squall and the theatre of sunset and sunrise to break the monotony.

A dozen or so miles from Diego Garcia a low line is scarcely discernible which gradually comes into focus as a fringe of coconut trees and a white line of breakers on the reef. From the north, the only entrance to the lagoon, Diego looks like a string of small islets, each with its crown of high trees. The scene has scarcely changed today from the sketches made by eighteenth-century naval officers to guide future mariners making their landfall. As a vessel approaches the Main Pass, it becomes apparent that there are three small islands masking the mouth of the lagoon and that what appear to be two other islands are the embracing arms of a huge atoll. The air is full of frigate birds, boobies and terns. The vast lagoon, 13 miles long by $4\frac{1}{2}$ miles across, stretches far away into the distance, forming a small inland sea, a little world turned in on itself.

Describing the scene in 1885 in terms that remain true to this day, the naturalist Gilbert Bourne said:

On a fine day, the varied colours of the still waters of the lagoon, the low-lying strip of land covered with vegetation of a vivid green, the dazzling strip of white sand which borders the shore and the clear sunny sky, will afford a picture which will not easily be forgotten.²

The sea was the traditional way to approach Diego Garcia. Nowadays the more usual way is by air from the Gulf, Singapore or Mauritius. Although crossed infinitely more swiftly, the vastness and emptiness of the ocean still impress and intimidate through the aeroplane window. Massive, towering clouds make stately progress like the billowing sails of galleons. The sea below is an opaque dark blue. Suddenly there is the excitement of sighting land after many hours over

nothing but water. 'A laurel on the sea, a circle of bursting, startling green', a Second World War soldier-poet described it.³

Indeed what the traveller notices at once from the air is the dramatic shape of the thin necklace of land, which appears little more than an outline of a pencil mark on the ocean. Of all the atolls in the Chagos Archipelago, Diego Garcia is the most perfect, forming a shaky V-shape extending about 15 miles from north to south and with a distance of about 35 miles around the circumference from tip to tip. Visitors have called forth various images to describe its shape. The early nineteenth-century Mauritian historian, Charles Grant, the Viscount of Vaux, described it as being 'in the form of a serpent bent double'.⁴ The eighteenth-century French cartographer, Abbé Rochon, said more prosaically that it 'resembled a horseshoe'.⁵ Its more recent, late twentieth-century American residents have likened it to the outline of a footprint in the sand, with the islets at the mouth of the lagoon forming the toe-marks.

From the air, the vivid contrast between the varying blues of the lagoon, lighter, and with more green, than the dark blue indigo of the surrounding ocean, is apparent. It is also possible to make out on the upper western arm of the island the wide apron of the airfield, neatly arranged low-lying buildings, antennae in extensive aerial farms, ships at anchor in the lagoon and, as the plane makes its final approach, the roofs of the old plantation buildings peeping out of the vegetation on the eastern side.

Travellers arriving today in Diego Garcia, whether by air or by sea, must first be processed by British India Ocean Territory Customs, in their smart and functional sand-coloured uniform of desert boots, long socks, shorts, shirt and beret with the Crown and palm tree badge. The red telephone box at the airport entrance is a further reminder that this is British territory. However, the drive along the fine road leading from the airport or the fleet landing jetty to the Downtown area on the north-west tip of the island is

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reminiscent of the Florida Keys and a reminder that the present residents are predominantly American.

The road runs through immaculately groomed grass verges, past the civilian workers' accommodation, the British Club, the sports fields and other recreational facilities, the fire station and the Cable and Wireless building with its satellite dish, to the impressive, white, headquarters building overlooking the lagoon, outside which the Union Jack and the Stars and Stripes fly side by side. Not far away stands the BIOT police station with its traditional blue British police lamp and the distinctive wavy blue and white BIOT flag flying outside.

The Downtown area, containing the quarters of the military personnel, has all the facilities of a small town, including an interdominational place of worship, shops, eating-places, a swimming pool, a bowling alley and a bus service. Everything is beautifully laid out with ample lawns and carefully planted decorative trees and shrubs. Incongruously, broods of wild chickens peck their way nonchalantly between the buildings, and the occasional feral cat is to be seen padding about. Madagascar fodies flit from tree to tree, red-capped if in mating plumage. The human residents, American, British, Filipino and Mauritian, military and civilian, male and female, make their way about on buses, bicycles and on foot, in the last case often in jogging kit. Near the northern tip is Cannon Point, where two 6-inch guns still point out to sea, as they have done since 1942.

As you drive south down the island beyond the airfield, the buildings and facilities begin to thin out. A poignant reminder of the past is the well-maintained cemetery near the old settlement of Point Marianne, containing the resting place of earlier islanders as well as graves from the Second World War. It now contains a monument to those who fell in a more recent conflict, that of the Gulf in 1991. The thick vegetation that lines the road on either side conceals the narrowness of the land and lends a deceptive air of spaciousness as the ribbon of the road unfolds. There are only occasional glimpses of the calm waters of the lagoon on the

one side and the breakers on the reef on the ocean side, even though these are at some points separated by only 100 yards. Large land crabs scuttle across the road, which is scattered with the shells of those who lost the game of chicken with vehicles.

Half way down the western side, beyond the Donkey Gate, which is designed to keep the animals clear of the runway, wild donkeys, alone or in groups, begin to appear. They are especially numerous in the extensive grassland areas around the transmitter antennae near the southern bend of the island, looking for all the world like game on the African plains. Near the transmitter site is Turtle Cove, where small lemon sharks and turtles can be seen swimming in the clear water of the narrow channel leading from the lagoon to a large, enclosed, swampy area known as Barochois Sylvaine.

The road becomes unpaved coral as it leaves the area set aside for military purposes near the bottom of the eastern arm. It passes at first through fairly open coconut groves but the vegetation thickens markedly as it approaches the old plantation area at East Point.

East Point is a completely different world from the Downtown Area. Here are the remains, which the British authorities are trying hard to preserve, of a plantation society which lasted for two centuries. The manager's elegant *château*, recently restored, dominates the plantation square and faces the old jetty, cross and flagstaff by the lagoon shore. Around it stand the plantation chapel, itself also recently restored, the jail, the blacksmith's shop, the store, the hospital, copra mills and the remains of the copra drying sheds. The orange blossoms of a flame tree and pink and white ground flowers add colour to the scene. On the shore lies the remarkably intact wreck of a Second World War Catalina flying boat, still shining silvery in the sun. Farther up there is the morgue and behind it a macabre 'bleeding stone' where corpses were drained of their blood, around which the moss seems to grow with especial luxuriance. Nearby is the old graveyard with tombs from far back into the nineteenth century. The last

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burial, that of a small child, dates from 1971 just before the evacuation of the plantation.

Beyond East Point the road becomes no more than a track, heavily encroached on by the vegetation. After the brooding remains of the old settlement of Minni Minni, now almost lost in heavy vegetation and thick with moss and ferns, the track reaches Barton Point. This is the extreme north-east tip of the island and is a distance of about 37 miles by road from the north-west tip at Simpson Point. There is a fine beach of white sand between Barton Point and Observatory Point, studded with shells of all shapes and sizes, many of them occupied by small hermit crabs, and pieces of white, pink, green and blue coral. In the waters offshore, the coral heads of the reef are host to a myriad of fish.

Opposite Barton Point lies East Island, the largest of the islets at the mouth of the lagoon. It is designated as a nature reserve and is the home of large numbers of red-footed boobies which roost in the vegetation, and ferocious-looking giant crabs, which lurk in holes in the interior. The remains of buildings and machinery from the coaling station era are also in evidence there. Middle Island has a small interior lagoon of murky water from which you half expect some sea monster to erupt as a tidal surge makes itself felt.

Beyond the extensive reef around Middle Island, known as Spurs Reef, lies the deep-water channel of the Main Pass, on the other side of which is the small scrap of West Island and so back to Eclipse Point. There are few finer places to be on a clear, balmy night under the palm trees, the dark-blue velvet sky alight with stars, and the waves breaking translucent white in the moonlight on the reef.

II

Takamakas, Turtles, Corals, Coconut Crabs, Shearwaters and Sharks

Diego Garcia is a low-lying tropical atoll with an average elevation of only 6 feet above sea level. The maximum natural elevation is around 25 feet in dunes near Point Marianne. If the greenhouse theory of atmospheric warming with a consequent rise in sea level is valid, the Chagos group, like the neighbouring Maldives, must be one of the places in the world most vulnerable to its impact. So far, however, there is no sign of significant encroachment by the sea and indeed the land area has shown considerable stability since it was first mapped accurately more than 200 years ago.

The surface area of Diego Garcia is not much more than 10 square miles. The island is composed entirely of coral rock. Some pumice rock found near Barton Point is likely to be debris from the explosion of the Mount Krakatoa volcano in the East Indies (now Indonesia) in 1889. There is a layer

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of poor soil which in places barely covers the underlying coral but in more heavily vegetated areas has a depth of a couple of feet of peaty earth. The typical profile across the island starts on the ocean-side reef with a wide, eroded, sea-washed platform of dangerously sharp rock, a scattering of boulders and a narrow, sandy beach. There is a steep ridge at the edge of the land which then slopes gently downward to a less pronounced ridge and another sandy beach on the lagoon-side. In places the land is indented on the inside rim by depressed areas with narrow entrances which flood and drain on each tide and are known as 'barochois'. Particularly extensive barochois are found in the south and south-east, such as Barochois Maurice and Barochois Sylvaine.

Diego Garcia is the wettest tropical atoll in the Indian Ocean and experiences average rainfall of over 100 inches a year. Gilbert Bourne, visiting in 1886 observed: 'it would be scarcely beside the truth to say that rain may be expected every day; that at least was my experience.'¹ If not quite true, it is rare for there to be periods of more than a few days without rain, which comes in short, intense downpours, which race as squalls across the lagoon. There is consequently a high water-table of surprisingly unbrackish water, taking into account the proximity of the sea on every hand. The explanation, which was discovered quite recently, is that there are extensive 'water lenses' in Diego Garcia, caused by fresh water, with its lower specific gravity, floating on top of the sea water which permeates the ground at a lower level. These fresh-water lenses are readily tapped by shallow wells. There are few natural bodies of standing fresh water above ground but rainwater gathers sufficiently after the frequent downpours to provide adequate drinking water for wildlife.

The climate of Diego Garcia was described by an early visitor Charles Pridham, in 1846, in the following terms: 'there is almost continually a delightful freshness and softness in the atmosphere, and although very hot in the sun, the air where there exists any shade is cool and the nights invariably very pleasant.'² Temperatures generally range between the upper seventies and the mid-eighties Fahrenheit (25°–28°C).

There is a high level of humidity but it is ameliorated by frequent breezes and is less stifling and enervating than elsewhere in comparable latitudes. The island is also mercifully free of unpleasant tropical manifestations such as malaria.

There are distinct if marginal variations of season in Diego Garcia which are governed by changes in the predominant winds, which in turn govern the direction of the currents. From December to March the wind blows mainly from the north-west under the influence of the monsoon, which brings hotter temperatures (an average of 85°F/28°C) and heavier rainfall (a mean of over 12 inches in January). In April and May there is a transition in the prevailing wind from the west to the south-east. From June to September the south-east trade winds blow and the weather is cooler (79°F/26°C) and relatively drier (6 inches of rain in June). October and November is another period of transition, with variable wind directions. Diego Garcia is fortunate to lie between the northern and southern cyclone belts in the Indian Ocean, so avoiding the storms which periodically devastate Mauritius, Reunion and Rodrigues to the south and the coast of the Indian sub-continent to the north. However, the tail of a cyclone will occasionally clip the island, usually during the period of the south-east trades.

Behind the rhododendron-like 'scavy' thicket (*Scaevola tacada*) which fringes the shores, the vegetation of the island is now dominated by coconut trees, either of self-sown 'cocos bon dieu' (God's coconuts) or the cultivated variety established in the plantation era. Early historical accounts suggest that this was not always so and that much larger areas were covered by broadleaf trees. Impressive varieties of the latter which survive individually or in clumps around the island are the white wood tree (*Hernandia sonora*), the rose or mapou tree (*Barringtonia asiatica*) and the takamaka tree (*Calophyllum inophyllum*). The white wood tree can grow to a height of 60 feet and has small, cream-coloured flowers. The rose tree is even taller and has a massive girth. It has leaves 18 inches long and its flower of four white petals, with a mass of slender pink stamens protruding from the centre, gives

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off a heavy scent. The flowers last only from dusk to dawn of a single night but when fallen they spread a fragrant carpet round the tree. The seed husk of the rose tree has a characteristic square shape, designed, like a coconut, to be water-borne. The takamaka grows slowly into a giant oak-shaped tree and is supported by a widespread network of roots above ground. It has shiny leaves with fine parallel veins, a small, delicate flower with a clump of yellow stamens at the centre and fruit like a large gooseberry. The wood of the takamaka is excellent for boat-building and has been used as such around the islands of the Indian Ocean to construct traditional craft such as pirogues.

A number of other impressive trees were introduced in the old plantation areas, such as the giant fig trees at Point Marianne and Minni Minni and the breadfruit trees at East Point. It is not clear when the ironwood tree (*Casuarina*), with its needle-like leaves and pine-like appearance, was introduced. Its seeds are very resistant to sea-water and it is possible that they arrived originally on drifting branches. However, it is now spreading widely in the areas where construction has taken place because of its liking for disturbed soil. Its ability to extract and fix nitrate from the soil gives it an advantage over other vegetation. Numerous other exotic flora – fruit trees, shrubs, flowers, vegetables and grasses – were introduced in the plantation era and more recently for decorative and dietary purposes. Both the amateur and professional botanist will find Diego Garcia a happy hunting ground.

Diego Garcia also holds delights for the ornithologist. At least 35 species of bird have been identified. The bird population has been subject to vicissitudes over the years. Before the arrival of man there were probably enormous colonies of seabirds and also possibly some native species of landbird. Human activity had a devastating effect on the bird life. The vegetation was, as we have seen, transformed by the cutting down of much of the natural broadleaf woodland and its replacement by coconut trees. Worse still, predators were introduced in the form of rats, cats, dogs and, of course,

man himself, for whom birds were a source of meat, eggs and feathers.

The closing of the plantations and the rigorous conservation policy of the BIOT administration may well have led to a revival of a number of species which had become rare or disappeared from the island altogether. Today, long-standing winged inhabitants of Diego Garcia which can be termed indigenous include various sorts of terns, noddies, boobies, frigates and green herons. The island is also a staging post for migratory birds such as shearwaters, turnstones, plovers, sandpipers, whimbrels and perhaps storm-petrels on their way between breeding areas and wintering areas around the Indian Ocean. Land birds introduced from Madagascar, Mauritius, Seychelles and India since the nineteenth century include fodies, Madagascar turtle doves, cattle egrets, barred ground doves, mynahs and the domestic fowl which now run wild. Many of the birds of Diego Garcia are beautifully portrayed on the 1990 definitive set of British Indian Ocean Territory postage stamps.

There are no indigenous mammals in Diego Garcia and no sign that any ever existed. Of those introduced in the plantation era, which included horses, cattle, sheep, pigs and dogs, only donkeys, cats and rats have survived and thrived. The wild donkeys could perhaps in due course evolve into a distinctive breed, the Diego donkey. An imaginative proposal to introduce the endangered Rodrigues fruit bat to the island has, for the moment at least, been abandoned.

If Diego Garcia has a native 'king' species it should surely be the giant coconut or robber crabs. Their Creole name is *cipaye* or *sipaille*. The coconut crab has a mottled purplish appearance and can grow to 3 feet across. Their enormous pincers can rip open a coconut husk. They are nocturnal creatures but can be found in the day skulking in holes in the ground or under fallen vegetation. They should be treated with great respect – a writer in 1802 noted that their pincers could snap off the iron tips of walking sticks – but if approached from the right direction (the rear), can be picked up. This, however, requires strong nerve. Other crabs,

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the land crab and the fiddler crab, energetically excavate sandy areas, including in the barchois. On the beach, most shells on examination are found to be occupied by hermit crabs and immature coconut crabs.

There are a couple of types of lizard or, more accurately, geckos on the island, at least one species of toad, but no snakes. Despite the presence of African bees, hornets, several variety of spider and one of scorpion, the main hazard when walking or jogging in the jungle of Diego Garcia is not creepy-crawlies but being hit on the head by a falling coconut. Five per cent of the identified insect specimens, including a butterfly, are unique to the island and there are doubtless more still to be discovered.

If land fauna on Diego Garcia is admittedly fairly limited, marine life is exceptionally rich. As Gilbert Bourne wrote in 1886, 'to describe the immense and varied marine fauna that abounds around this island requires a paper on natural history'.³ Spectacular visitors to the shore are two varieties of large marine turtle, the green and the hawksbill. Their life span is 150 years and they only start breeding when they are 50. After mating at sea the females come ashore on the high tide in different seasons according to species, the hawksbill during the north-west monsoon and the green during the south-east trades, and lay their numerous eggs, which look like table-tennis balls, in the sand. The turtles were formerly hunted for their flesh and their shells by the islanders but they are now protected by law and it seems likely that these endangered species are increasing in numbers around the Chagos. Appropriately, the green and hawksbill turtles are supporters on the BIOT coat of arms. Smaller species of turtle live permanently in the lagoon, especially at the southern end.

The deep ocean beyond the reef supports dozens of species of fish. There are 14 types of shark alone, including the white, grey, tiger, hammerhead, white tip, black tip, nurse and sand shark. Tuna, especially the big eye, yellowfin and skipjack varieties are present in huge quantities. Prized game fish such as the wahoo, marlin, swordfish, kingfish, sunfish,

mahi mahi, bonito, dorado and barracuda are commonly found. The BIOT administration took steps in 1991 to conserve fish stocks in what is probably the least exploited area of the Indian Ocean by introducing a licensing regime in a 200 mile zone around the Chagos. Sperm whales, which breed to the west of the islands, and dolphins receive specific protection.

Richest of all from an ecological point of view is the reef, which teems with a vast variety of life. The living coral itself is Diego Garcia's chief natural glory and indeed the cause of its very existence. The Chagos Archipelago constitutes one of the great reef systems of the world and probably the most pristine. About 100 species of coral, some very rare, have been identified around Diego Garcia and in its lagoon.

The coral animal itself is a primitive organism known as a polyp. It is akin to a sea anemone and the calcium it extracts from sea-water gradually builds up into a variety of remarkable shapes and sizes. The evocative names given to the differing structures formed give a good idea of their appearance: staghorn, organ-pipe, brain, table, mushroom, moss and so on. The shape of coral rock formed is influenced by the depth at which it grows. The range of colours – yellow, green, pink, blue, violet, brown and grey – is derived from the minute plants which live inside the polyps.

Reef-building corals are delicate and choosy organisms. They are found in a belt around the world in the Indian Ocean, the Pacific and the Caribbean 30 degrees either side of the Equator where the sea temperature is below 100°F (37°C) and above 68°F (20°C). Corals need the right amount of oxygen and salinity in the water. They cannot grow above water and because they need light will not grow much below 150 feet in depth. They like water that is somewhat disturbed but not rough. Consequently, the reef corals are less luxuriant on the south-east side of Diego Garcia which is most exposed to storms.

There are living coral reefs both around and inside the lagoon of Diego Garcia. These are alive with literally hundreds of varieties of small, brilliantly coloured tropical

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fish such as are found in aquariums all over the world, as well as the larger grouper, snapper, jack, emperor, trevally, moray eel, sting ray and manta ray. Seaweeds in a multiplicity of forms, sea cucumbers, octopuses, crabs, lobsters and small turtles add to the variety. Underwater swimming is a constant delight in Diego Garcia, although in addition to watching out for sharks an eye must be kept open for the sinister stone fish and the scorpion fish with their poisonous spines.

III

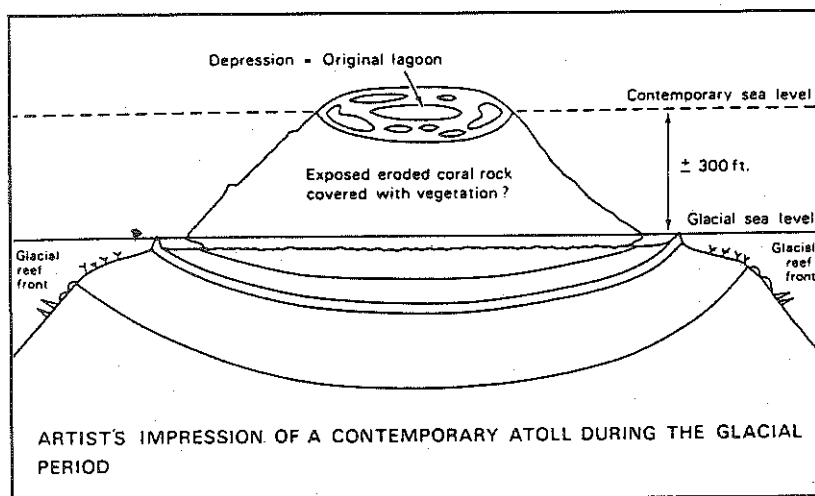
From out the Azure Main

Diego Garcia and its sibling islands comprise all that remains above sea-level of huge underwater mountains of volcanic origin which rear dramatically from the ocean bed 10,000 feet or more below. The romantic appellation for these islands is the 'Peaks of Limuria'.

Limuria is the name given to the ancient continent which used to exist in the middle of the Indian Ocean, a sort of Indian Ocean Atlantis. This lost continent was probably created as a result of apocalyptic volcanic activity 130 million years ago as the land mass of what is now India gradually drifted away from Africa. Even now seismic activity is common in the area. A severe earthquake is reported to have occurred in Diego Garcia in 1812 and there was another major one elsewhere in the Chagos Archipelago in 1913. An earthquake measuring as high as 7.6 on the Richter Scale struck Diego Garcia in November 1983. Although causing limited damage to buildings, it ruptured some of the underground fuel lines. Earthquakes of 6.0 or above on the Scale occur regularly. There have been a dozen such occurrences since 1940. Luckily the lack of a wide surrounding platform of shallows precludes the building of tidal waves as a result of seismic activity.

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It seems likely that over the aeons of time the sea level in the Indian Ocean waxed and waned as a result both of uplift and subsidence, and of the periodic ice ages which locked up water in the icecaps. Because of the sea level changes during this period, the underlying peaks of basalt became overlaid with coral limestone to a depth of as much as a mile. Only 17,000 years ago, at the end of the last ice age, the sea level was 300 feet lower than at present. This would have meant that, where there are now only banks and atolls, a vastly larger area of dry land would have existed, including the whole of the present Chagos Bank and large adjacent islands.



(From book *Half of Paradise* by Professor David Bellamy)

We cannot know what type of vegetation flourished then or what sort of wildlife roamed the land because, as the Polar icecaps melted, the sea swept in like Noah's flood. The land may well have been entirely submerged. As Lord Tennyson wrote as he came to grips with dawning scientific reality in his poem *In Memoriam*,

There rolls the deep where grew the tree,
Oh earth what changes hast thou seen!¹

Certainly no trace of pre-Holocene, that is before the last ice age, flora and fauna remains, in contrast to the larger land masses in the Western Indian Ocean now comprising Madagascar, Mauritius, Reunion and Seychelles, which had sufficient elevation to avoid being totally engulfed. In these places weird and unique forms of life such as the lemur and, until hunted to extinction, the dodo survived. In fact, the limited range of land flora and fauna in the islands of the Chagos Archipelago suggests that in their latest form they emerged from the sea perhaps only a couple of thousand years ago. Like Britain in the song 'Rule Britannia', Diego Garcia literally 'at heaven's command arose from out the azure main'. Given no further significant changes in sea level during this period and the lack of evidence of major movements of the earth's crust in the area, how could this happen?

The solution to the mystery was first put forward by no less an authority than Charles Darwin, the great nineteenth century natural scientist and author of *The Origin of the Species* which fundamentally altered man's view of the world. In 1842 Darwin published a work called *The Structure and Distribution of Coral Reefs*, which was based on the observations he carried out during his epic four-and-a-half year voyage around the globe on HMS *Beagle*. One of the *Beagle's* missions was to take soundings around coral islands and to determine if the atolls sat on the summits of extinct volcanoes. Darwin and the *Beagle* visited the Cocos-Keeling Islands and Mauritius in the Indian Ocean but, impatient to return home after such a long voyage, did not call at the Chagos group. However, Darwin drew extensively in his book on coral reefs on a thorough scientific survey of the Chagos, and Diego Garcia in particular, carried out in 1837 by Captain Robert Moresby. As he acknowledged in the preface:

I must most particularly express my obligations to Captain Moresby, Indian Navy, who conducted the survey of the archipelagos of low coral islands in the Indian Ocean.

According to Darwin's theory, as the sea level rises, the living coral grows up too, keeping pace with and just below the surface of the water. On to this submerged platform wash boulders of dead coral and sand, forming a bank which builds up above high water. Once a dry bank is established it begins to be colonised by seeds of plants and trees borne on the ocean currents. The predominant current washing the Chagos Archipelago is the Malabar current coming from the direction of South-East Asia. It is therefore not surprising that most of the indigenous flora on the islands is of Asian origin. Of these, the key to stabilising the newly emergent islands will have been *Scaevola tacada*, commonly known as 'scavvy' in Diego Garcia, which thrives in sand and does not mind some contact with salt water. It forms a strong and impenetrable thicket along shorelines just above high water. Because of their buoyant water-borne husks the coconut and the rose tree will have been among early trees to establish themselves. Ironwoods and the creeper *Caesalpina bonduc* may have arrived as sea-borne seeds floating on vegetal debris. Birds, which can migrate huge distances across the ocean, will also have been the agents of colonisation by bringing seeds on their bodies. And their droppings, forming guano, will have helped enrich the poor mixture of sand and coral and thus encouraged further growth of vegetation, which in decay also fertilised the ground.

As Darwin recognised, Diego Garcia is unusual as an atoll in that almost the whole reef around the lagoon has been converted into land, 'an unparalleled case, I believe, in an atoll of such large size', he observed.² It seems likely that the present island is the result of the merging of a number of smaller islands that established themselves on the reef. The narrowness of the land at various points and the undeveloped nature of the vegetation, especially on the eastern arm of the island north of Minni Minni, suggests that some of the various individual islands which originally existed were joined up only comparatively recently. This could eventually happen between Eclipse Point and West Island. And a new island is forming at the mouth of the lagoon to the west of Middle

Island at the north-western end of Spurs Reef. This islet was given the name Anniversary Island in honour of the 25th anniversary of the establishment of the British Indian Ocean Territory in November 1990. If it survives, it will be interesting to see how quickly it is colonised by 'scavvy' and coconuts.

Darwin's theory of the origin of atolls is still accepted, although he seems to have been misled by some of Moresby's data to conclude that the Chagos was a dying group of coral atolls sitting on top of subsiding submarine mountains. He does not appear to have taken into account the effect of rises and falls in sea level because of periodic ice ages. He later acknowledged Gilbert Bourne's work on the subject and conceded that in the case of Diego Garcia there was no evidence of subsidence.

The fact that a minute marine creature could be responsible for the creation of solid land can still amaze today as much as it did the great scientists who discovered the phenomenon. Darwin wrote:

Everyone must be struck with astonishment when he first beholds one of those vast rings of coral rock, often many leagues in diameter, here and there surmounted by a low verdant island with dazzling white shores, bathed on the outside by the foaming breakers of the ocean, and on the inside surrounding a calm expanse of water which from reflection is generally of a bright but pale green colour. The naturalist will feel this astonishment more deeply after having examined the soft and almost gelatinous bodies of those apparently insignificant coral polypifers, and when he knows that the solid reef increases only on the outer edge, which day and night is lashed by the breakers of an ocean never at rest.³

Bourne echoed the same sentiment on visiting Diego Garcia itself in 1885:

The most unimaginative person will not fail to be struck with wonder that the vital activity of animals so low on

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the scale as coral polyps has been sufficient to raise up this island above the waves and to maintain it there in spite of the increasing wear and tear to which it is subject from the restless waves of the great southern ocean.⁴

IV

Discovery

The Chagos islands may well have been untouched by human footprints from their formation until the dawn of the modern era. It is possible that the Malagasy may have visited the islands as they made their way around the Indian Ocean from present-day Indonesia to their future home in Madagascar in the early days of the Christian era. It has been suggested that it was they who introduced the coconut and that the old Maldivian name for the islands was of Malagasy origin.¹ The Arabs who reached the Laccadive and Maldivé islands immediately to the north in the ninth century may have had some inkling of islands to the south. And a remarkable Chinese expedition during the Ming Dynasty commanded by Cheng Ho, the Great Eunuch of the Imperial Palace, would have sailed close to the Chagos in 1413–15. However, if any of these intrepid voyagers did visit the islands, we shall never know for they left no mark or record.

What is certain is that the Portuguese sighted and named the islands in the early sixteenth century. In the course of the fifteenth century, the traditional route through the Eastern Mediterranean, the Red Sea and the Persian Gulf to the Asian sources of luxuries which Europe sought was blocked

by the expansion of the war-like Ottoman Turks. Driven by a mixture of crusading zeal and mercantile enterprise, the Portuguese pioneered an alternative sea route around Africa to India and the Spice Islands in the later fifteenth and early sixteenth centuries. Their route lay across the Indian Ocean.

The actual discoverer of the islands was probably Pedro Mascarenhas, after whom the Mascarene group of islands comprising Mauritius, Reunion and Rodrigues is named. It was the custom of the Portuguese explorers to call newly discovered islands after either captains of vessels or saints' days. There were fleets to the Indian Ocean in 1509 and 1512 commanded by Diego Lopes and Garcia de Naronha respectively. It is tempting to assume that some combination of these names was applied to the largest of the islands that they stumbled on in their caravels and *nãos* far out in the Indian Ocean. According to another account, a Spanish navigator actually named Diego Garcia visited the island in 1532.² However, the origin of the name can be no more than speculation. Early maps give a variety of other names including Gratia, Graciosa, Don Garzia and Chagos island. The existing name only became definitive towards the end of the eighteenth century. The Portuguese names for other groups in the Archipelago also stuck, Peros Banhos, and Three Brothers, which is a translation of the Portuguese 'Três Irmãos'.

The only evidence found in Diego Garcia of Portuguese visits are the roof tiles brought up by divers from the floor of the lagoon in Rambler Bay. It was the custom to carry such items on the outward voyage from Portugal as ballast which could be put to good use on arrival before loading up with spices, calicoes, muslins and chinaware for the return trip. There may well be Portuguese wrecks in other parts of the Archipelago. One fairly well-documented case is that of a *não* (a type of sailing ship of about 500 tons, named the *Conceição* (*Conception*) which was outward bound from Lisbon to Goa in India with a cargo of jewels, gold and silver in 1555 when it ran aground on the reefs of Peros Banhos.³ The captain Francisco Nombre and other officers appropriated





East Point chapel. (NSF Fotolab, Diego Garcia)





Lagoon just before sunset. (*Dan Layman*)





A coconut crab. (*Dan Layman*)



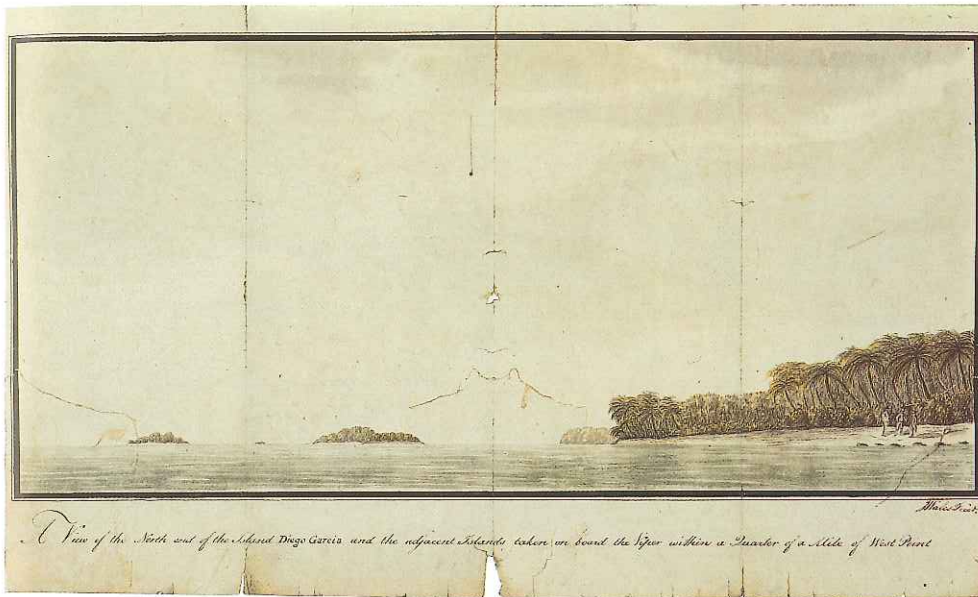


A family of red-footed boobies. (*Dan Layman*)





A sixteenth-century Portuguese map of the Indian Ocean. (*The British Library*)



View of the north end of Diego Garcia; 1786; watercolour by Lieutenant Wales.
(India Office Collection, British Library)



The settlement at East Point, 1819; Dutch print by Lieutenant Verhuell.
(Mr K. Dirkzwager)



Six-inch naval guns at Cannon Point, installed in 1942. (*NSF Fotolab, Diego Garcia*)



the only undamaged boat, filled it with as much treasure as it could carry and set out for India, leaving 350 crew and passengers to fend for themselves. Of these 50 eventually managed to reach India in improvised craft but the rest perished from hunger and exposure. It is possible that remains of the *Conceição's* equipment and cargo could still be found.

Among the rare references to the Chagos in this period is the claim to them made by the Christian King of the Maldives, Dom Manuel, who was installed by the Portuguese in the mid-sixteenth century. The islands were called 'Folovahi' in the Maldivian language Divehi, which means something like 'ten islands'. However, two attempts by the Maldivians to colonise the islands failed when they could not locate them.

The discovery of the Chagos Archipelago was a minor incidental by-product of the opening up of the seaway from Europe to the Indies. The islands were not on the main route, which followed the African coast to around the latitude of present-day Kenya and then struck out towards India. Accordingly they were not regarded as of any value as way-stations for water and fresh supplies. On the contrary, the Chagos Archipelago with its network of dangerous reefs was seen as a peril to be given a wide berth. The inaccuracy of the charts, which scattered islands, many of them imaginary, over a wide area increased the uncertainty of navigation in the central Indian Ocean.

The English, along with the French and Dutch, began to follow the route pioneered by the Portuguese to the lucrative *entrepôts* of the East in the later sixteenth century. The experience of the captain of one of the first English fleets to penetrate the Indian Ocean graphically illustrates the perils posed to early navigators in the seas around the Chagos. Setting out from Agalega Island north-east of Madagascar in the direction of India in late March 1602 Sir James Lancaster found himself two weeks later trapped within the reefs of the Chagos Bank. For several days the ships tried to find a way out of the maze or 'pound' (enclosure) as Lancaster called it. Eventually, led by a small boat from which constant sound-

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ing of the depth was made, the fleet was able, 'thanks be to God', to nose gingerly out of the reefs to the open ocean to the north and continue its voyage.

Although Lancaster did not land on any of the islands in the Chagos he left a vivid account of his earlier landfall at Agalega, an island which shares many of the same characteristics:

As we coasted along this island, it seemed very fair and pleasant, exceeding full of fowl [birds] and coconut trees; and there came from the land such a pleasant smell as if it had been a garden of flowers.⁴

For a further century and a half, after Lancaster's inadvertent visit, although the Dutch established themselves from 1639 in Mauritius and the French from 1654 in Reunion, the Chagos remained in a sort of limbo, vaguely in the consciousness but rarely visited by the European nations contending for the upper hand in the Indian Ocean. If pirates, who in the early eighteenth century established a shortlived stronghold in eastern Madagascar and bases in the Seychelles, ever used or visited Diego Garcia, there is no record of this but the intriguing possibility cannot be discounted. An eighteenth century cannon-ball was discovered in the jungle on the eastern arm of the island in 1989. And a mid-nineteenth century ordinance reserved to the Crown any buried treasure found on Diego Garcia.

As time went on, the contest in the Indian Ocean became increasingly one between Britain and France, with India as the prize. The five wars fought by the two countries in the course of the eighteenth century spilled over into eastern seas. Meanwhile the French were assiduously island-hopping. In 1722 they took over Mauritius which the Dutch had abandoned in 1703, and renamed it the Ile de France. They also colonised Rodrigues 300 miles to the east in 1742.

From the 1740s the French began systematically to survey the islands to the north and the north-east of their principal base on Mauritius. Up to this point these islands remained

inaccurately fixed, still unknown, or even figments of the imagination, as was the case in their rendering in the chart the 'English Pilot' published in 1755. The co-ordinator of this effort was the renowned French cartographer Après de Manneville who embodied his findings in his famous map of the Indian Ocean 'Neptune Oriental', published in 1780. Much of this effort of filling in the gaps on the map was directed towards the north where Mahé in the Seychelles group was first formally possessed in 1756 and then colonised in 1768. However, several expeditions visited the Chagos. In 1770 a Monsieur la Fontaine in the vessel *L'Heure du Berger* surveyed the northern part of the lagoon at Diego Garcia and produced the first detailed map of the island. This ship also achieved the feat of sailing the dangerous passage between East Island and Barton Point. Subsequently a British ship, the *Hampshire*, was wrecked attempting the passage in 1793. Elsewhere in the Archipelago, in 1777, the French ship *Salomon* visited and named the islands of that name in the northern Chagos.

The British, from their bases in India, were also showing an interest in the islands. In 1760 the *Egmont* visited the islands which bear its name. In 1763 the *Speaker* and the *Pitt* surveyed the banks named after them and also visited Diego Garcia, producing a rough sketch from the north which may be the first known pictorial rendering of the island. In 1772 the *Eagle* called at the island of the same name. And in 1774 the *Drake* visited Diego Garcia and carried out a detailed survey of the entrance to the lagoon, including detailed sketches by a Joseph Mascall which show West, Middle and East islands, which were named respectively Red Beach, Black Beach and White Beach islands on the picture. This expedition left sheep, goats and pigs on the island as fresh provisions for future expeditions.

On the British side, the driving force in mapping the islands of the Central Indian Ocean was Scotsman Alexander Dalrymple, the Hydrographer of the East Indian Company, who published in 1786 a *Memoir concerning the Chagos Archipelago and the Adjacent Islands*. Dalrymple sent orders from

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London to the Company's base in Bombay to despatch vessels:

to ascertain the numerous shoals and islands in the Southern Passage from the Maldives to Madagascar as an accurate knowledge of these hitherto much neglected Seas is essential to the security of the Navigation of the Company's ships.⁵

As a result of these instructions, a comprehensive exploration of the Archipelago was undertaken by Lieutenant Archibald Blair of the East India Company Marine in 1786 and 1787. He was given orders that:

for facilitating the more particular survey of the island afterwards, he was to leave a distinguishing mark on all the principal points, which should terminate his angles, or form stations, to enable those points to be found at any future time.⁶

Accordingly, in May 1786, Blair carried out a survey of Diego Garcia, setting up flag staffs at key places to act as reference points. Although he was given only a couple of weeks for the undertaking, Blair produced a highly accurate map which would pass muster today. He also observed the eclipse of Jupiter's moons, which no doubt accounts for the names Eclipse and Observatory Points at the entrance to the Diego Garcia lagoon.

The transformation in knowledge about the Chagos resulting from these systematic surveys meant that, in future, mariners would avoid the experience of James Horsburgh, who later succeeded Dalrymple as the East India Company Hydrographer. In May 1786 he was wrecked on Diego Garcia in the *Atlas* on the point on the east coast which bears his name:

The charts on board were very erroneous in their rendering of the Chagos Islands and Banks and the Com-

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mander trusting too much to dead reckoning was steering with confidence to make Ady or Candy (islands which turned out not to exist) . . . but unfortunately, a cloud over Diego Garcia prevented the helmsman from discerning it (the officer of the watch being asleep) till we were on the reef close to the shore; the masts, rudder and everything above deck went with the first surge; the second lifted the vessel over the outer rocks and threw her in toward the beach, it being high water and the vessel in ballast, otherwise, she must have been dashed in pieces by two or three surfs on the outer part of the reef and every person on board have perished.⁷

The survivors from the ill-fated *Atlas* were rescued by the expedition described in the next chapter.

V

Settlement

A Monsieur Dupuit de la Faye was given a grant of Diego Garcia by the Governor of Mauritius in 1778 and there is evidence of temporary French sojourns. However, the first systematic attempt to colonise the island was made by the British. In 1786 the East India Company, the great commercial corporation which established and ran Britain's Empire in the East for 250 years, decided that it was now feasible to establish a victualling station where, as Dalrymple put it:

ships might be enabled to get refreshments after their long voyage from Europe before they came into the low latitudes where the light winds and tedious passages consequent to them, had so often proved fatal to the lives of the seamen before they could reach India.¹

It was also hoped that Diego Garcia could be a base for further exploration of the islands of the central Indian Ocean, as well as in future wars against France.

The aim was that the new settlement should be self-sufficient. According to the reports available, Diego Garcia had good water, soil which would support 'legumes' (vegetables)

and an abundance of fish, turtles and 'land lobsters'. The latter 'fed on coconuts and are very good, their tails very fat'.² The expedition was to take with it boatloads of soil and to experiment with the growing of grain, fruit and vegetables. It was also to bring cattle and poultry.

After meticulous planning, the expedition set out from Bombay on 15 March 1786 in four ships, the *Admiral Hughes*, the *Drake* and the survey ships *Viper* and *Experiment*. Richard Price and John Smyth, senior officials of the East India Company, were respectively first and second in command. Price was appointed 'Resident of Diego Garcia', effectively the first British representative. The civilian element included carpenters, smiths, bricklayers, coopers, stockmen, gardeners, bakers, butchers, tailors and two doctors as well as 50 servants. An engineering officer Captain Sartorius commanded the military element, who were all volunteers. This consisted of 64 Indian infantry sepoy and 2 bandsmen, 24 Indian engineer pioneers and a number of marine surveying officers led by Lieutenant Blair, mentioned in Chapter IV. They also took with them one field piece and 6 or 8 pieces of smaller artillery.

The expedition sailed with sealed orders to be opened at sea in order to keep its destination secret from the French. The instructions included contingency plans in case any French were encountered on the island. If 'beyond all expectations... a regular settlement... who cannot be removed by force were found, new orders were to be sought. However, if only 'straggling French' were present these were to be 'deemed to be there without authority and not any impediment to occupying the island and establishing a settlement'.³ In fact when the expedition entered the lagoon of Diego Garcia on 27 April 1786, they were surprised to see a canoe set out from the shore with five men on board who produced papers from a Monsieur Le Normand about his establishment on the island, which consisted of 'a dozen huts of the meanest appearance'. The British expedition chose not to regard this as evidence of a proper French title to the island and on 4 May 'took formal possession of the island of

Diego Garcia and all its Dependencies in the name of His Majesty King George the Third and in the name and for the use of the Honourable United Company'.⁴ The hoisting of the British flag was saluted with three volleys of musketry. The East India Company's own flag, on which the American Stars and Stripes was modelled, will also have been flown by the expedition. The Frenchmen found on the island left for Mauritius to report this turn of events.

Meanwhile, the expedition got down to its task of laying out a settlement, building a fort, planting crops, measuring temperatures and winds and surveying the land and the lagoon. A Lieutenant Wales produced charming water-colour sketches of the island, one of which showed three men in broad-brimmed hats and knee-breeches strolling on the shore among the crabs near Cannon Point, and another of two of the expedition's ships sailing across the mouth of the lagoon. The settlement was established on the site of the present East Point, which was named Flag Staff Point. The climate was found to be quite healthy and few men fell sick. Temperatures taken over a four week period between early May and early June showed a range of 73°F to 87°F (approximately 23°C to 31°C), which is remarkably consistent with present-day readings. However, the agricultural experiments were disappointing. Vegetables such as potatoes and grain would grow but the amazing swarms of rats caused problems. Most of the turkeys and ducks died and the cattle sickened. There were also disagreements over whether the island was militarily defensible and who was responsible for surveying the lagoon.

The reports from Price and Smyth to the Council in Bombay sowed doubts about the settlement's viability. The Directors of the East India Company in London also became concerned when they learned of the expedition's 'magnitude and unnecessary cost'.⁵ A further problem was that the French were exercised by the establishment of the settlement. The Governor of Mauritius, the Vicomte de Souillac, sent a letter of protest to Bombay. An international incident seemed likely to develop. Accordingly the Bombay Council decided in August 1786 'to entirely withdraw the settlement from

Diego Garcia'. A letter from Bombay Castle signed by Governor Rawson Hart Boddam (after whom Boddam island in the Salomons is named) instructed Price and Smyth that 'on receipt of this letter you will immediately issue the necessary orders for the embarkation of the stores, ammunition and provisions and for evacuating the island'.⁶ The expedition sailed away in October 1786, leaving Lieutenant Blair to complete his survey of the rest of the Archipelago.

The French authorities in Mauritius were sufficiently alarmed by news of the British settlement to send the frigate *Minerva* to enforce their claim and eject the interlopers. However, by the time the French ship arrived, the British had already left. The French none the less put up a stone pillar proclaiming their sovereignty. A similar marker decorated with fleur de lys survives at Mahé in the Seychelles but that on Diego Garcia has disappeared; perhaps it still lies somewhere on the island awaiting discovery.

The British incursion led the French to take a more active interest in the islands. In the later 1780s businessmen in Mauritius were granted concessions to gather coconuts. A petition to operate in one of the islands reads 'this desert island uninhabited up to the time of writing, can nevertheless hold out prospects to an industrious and enterprising man.'⁷ The first named individual to receive this concession in Diego Garcia was the same Monsieur Le Normand whom the British encountered in 1786. A Sieur Dauguet was also granted fishing rights. It is not clear whether these concessions involved the setting up of permanent establishments or merely limited visits. The French in Mauritius also seem to have begun using Diego Garcia as a leper colony, apparently in the belief that turtle meat helped to cure this condition. According to one account, a British ship anchored off Diego Garcia in 1792 and sent ashore two Lascars or Indian seamen to look for water. These encountered a small party of lepers. When they reported the fact on coming back on board, such was the fear of leprosy in those days that the ship's master put the Lascars ashore to fend for themselves – a nightmare story if true.

In 1793, a Mr Lapotaire of Port Louis proposed to the French authorities that instead of loose coconuts being brought back to Mauritius from Diego Garcia for processing, a 'factory' be established to extract copra and oil from them on the island. Lapotaire sent out two ships with 25 to 30 men in each and a complement of slaves to set up the enterprise, which could be termed Diego Garcia's Jamestown, and seems to have been based at the north-west corner of the island. By the next year, Lapotaire was exporting a considerable amount of oil to Mauritius. According to Baron d'Unienville, salted fish, and rope made of coconut fibre were also exported, and sea slugs to the Far East, where they were a sought-after delicacy among the Chinese.⁸

There was good profit in the extraction of coconut oil which was used for a variety of purposes including lamps, cooking and soap. In the 1790's France was again at war with Britain and Mauritius found itself increasingly cut off from longer distance trade by the British blockade, leading among other things to a steep rise in oil prices. It is therefore not surprising that other businessmen from Mauritius began to follow Lapotaire's example and to set up their own establishments in Diego Garcia, as well as in other islands of the Chagos Archipelago. On Diego Garcia two brothers, Paul and Aimé Cayeux established themselves at East Point and Minni Minni.

While Lapotaire and the Cayeux seem to have had no problems in dividing the island between them, in the early 1800s they united against two newcomers, Messrs Blévec and Chepé, whom they accused of wasteful exploitation of the coconuts. However, in 1809 the French Captain General of Mauritius, De Caen, settled the dispute by assigning eastern parts of the island to Blévec and Chepé, while forbidding the manufacture of oil in Diego Garcia on the grounds that this would attract British raids. Readiness to accept lepers sent from Mauritius was a condition of the concessions.

But French rule in the Indian Ocean was about to be snuffed out at its heart. Exasperated by French privateer attacks on British shipping, a British expeditionary force from

India captured Rodrigues and Reunion and finally Mauritius itself. The capitulation signed on 3 December 1810 marked 'the surrender of the Isle of France (Mauritius) and all its dependencies (including the Chagos) to the arms of His Britannic Majesty'. The Treaty of Paris signed in May 1814 formally ceded 'the Isle of France and all its dependencies . . . to the dominions of the British Crown'. The Chagos Archipelago has remained British territory ever since.

Although the formal period of French rule on Diego Garcia was quite short, by the time it ended the pattern of a plantation society based on exploitation of the coconut, which was to last more than another century and a half, was well established. A contemporary Dutch print of East Point dating from 1819 is the first known depiction of the settlement.⁹ It was probably made by a naval officer called Verhuell who was a survivor of the crew of the Dutch warship *Admiral Evertsen*, which was carrying home from Java spices, some 'boxes with curiosities' for the King of the Netherlands, senior officials of the Dutch East India Company and an admiral. The ship foundered off Diego Garcia on 9 April 1819 and the 340-strong crew were rescued by the American brig *Pickering*, a vessel of 154 tons from Plymouth, Massachusetts,¹⁰ which is shown at anchor in the print. Two hundred of the rescued sailors spent many weeks on the island before another ship arrived to take them off.

The Dutch print shows manually driven copra mills, simple buildings and huts, loin-clothed slaves carrying between them a turtle, fish and baskets, and overdressed Europeans promenading with walking sticks. Dogs (one appears in the print), cats, pigs, poultry, bees, new plants and vegetables would have been introduced by this point. Rats had also been inadvertently introduced from visiting ships at an early stage and soon became a menace to bird life, which had not previously experienced predators.

The population in 1826 was 275, made up of 6 Europeans, only one of whom was female; 14 freemen, four of whom were female, and 9 were children; 218 slaves, of whom 17 were female and 13 children; and 37 lepers, 5 of whom were

female and 2 were children.¹¹ Most of the slaves would have been brought from Mozambique and Madagascar either directly or through Mauritius and Seychelles. As a *lingua franca* they would soon have adopted Creole, a dialect of French with African overtones, whose use was universal in France's tropical possessions and is still spoken by Mauritians working in Diego Garcia today.

In the tiny society of the islands and far from assistance in Mauritius, it does not seem from contemporary accounts that the overseers actively mistreated the slaves. The historian Charles Pridham, who visited the island soon after the abolition of slavery, noted that their set tasks involving the collection and preparation of coconuts were relatively light and their rations of rice and rum could be supplemented by what they could catch or raise for themselves. According to d'Unienville, the latter included fish caught at night by torchlight, birds knocked from their perches by long sticks, *cipaye* crabs, and of course coconuts. As elsewhere in slave societies the considerable imbalance between the sexes and the lack of a religious or moral framework gave rise to considerable promiscuity. Their overseers seem to have provided little better example. As Pridham priggishly remarked, 'Frenchmen when removed from the public eye, have a strong tendency to degenerate into savages'.¹²

VI

Abolition of
Slavery

Especially in an age of *laissez-faire* or self-regulation, the new British administration in Mauritius might have been content to leave the planters to their own devices in far off Diego Garcia had it not been for the issue of slavery. The slave trade in the British Empire had been abolished in 1807. Sir Robert Farquhar, the first British Governor of Mauritius and its dependencies, made it clear to the new subjects of the Crown in a proclamation of 1815 that 'no doubt should exist that Acts of Parliament for the abolition of the Trade in Slaves extend to every, *even the most remote and minute portion*, of the Possession, Dominions and Dependencies of His Majesty's Government'.¹ Complete abolition of slavery was already in the wind because of pressure from public opinion in Britain.

Nevertheless, despite the attentions of the Royal Navy, slaving to the islands directly from the East African coast probably persisted surreptitiously for some years. At the time of emancipation in the mid-1830s, there were still 33 slaves in Diego Garcia declared as having been born in either Mozambique or Madagascar.

It was unrest on the island because of problems between the planters, the slaves and the lepers (who were still being

sent there) which led to the appointment of the first British official, a Mr Le Camus, in Diego Garcia in 1824. Le Camus was also charged with managing the anchorage at Diego Garcia and establishing a quarantine station for seafarers with infectious diseases on one of the islands at the mouth of the lagoon. For his services over a five-year period, Le Camus was granted the concession formerly held by Lapotaire, from whom he bought slaves, stock and buildings.

As in the rest of the British Empire the institution of slavery was formally abolished in Mauritius and its dependencies in August 1834. For a six-year transitional period, so that both masters and slaves could get used to the new situation, the ex-slaves were apprenticed to their former masters under various safeguards. The Act of Parliament ending slavery laid down that Governors of Colonies should appoint Special Commissioners with the powers of Justices of the Peace to implement its provisions. The remoteness of the Indian Ocean dependencies posed special difficulties for the emancipation process but the authorities in Mauritius showed great conscientiousness. A report to the Colonial Office in London in 1835 assured the latter that 'all that can be done to carry into effect the provisions of the Abolition Act as far as circumstances will possibly admit'² was being done.

Mr George Harrison, designated as Assistant Protector of Slaves, visited the Chagos islands, including Diego Garcia, to supervise emancipation of the former slaves in 1835. There was a follow-up visit by Special Justice Charles Anderson in 1838 in the brig HMS *Leveret*. His instructions before departure pointed out that as the islands could be visited only occasionally, and his stay would be limited, his object was:

to acquire information with a view to ulterior improvement if required rather than temporary exercise of authority. You will explain to apprentices in the presence of their masters and overseers their positions under the Slavery Abolition Act . . . the work they are expected to do . . . the treatment they have a right to expect . . . and the nature and quantity of their provisions.³

Anderson was also to report on general matters and on the possible value of Diego Garcia as a convict settlement.

Anderson was obviously a zealous person. He not only produced a highly critical report of conditions in Diego Garcia, which he described as 'decidedly inferior to those of labourers on the other islands I have visited',⁴ but also exceeded his instructions by intervening actively and ordering the reduction of the daily set tasks of the labourers which he regarded as too severe. He found that the food, consisting mainly of rice, and the clothing provided were unsatisfactory. He described the physical state of the labourers as deplorable, with many of them old, infirm or diseased, with several bad cases of leprosy. There was also a deplorable – a word Anderson obviously liked – deficiency of hospital accommodation and an entire want of medical aid.

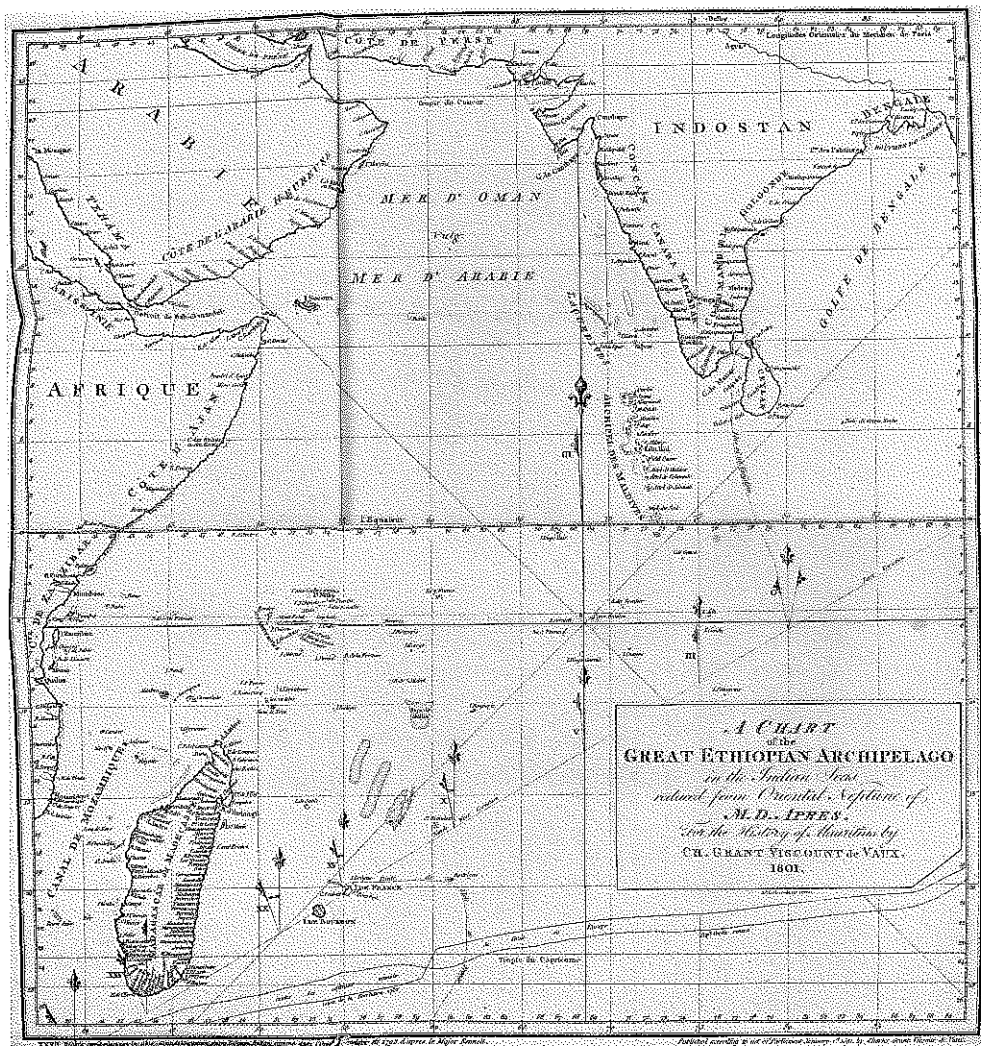
On the positive side, Anderson found that the labour involved in coconut plantations was of a much milder nature than on the sugar plantations of Mauritius. Crime was also uncommon, which he attributed to the absence of strong liquor.

Anderson recommended that the proprietors of the plantations resident in Mauritius, who still included Monsieur Cayeux, 'ought to be compelled to make good the past deficiencies to their fullest extent and that other means should be adopted to prevent the repetition of such wilful neglect'.⁵ However, the Governor decided more judiciously that while he 'cannot but regret that the Act is not fully complied with . . . yet taking into consideration the locality, the precarious nature and infrequency of communications, he did not feel disposed to visit on the masters the whole penalties for breaches of the law.'⁶

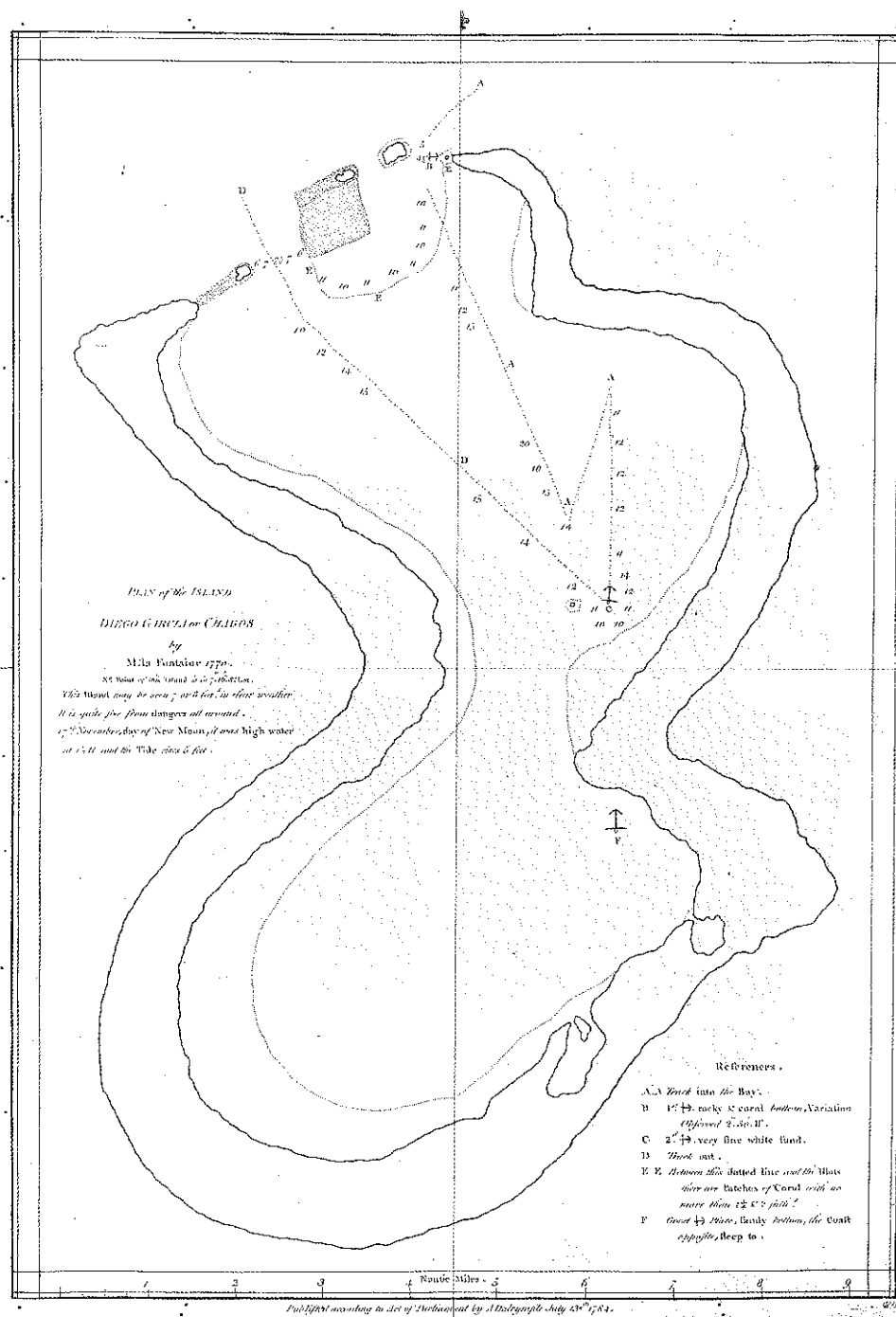
At the time of Anderson's visit there were 135 apprentices, that is, freed slaves, on Diego Garcia. The three estates at East Point, Point Marianne and Minni Minni produced between them 36,000 veltes (a velte is about $\frac{3}{4}$ gallons or nearly 8 litres) of coconut oil annually. Anderson also noted that the island was much resorted to by whalers and vessels

bound from England to India for supplies of water, firewood, pork and poultry.

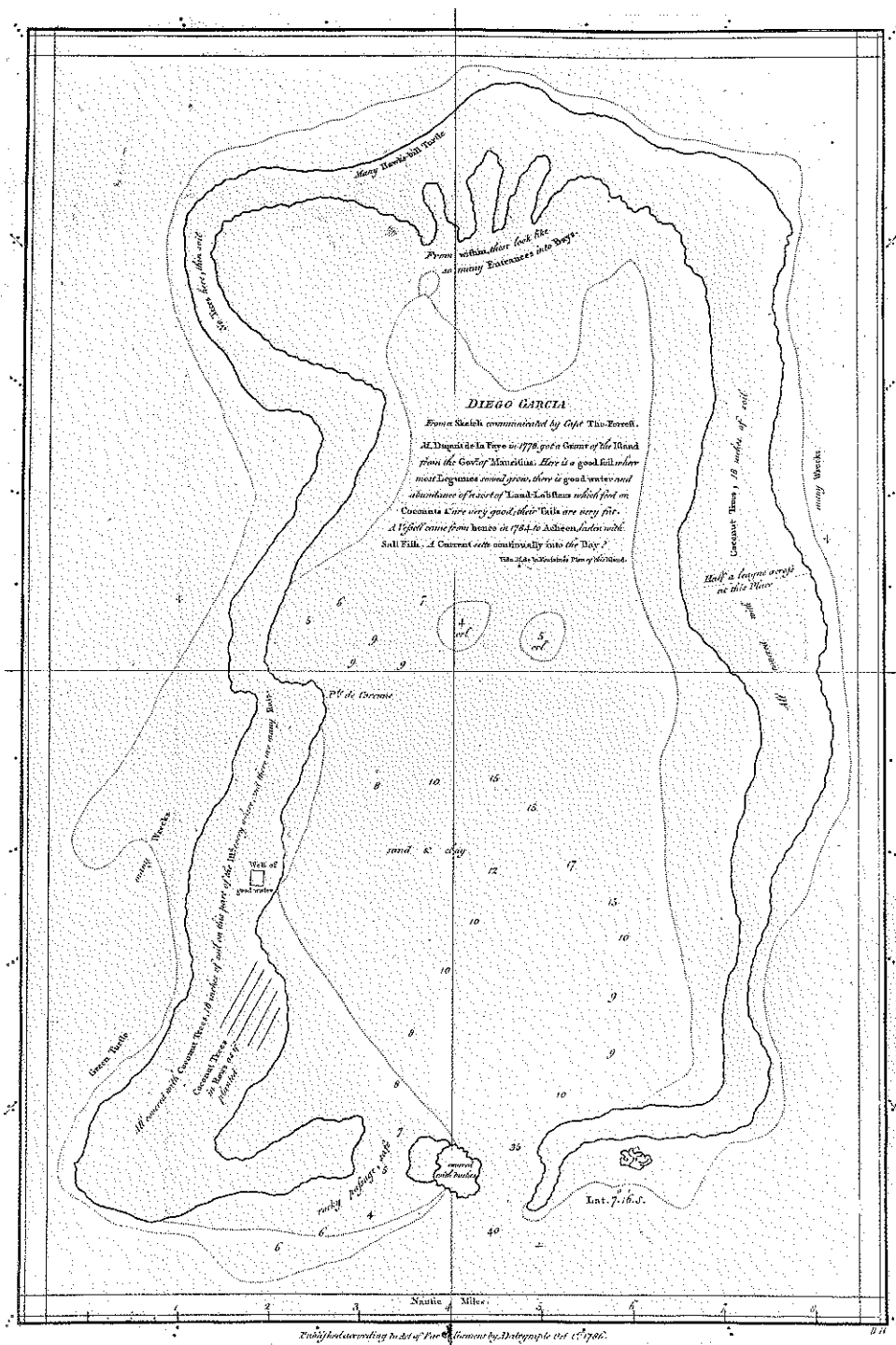
The main difference after final emancipation in 1840, was that the now free labourers made a contract with their new employers in return for wages. Apart from this, life on the islands continued much as before. As Pridham remarked in 1845, 'the slaves on the Chagos Group are now free, that is to say nominally, though perhaps very little change would be found in their condition'.⁷ Unlike in Mauritius, where the abolition of slavery led to the increasing recruitment of indentured labour from India to work the sugar plantations, the workers in the islands had effectively nowhere else to go and no other occupation to turn to.



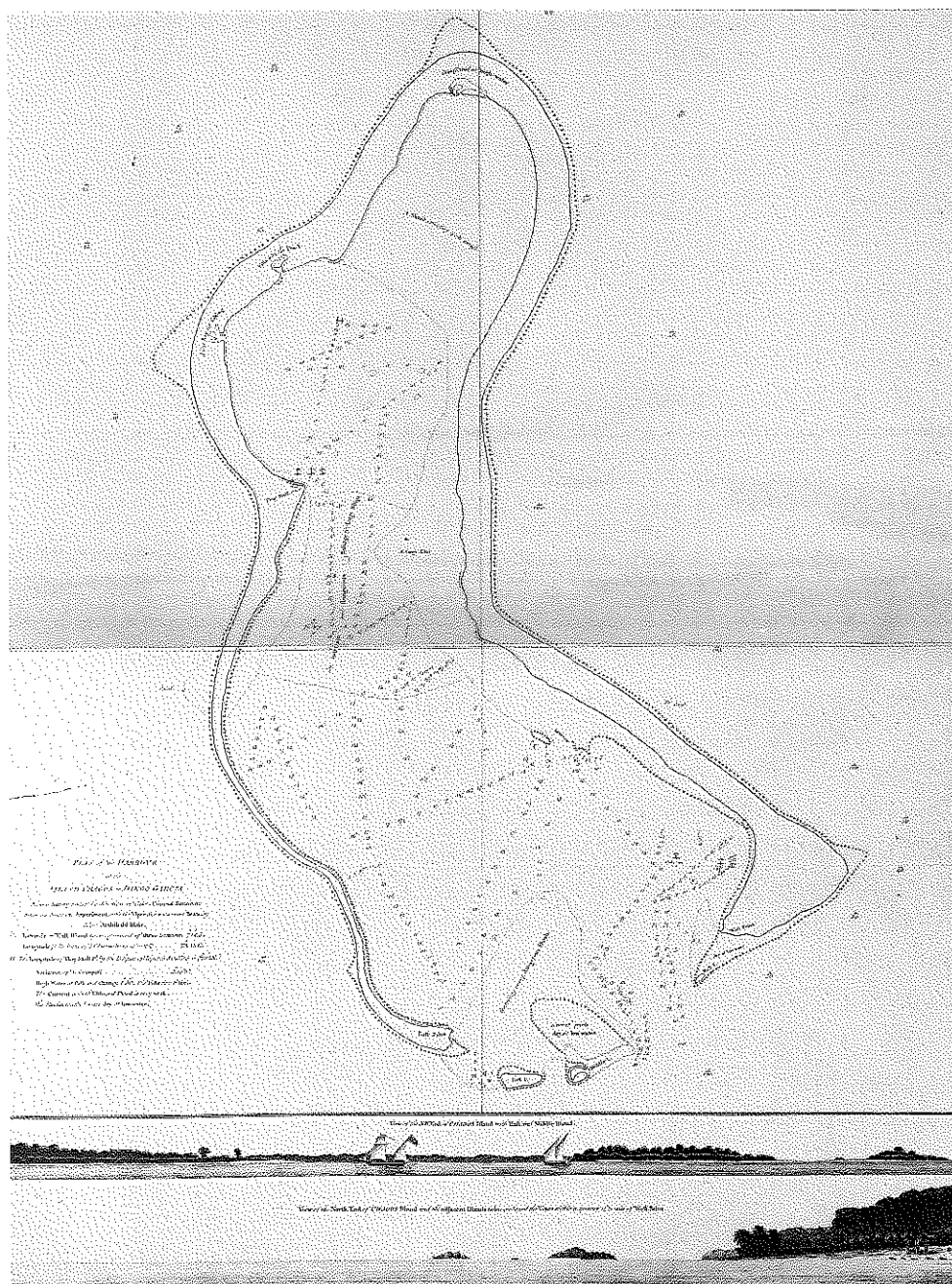
Late eighteenth-century map of the Indian Ocean – ‘Neptune Oriental’
– by Apres de Manneville. (*India Office Collection, British Library*)



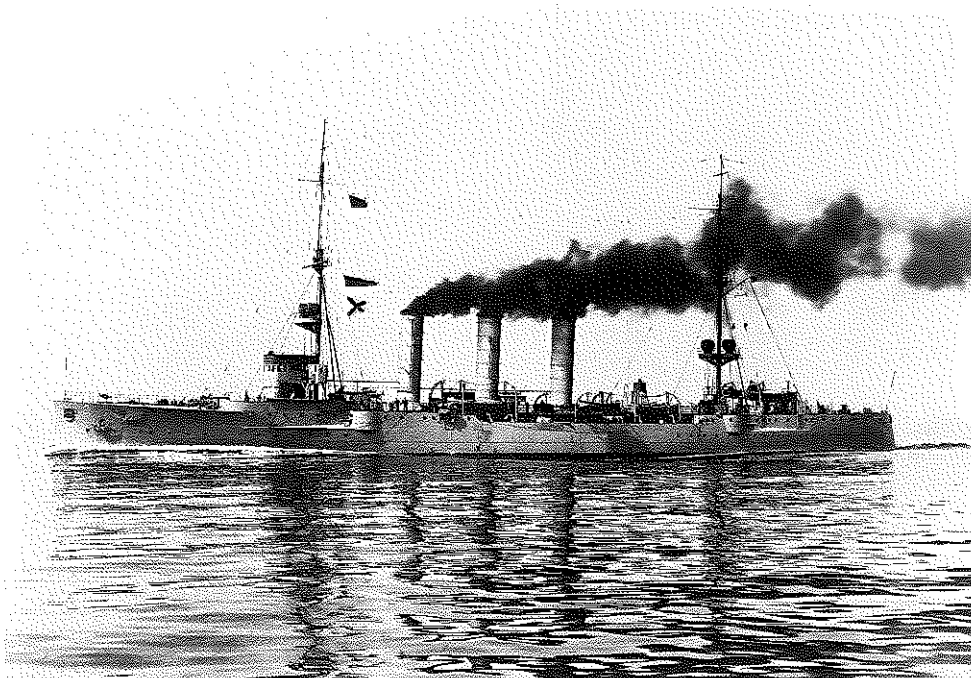
La Fontaine's map of Diego Garcia, published in 1784.
(India Office Collection, British Library)



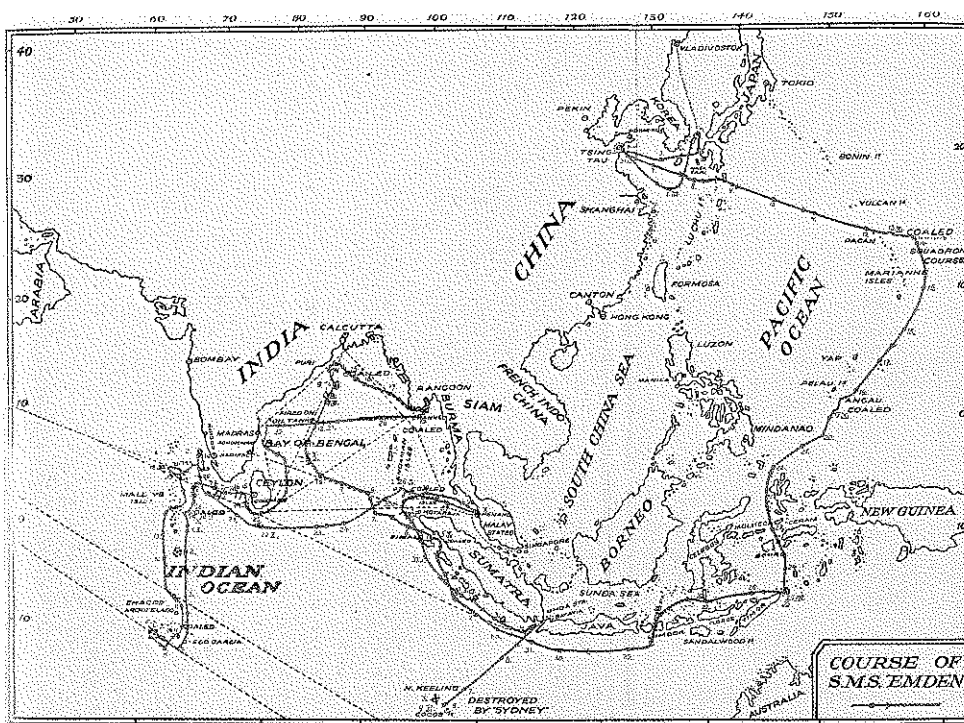
Captain Forrest's map of Diego Garcia, published in 1786.

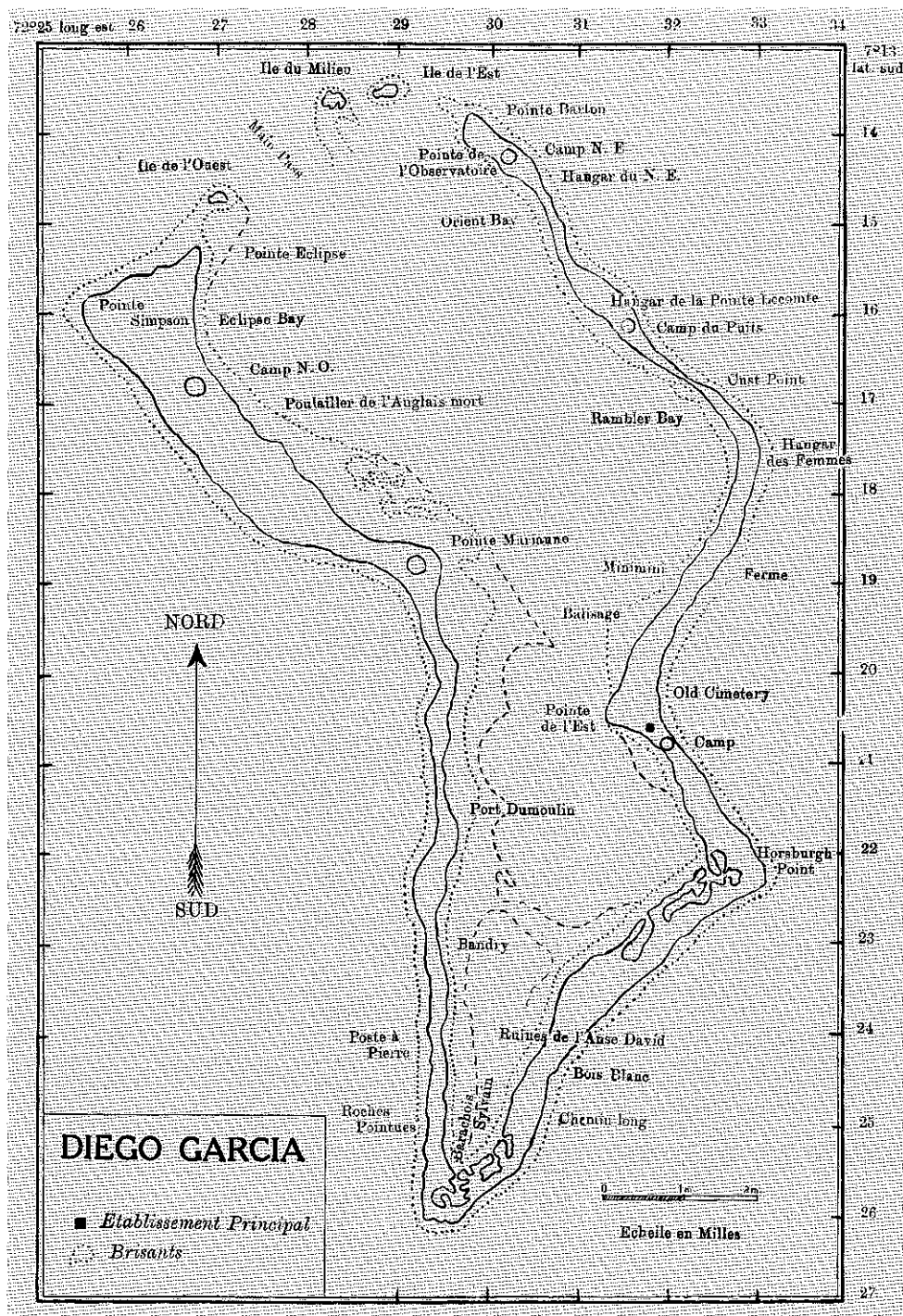


Lieutenant Archibald Blair's map of Diego Garcia, published in 1787.
(India Office Collection, British Library)



The German cruiser SMS *Emden*. (MOD Library)



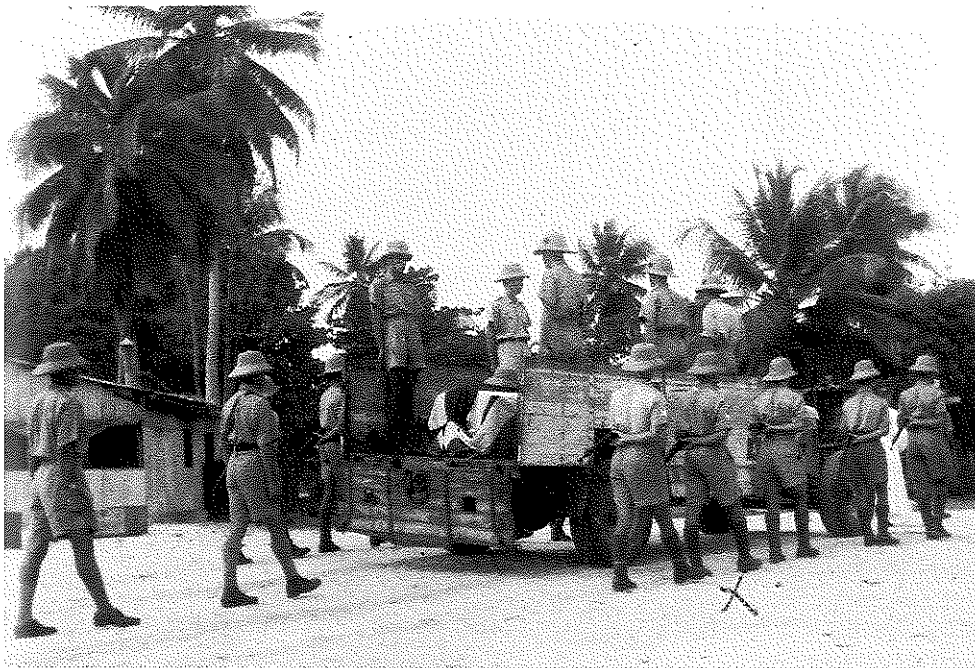


Dussercle's map of Diego Garcia in 1934.

(From Archipel de Chagos: en mission by R. Dussercle)



Father Dussercle (seated left with beard) with British military party on Diego Garcia, 1942. (*Fred Barnett – seated next to Dussercle with dog*)



General view of the Downtown area. *(NSF Fotolab, Diego Garcia)*



BIOT Customs and Immigration officers at the airport. *(NSF Fotolab, Diego Garcia)*



Two flags outside the headquarters building. *(NSF Fotolab, Diego Garcia)*



HRH Prince Edward (in hat) with Commissioner Harris (left) inspecting old oil grinder at East Point, October 1992. *(NSF Fotolab, Diego Garcia)*



VII

The Oil Island

After emancipation had been implemented, direct British intervention in the affairs of the islands was limited for another quarter of a century. Subject to occasional inspections by captains of visiting Royal Navy ships and Special Commissioners, the islands were run effectively as private estates. The owners of the concessions, or *jouissances* in French, which was still the language in general use, were invariably absentees based in Mauritius.

Two significant developments during this period were the change in the system of tenure and the amalgamation of the plantations. From 1865 the holders of the concessions were able to transform them into permanent holdings against payment based on estimates of the amount of oil produced. In 1883 the three separate existing plantations on Diego Garcia at East Point, Minni Minni and Point Marianne were merged into the 'Société Huilière de Diégo et Péros' (the Diego and Peros Oil Company), which continued to run them, along with those in the outer islands, until 1962.

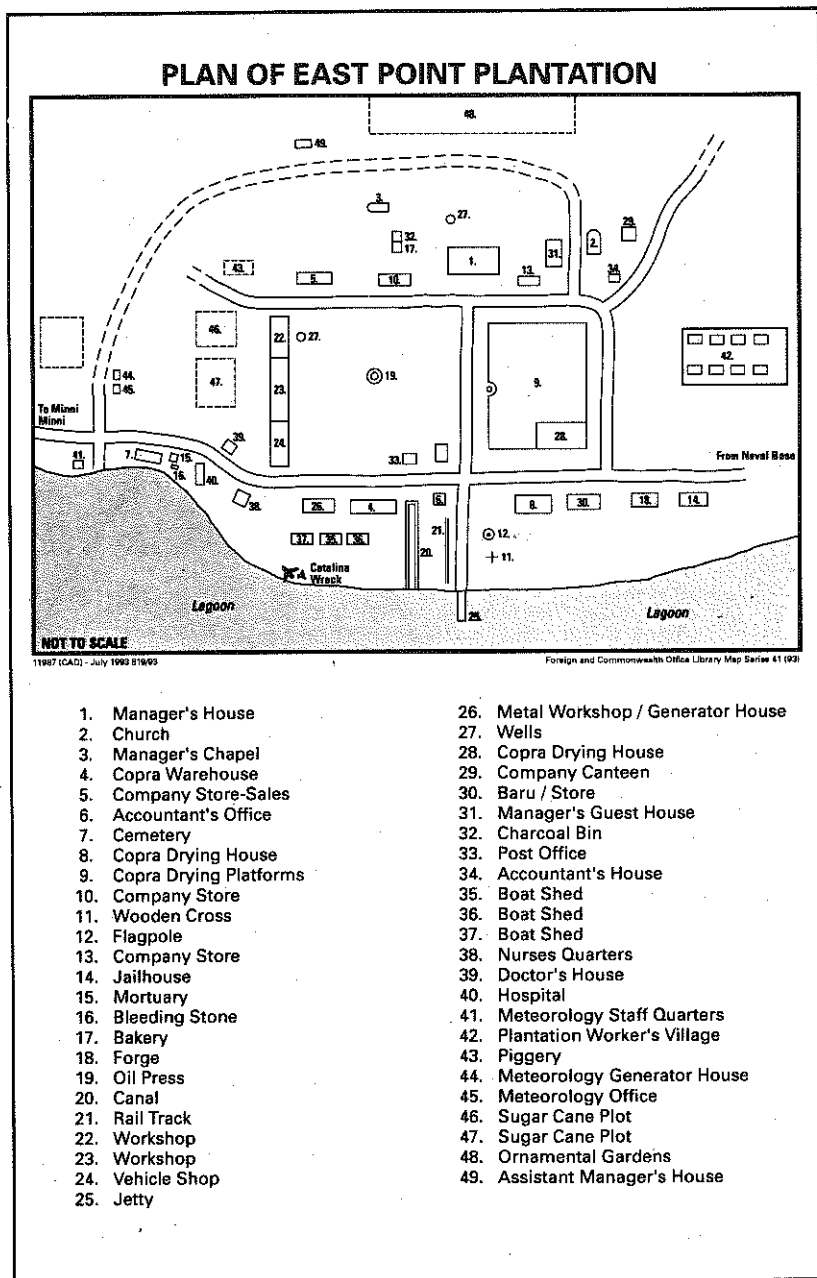
The running of the plantation was in the hands of an *administrateur*, or manager, assisted by a number of under-managers. These were normally whites from Mauritius. Much of the supervision of the labourers recruited from Mauritius,

Madagascar and Mozambique was left to black *commandeurs* or overseers. Occasionally there was an administrator who by his personality and energy stood out from the run of the mill. One such was James Spurs who ran East Point Plantation as a benevolent despot in the 1870s, among other things showing concern for conservation by forbidding the killing of seabirds, turtles and land crabs.

By the lights of the time, and it should be remembered that slavery persisted in the USA until 1864 and in Brazil until 1888, the management seems to have been reasonably enlightened and humane and the life of the labourers tolerable. Typical wages were 40 dollars a month for an under-manager, 10–14 dollars for an overseer, 5 dollars for craftsmen such as blacksmiths, 4 dollars for field-hands and 3 dollars for the women who shelled the coconuts. The workers were expected to put in a couple of hours of voluntary work on Sunday mornings, known as the *corvée*, to clean up the settlement area and tend the animals.

Huts in the 'camp' for accommodation, and basic rations, were provided. Rations consisted typically of 12½ lbs of rice a week, 1lb of salt a month, and 'as gratification' a glass of rum or 'calou' a day 'drunk at the tub as in Her Majesty's Navy.'¹ and an ounce of tobacco a week. Women with babies were entitled to a bottle of coconut oil a week. The labourers supplemented these rations by raising pigs and chickens and by cultivating fruit and vegetables in gardens enclosed to protect them from the depredations of donkeys and crabs. Fish also varied the diet. Such was the abundance of fish that it was said by a visiting official that 'the inhabitants can literally walk into the water and in a few minutes get a supply as would be a banquet for many of a far superior class in Mauritius'.²

There were company shops at each of the plantations, selling basic items such as kettles, pans, hooks and needles and small luxuries such as wine, coffee and eau-de-cologne. There was free, if basic, medical care provided for the treatment of the sick and injured. A stock of medicines was dispensed by a medical attendant whose qualifications seem to



Plan of East Point Plantation

(Charles Borman and Foreign and Commonwealth Office Library)

Appendix No. 9.

List of Prices at which Articles are supplied to Laborers on Minimini-Estate, Diego Garcia, together with the retail prices of the same in Mauritius.

Articles.	Price on Mini- mini Estate.	Price in Mau- ritius.	Remarks.
	\$ \$	\$ \$	
Sugar per lb.	0 12 $\frac{1}{2}$	0 09	
Coffe do.	0 40	0 30	
Biscuits do.	0 15	0 15	
Salt Pork do.	0 03	..	Made on the Island.
Soap per bar of 2 $\frac{1}{4}$ lbs	0 25	..	Do. do.
Wine per bottle	0 25	0 12 $\frac{1}{2}$	
Liqueurs do.	0 50	0 25	
Conjon bleu per piece	4 00	2 00	
Coutil per aune	0 25	0 18	
Paliacats each	0 37 $\frac{1}{2}$	0 15	
Grey Calico per piece	4 00	2 25	
White Calico do.	4 00	2 50	24 yards.
Patna each	1 12 $\frac{1}{2}$	0 75	
Cooured handkerchiefs each	0 25	0 12 $\frac{1}{2}$	
Thread per bobbin	0 04	0 04	100 yards.
Buttons per dozen	0 12 $\frac{1}{2}$	0 04	
Needles do.	0 06	0 03	
Thimbles each	0 12 $\frac{1}{2}$	0 03	
Straw hats (Seychelles) each	1 00	0 50	
Felt hats each	1 50	1 00	
Spoons do.	0 06	0 03	
Forks do.	0 06	0 03	
Plates do.	0 12 $\frac{1}{2}$	0 06	
Common round dishes each	0 40	0 25	
Basins large each	0 25	0 15	
Knives (sailor's) each	0 25	0 12 $\frac{1}{2}$	
Marmittes each	0 37 $\frac{1}{2}$	0 25	
Pagne (Madagascar) each...	0 20	0 12 $\frac{1}{2}$	
Tobacco per stick each	0 12 $\frac{1}{2}$	0 08	
Vermouth per bottle.	1 00	0 50	
Fish Hooks large each.....	0 03	0 01 $\frac{1}{2}$	
Do. small do.	0-02	0 00 $\frac{1}{2}$	
Tin pots each	0 50	0 12 $\frac{1}{2}$	
Tin mugs each	0 25	0 12 $\frac{1}{2}$	
Padlocks	0 50	0 25	
Grease per lb.	0 06	..	Made on the Island.
Graton do.	0 06	..	Do. do.

E. PAKENHAM BROOKS,
Stipendiary Magistrate.

List of articles for sale at Diego Garcia Plantation shop, 1875.

have been rudimentary. The labourers were reported to have a great fondness for the castor oil administered. Generally the state of health of the labourers was good. Even some of the maladies which led to admission to the sick-bays or giving days off work were attributed by the management to malingering and too much strong liquor.

The population of Diego Garcia fluctuated between 350 and 550 during this period, with additional labour being imported as necessary. The birthrate on the islands was low. There remained a great imbalance between the sexes with women rarely constituting more than 20 per cent. Visitors frequently commented on this, attributing 'the sad state of morality prevailing to the inequality of the members of the sexes. Marriage is unknown and all the women appear to live in a state of concubinage.'³

Occasional though they were, the visits to Diego Garcia by British officials, either Special Commissioners such as Commander E. Hardinge of HMS *Persian* or, from 1864, by District Magistrates, such as J. H. Ackroyd and E. Pakenham Brooks, were not perfunctory efforts. Their standard directive from the Governor of Mauritius was threefold: to ensure that no one had been brought to the island against his or her own will, that no one was being kept there against his or her will, and that no one was being treated with cruelty or oppression or illegally detained. They probed with surprising intrusiveness into the island's affairs and their painstaking reports give fascinating glimpses of life on the island. They clearly saw it as their duty to guard against tyrannous behaviour on behalf of the management, which could all too easily have sprung up. They were not slow to upbraid and punish any such manifestations. Pakenham Brooks, who paid a visit as Special Magistrate in 1875, handed out sizable fines both to an under-manager at Point Marianne for striking a labourer and to James Spurs, the Manager at East Point, for unjustifiably imprisoning three labourers without sufficient cause. The management at Point Marianne and Minni Minni were also instructed to provide sick-bays for their workforce. Prices and weights and measures in the Company's shops were

44 *Peak of Limuria*

carefully checked and the labourers' accommodation, the hospital and the jail measured to ensure that they fulfilled minimum specifications.

The labourers were not slow in coming forward with complaints against their employers which mainly related to rations and hours of work. This was not always to their advantage. In one case, a labourer was fined for bringing a frivolous and unfounded complaint. There were also disputes between the labourers to adjudicate, usually relating to petty thefts and assaults but occasionally involving suicide and murder. Pakenham Brooks had to investigate one such 'atrocious crime' committed by Janvier, a 'Malagash', that is, a native of Madagascar, who apparently acted as some sort of voodoo doctor. According to the allegations he had 'bewitched' a pregnant woman called Laure, and in presiding at her delivery succeeded not only in killing the unfortunate woman but her twin babies as well. Pakenham Brooks went so far as to exhume the body but the state of decomposition was too advanced. The accused and witnesses were sent to Port Louis for the trial, where it is interesting to note that the Magistrate found Janvier not guilty.

Various attempts were made in the mid-nineteenth century to diversify the economy by introducing new crops and livestock. Maize or Indian corn, cotton, tobacco and citrus trees were tried and found to grow well. Captain Robert Moresby of the Indian Navy had planted breadfruit trees from Ceylon in 1837, which still survive at East Point. His survey of Diego Garcia incidentally produced charts which remained in use for a century and led to the naming of two promontories on the island after two of his officers, Lieutenants Simpson and Cust. Cattle, goats and sheep were also brought in for a while. Donkeys, introduced to drive the copra-grinding mills, became a permanent feature of the island from the 1840s. However, none of the agricultural experiments was pursued, probably because the well-established exploitation of the coconut, which now began to be cultivated systematically, continued to provide a steady and reliable income. In 1864, for revenue purposes, the estate at East Point was assessed as

producing 51,000 gallons of coconut oil, Point Marianne 30,000 gallons, and Minni Minni 18,000 gallons.

Gilbert Bourne, who visited Diego Garcia a few years later under the auspices of the Royal Geographical Society, gave a comprehensive account of the process of extracting the oil:

Each palm will bear an abundance of coconuts for four or five years in succession, after which it remains comparatively unfruitful for another three years or more. The nuts when ripe fall on the ground, whence they are gathered by parties of men sent out in boats for the purpose. The daily task of each labourer is to collect, husk and deliver at the habitation 350 coconuts per diem. This is performed in a surprisingly short space of time when the nuts have not to be carried far by boat. Each party of men is in charge of a commander or sarang, who measures out a piece of ground on which each labourer is to work. The labourer collects the required number of coconuts into a heap, and then sticking a short broad-bladed spear into the ground, he takes each coconut, spits it upon the spear, and in a couple of wrenches has stripped off the husk and thrown the nut on one side.

On their arrival at the habitation the nuts are counted on the beach, and delivered to the women whose duty it is to break them and extract the kernel. The daily task of each woman is to break 1300 coconuts in the day, but I am told that they are able to break as many as 2500 in ten hours. The kernels, which are now known as copra, are then exposed to the sun in heaps, to allow an incipient fermentation setting in, but are carefully protected from the rain by a sort of pent-house on wheels, which can be run over the heaps at a minute's notice. After an exposure of two or three days, 250lbs of copra are delivered to each mill, this being the amount which each mill-labourer is required to grind daily; from it about 30 gallons of oil are produced. The mills used are of a most primitive pattern. The body of the mill is a hollow

cylinder of hard wood, in which an upright beam of the same material is made to rotate, the motive power being supplied by three or four donkeys harnessed to a long horizontal beam, which is connected to the upright by a chain, and is weighted at the far end by two or three large lumps of coral. The copra is put in at the top of the cylinder, and the oil escapes by a hole at the bottom. The oil is merely strained through cloths and allowed to settle for a few days, after which it is run off into large vats, and is ready to be collected in casks and shipped for export. All the oil is exported to Mauritius by the oil company's ship, which calls three times a year at Diego Garcia.⁴

So well known were the Chagos for their principal product that they became known as the 'Oil Islands'. The middle of the century must have been a prosperous one for the coconut oil industry. Several of the most substantial buildings surviving in the East Point Plantation have the date 1864 inscribed on them. At that time on the other side of the world, the American Civil War was raging.

VIII

The Coaling Station Interlude

The 1880s saw an intrusion of the outside world into Diego Garcia unparalleled until the establishment of the permanent naval facilities in the 1970s. The introduction of steam ships, which increasingly replaced the old sailing ships from the 1860s, gave rise to the need to establish strategically placed coaling stations along their routes. The newly constructed Suez Canal opened in 1869. For the routes to Australia and the Far East, Diego Garcia in the centre of the Indian Ocean seemed ideally situated. As Lionel Cox, Acting Procurator-General of Mauritius, noted:

the advantages of Diego Garcia as a coaling station are now evidently well recognised . . . There is little doubt that situated as this is on the straight line between the entrance to the Red Sea and Cape Leeuwin (on the South west Coast of Australia), and possessing a good harbour, it will become more and more important.¹

In 1882 the Orient and Pacific Steam Navigation Company relocated its coaling station for the Australia run from Aden to Diego Garcia. Messrs Lund and Company also established itself. Traffic built up and by the second half of 1883 there

were coaling visits by 34 large steamers as well as by two Royal Navy warships. Lund and Company, whose agent was George Worsell, kept its coal on hulks off East Point and ashore there. The coal was sold for £2 10 shillings a ton and was hauled by labourers hired from the plantation.

The Orient Company appointed James Spurs, the former manager of East Point, as its permanent agent. He, with characteristic energy, set about bringing in the latest technology for its operations. The Company's coal was kept mostly on hulks, initially off Minni Minni and later in the lee of Barton Point, accounting for the name Orient Bay, but some also on shore at East Point. To transfer the coal to the visiting ships 12 iron lighters were brought in sections and assembled on the spot by artisans from Greece and England. A 35 horse-power tug was used to pull the lighters and the coal was hoisted into the ship by special steam appliances. Spurs based himself on East Island and his work force on Middle Island which was leased to the Orient Company. The remains of the buildings, wells and some of the equipment can still be seen on these islands. The latter included 'a large condensing apparatus which will furnish a sufficient supply of wholesome distilled, filtered and aerated water for the use of the manager and labourers.'²

The need for safe navigation of the lagoon by ships calling to coal led to the carrying out of an accurate and detailed survey in 1885 by Captain the Honourable E. P. Vereker, in HMS *Rambler*, after which the bay north of Minni Minni is named. There was also a plan to place lighthouses at Horsburgh Point and West Island. This was never implemented, though temporary lights on posts were rigged up.

Labour proved a problem. Initially 40 Somalis were brought from Port Said but they proved unreliable and troublesome, and were sent back. They were replaced by labour from Mauritius who did not prove entirely satisfactory either, and there was an abortive project to recruit Chinese instead. Imported labour seems to have been behind a near insurrection in 1883 described by Bourne when the residence of the manager at East Point, Mr Leconte, was besieged by a

mob of about 30 men armed with knives and clubs who threatened his life.

Luckily for him they were as cowardly as they were insolent, and he was able to keep them at bay by presenting a revolver, until he had succeeded in reducing them to a more reasonable state of mind.³

The crews and passengers of the visiting ships, carrying such diverse elements as migrants to Australia and Moslem Javanese pilgrims on their way to Mecca, also contributed to the Wild West atmosphere on Diego Garcia in the 1880s. Those on board the ships were not meant to disembark, for quarantine reasons, but this instruction was often ignored, causing havoc ashore. In February 1884 for example, Captain Raymond of the *Windsor Castle*, while in a drunken fit

landed at East Point with 16 men with loaded guns; had the Union Jack hoisted on the top of a tree in front of the manager's house; paraded his men; had a volley fired at the house (fortunately unoccupied), patrolled about, informed the manager that he had taken possession of the island in the name of the British Government and appointed the Manager Mr Leconte in writing as Lieutenant Governor.⁴

The plantation workers too became infected with the general air of indiscipline. They were induced on board the ships and administered strong drink. There were attempts to desert, some of them successful. Two labourers stowed away on an Orient Company steamer and got as far as Port Said in Egypt.

Visiting British officials noted the deterioration in law and order with concern and were not themselves immune from its manifestations. The memorably named Mr Ivanoff Dupont was exasperated by the lack of respect shown him by the labourers of the Orient Company on Middle Island but, especially as some of those concerned were said to be armed,

decided that discretion was the better part of valour. He reported somewhat plaintively:

the attitude of these men was impertinent and provoking to the extreme, and they would have met with severe punishment had I the means of enforcing my judgement. But I had not the assistance of policemen, which I would have asked for before leaving Mauritius had I known the state of insubordination in which I found some of the labourers of the Orient Company, and I considered it wiser to let them go unpunished.⁵

As a result of Dupont's report, the authorities in Mauritius concluded there was a need for an officer stationed in Diego Garcia 'who will make all, high or low, feel that they are living under the authority of the Queen and that differences are not to be adjusted by means of sticks and knives and revolvers'.⁶ In response to the unprecedented threats to law and order it was decided in 1885 to set up a police post at Minni Minni at the surprisingly large contemporary cost of £1000 and with a sizable complement of an inspector, a Mr V. A. Butler, sergeant and six constables. The inspector's request for a steam launch was however turned down by the Colonial Secretary on the grounds of expense. Indeed the cost of the police operation and the disinclination of the Imperial Government, the authorities in Mauritius and the companies operating in the island to pay for it led to the withdrawal of the police presence in 1888. Although Special Constables were appointed as needed, it was not until 1973 that regular British policemen were reintroduced to Diego Garcia.

In any case, the use of the island as a coaling station did not last beyond the end of the decade. The introduction of larger ships with a longer range rendered the use of Diego Garcia superfluous. In 1888 a visiting official, Mr A. Bouchérat, reported that:

it does not seem at all certain that Lund's coaling com-

pany will continue its operations at Diego Garcia. The Orient Company no longer have their coaling station on East Island. The Agent has left for Colombo, having sold the greater part of the stock.⁷

What happened to any remains of the coal stocks is unclear. Perhaps some of it litters the floor of the lagoon.

After this shortlived brush with the developing modern world, the island returned to its sleepy existence as a plantation economy. Developments of local importance included the erection of a chapel at East Point in 1895, and the building of a light railway, whose remains can still be seen, to carry produce to the new jetty. More significantly, in the early 1900s coconut oil gave way to copra as the main product. This was partly because oil was falling into disuse as a means of lighting and partly because of the introduction of new and more efficient techniques to dry copra using a combination of solar power and furnaces fed by husks of coconuts.

X

Partir C'est Mourir un Peu: Life Between the Wars

In the 1930s and early 1940s a French Roman Catholic priest Father Roger Dussercle, a native of Normandy, paid a number of visits to the Chagos which he described in several books which he had published at his own expense in Mauritius. Photographs taken by a British soldier Sergeant Barnett during the Second World War show Dussercle as bluff, well-built, with a black bushy beard and sporting a pith-helmet. He was sent by the Archbishop Leen of Port Louis to minister to, as the Archbishop put it, 'those poor souls who have till now been more or less abandoned'. Writing in 1846, Pridham had described the spiritual state of the inhabitants as follows: 'there exists no means of instruction among these poor people, either religious or secular; they had scarcely an idea of a Supreme Being.'¹ Other nineteenth-century visitors frequently made similar observations. Forty years after Pridham, Bourne observed: 'no priest is resident on the island, nor is there any arrangement for religious or

other education.² As Pridham had commented, 'Here then is a field, however small or obscure, for some missionary.'³

Previous pastoral visits to the islands seem to have been few and far between before Dussercle's mission. The first recorded is by the intrepid Bishop Vincent, the Anglican Bishop of Mauritius, who made the difficult voyage to the Chagos in 1859. He found there 'a good proportion of Protestants', including some who could repeat the Lord's Prayer and the Creed in English, and he carried out several baptisms. The Bishop thought the islands 'a most promising field of labour'.⁴ There were at least two visits by Roman Catholic priests in 1875 and 1884. It is doubtful whether the nuances of denominations made much sense to the islanders, although one of Dussercle's aims was to eliminate Protestantism from the island, a goal foiled by the stubbornness of one particular woman who resisted all his blandishments to convert.

Setting sail from Port Louis in the 380-ton three-masted barque the *Diego* in November 1933, Father Dussercle took 15 days to reach the islands. His arrival, as he stepped ashore from the motor boat *Marshal Foch*, caused, like all visits from the outside, a great stir. He found a community and a way of life in many respects little changed from earlier accounts written in the nineteenth century. About 60 per cent of the population were now 'children of the islands' or *Ilois*, who had been born and bred there. They wore a 'national dress' of striped material, patterned like that of mattress covers, and spoke a Creole similar to that of Mauritius. Dussercle describes them as like big children, simple and amenable. Their diet consisted of rice, pork, chicken and fish, with wine and tobacco as simple luxuries. With all their immediate needs taken care of, they were, according to Dussercle, 'the happiest people in the world from the material point of view'.⁵

Dussercle described his pastoral duties in lyrical terms. He took the children through their catechism under the shade of a giant takamaka tree at Point Marianne, and on the beach at East Point in order to catch the breeze. He administered

First Communion to young and old confirmants. He celebrated Christmas midnight mass under the stars at an altar decorated with palm fronds and garlands of flowers which was set up near the jetty at East Point. Rich, strong island voices sang familiar carols such as 'Come all ye faithful' and 'Midnight, Christians'. Dussercle preached good sermons in Creole, drawing on his deep familiarity with the islanders' language and folk stories. He warned of the danger of death which came suddenly 'like a thief at the gate', or like 'brother hare', and which, if not prepared for, could lead to an eternity in hell, stewing in hot spice and salt. After the service the entire island population processed round the settlement from lagoon-side to ocean-side.

However, there were what Dussercle regarded as persistent moral problems, especially a deplorable tendency for couples to live together without benefit of formal marriage. The local description of this practice was to be 'married from behind the kitchen'. Dussercle said that in that case these were the 'Devil's kitchens'. He spent much of his visits to the island trying to persuade couples to regularise their situations but with only limited success. It may be that the women, who were still in a minority, found it an advantage not to be bound to one man. Apart from this, it was, as before, the labour recruited from outside who were seen by Dussercle as a disruptive influence, possibly because they were less inclined to accept the paternalistic system run by the Oil Company.

As before, copra was exported three or four times a year to Mauritius for processing. But some coconut oil was still produced for local use by primitive mills driven by donkey-power. Although some people lived at Point Marianne and Minni Minni, all copra processing had been concentrated at East Point. The set-up at East Point was typical of the other 'Oil Islands', with a manager's residence or *château*, a chapel, which was built in its present form during this period after the existing one was flattened by a tree in a storm in October 1932, a shop, copra drying sheds, an oil mill, boatsheds, a sail-maker's shed, a workshop, hospital and jail. All these

buildings can still be seen at the East Point Plantation site. The Manager's private chapel behind the Plantation House was reconsecrated by Dussercle in 1933, as a stone set in the wall proclaims. The jail contained four cells. During Dussercle's second visit, three of these were occupied by two men, who had killed a donkey to use its skin for a drum, and a young woman who had been cheeky to a supervisor.

A typical labourer's hut was divided into rooms by partitions made of coconut fronds. In the sleeping quarters were straw mattresses, raised above the ground on short stilts. Tattered clothes were scattered on the floor or hung up by strings. The living room was plastered with picture postcards and greeting cards, often with representations of couples in amorous poses. On cheap shelves were knick-knacks, decorative plates and occasionally a cheap and scratchy gramophone. Finally, there were drums for use in dancing, which was presumably what the inhabitants of the jail had in mind for the wretched donkey's skin.

Sports days and picnics were part of island life when it came to holidays and other celebrations. Dussercle records a Christmas afternoon of donkey races, sack races, bobbing for pieces of bread on strings, tug of war and swimming competitions. Dances were also held to the music of accordions, mouth organs and a sort of one-stringed harp. A dance which gave Dussercle particularly grave cause for concern was that typical of the islands, the *Séga*. No doubt because of the Mozambican origin of many of the islanders, this dance seems to have come from central Mozambique, where a similar dance exists to this day.⁶ It was regarded by Dussercle and other European visitors as a throwback to African roots and too wild and abandoned for civilized tastes, accompanied by wild drumming, stamping of feet and suggestive movements as well as generous infusions of rum. The dance, held around a fire on a beach or in a clearing, went on for several hours and became increasingly frenzied and reportedly often ended in fornication. The islanders were very attached to the dance. An attempt by a manager in the Salomons to ban *Séga*

in 1937 led to an insurrection. A more decorous version of the dance is still performed in Mauritius.

The *Séga* was not the only African survival which caused Dussercle concern. Distinctly non-Christian death ceremonies, intended to ensure that the ghost would not haunt the living, continued to be practised. Reports of these had cropped up before. In October 1886 a certain Louis Fidèle had been imprisoned for 'practising witchcraft in the Cemetery'. Dussercle described these practices as 'savage, barbarous and often bestial . . . such as one would only expect to find in the middle of Africa'. According to him the rites, which went on for eight days after the death, involved 'orgies, disgusting talk, witchcraft, casting spells, hellish invocations, devilish incantations, lascivious dancing, immoral getups, frenetic leaping off coconut trees on to the roofs of huts, and all accompanied by revolting acts committed on the corpse'.⁶ Having given this lurid description Dussercle said that he was not prepared to give more detail in order not to shock normal sensibilities!

Dussercle made the Chagos his special field of labour and, despite suffering shipwreck with the *Diego* on Eagle Island in June 1935, continued to serve the inhabitants of Diego Garcia through periodic visits up to and during the Second World War. He also ministered to the military garrison stationed on Diego Garcia during the war and presided at the funerals of those soldiers who are buried at Point Marianne cemetery.

Dussercle loved the islands and their people. As he quoted on his departure, 'Partir c'est mourir un peu' (to leave is to die a little).⁷ Many have felt the same on leaving Diego for the last time.

XII

The End of an Era

Sources of information about Diego Garcia become more vivid during the period between the end of the Second World War and the final closure of the plantations in 1971. In addition to written accounts, there are now numerous photographs and even a colour movie film. As a result we can form a clear view of life on the island as the plantation era drew to a close. Obviously the pattern of life had still changed little since the nineteenth century, an amazing and perhaps unique survival of 'Gone with the Wind' plantation life.

Sir Robert Scott was Governor of Mauritius and visited Diego Garcia as part of a wider tour of inspection of the 'Oil Islands' in October 1955. What might have been simply a routine chore by a senior Colonial Office official produced a minor literary masterpiece. Scott was clearly enchanted by the islands and some years later transformed the diary he had kept and the observations he had jotted down into *Limuria*, a masterly and beautifully written survey of their history and their then state.

Scott arrived at Diego Garcia in the corvette HMS *Killisport*. East Point Plantation was at the peak of its development, set in a crescent of lawns and flowering shrubs. Scott described

East Point as having 'the look of a French coastal village, miraculously transferred whole to this shore',¹ with the manager's *château*, the chapel, white-washed buildings, thatched cottages and even lamp-standards all grouped around a village green. A substantial portion of the then 680 population of the island turned out on the pier to welcome him, waving Union Jacks and creating a fête-like atmosphere. The visit of the Governor was a major event.

According to Scott, for every human being there was at least a score of other creatures, chickens, ducks, dogs, cats, donkeys, horses, pigs. And for each creature there were thousands of flies, which could blanket a horse to the extent of transforming it into a piebald. The smell of drying copra was everywhere. As Scott observed:

the principal characteristic of Diego Garcia is a prodigal fecundity, with the useful forms of life continually under pressure from the useless. The vegetation thrusts, sprawls, creeps, intertwines and shoots upward and sideways.²

(This vegetable vigour is the bane of efforts currently under way to preserve the East Point Plantation in a recognisable form.) Among the trees acrobatic rats disported themselves like squirrels.

In Scott's day, there was a motorable track both up to Barton Point and round the bottom of the island. There were a number of hamlets scattered around both arms of the island with now forgotten names and even locations. To the north of Minni Minni were Balisage, Camp du Puits and North East Camp; between East Point and Point Marianne lay Barchois, Roches Pointes, and Port Dumoulin; and to the north of Point Marianne, Noroit. Scott describes the islanders as dour and hard-headed compared with those of the other 'Oil Islands'. Like their present-day successors in Diego Garcia, they played soccer with an obvious and noisy consciousness that the match was for real and in earnest.

There had been some diversification of production on the

island. Dried fish, and timber from the large hardwood trees such as the takamaka, were exported. And from the mid-1950s guano for fertiliser was dug at the north-west end of the island, carted to the shore by tractors, and loaded on to a ship by barge. Maize, or Indian corn, was also grown on quite a large scale.

But exploitation of the coconut continued to provide the staple crop. Seven thousand nuts were needed to produce 1 ton of copra which in turn produced 11 hundredweight of crude oil. The film referred to above was made by the Colonial Film Unit, probably during Scott's visit. In scenes remarkably reminiscent of Bourne's account a century before, it shows in colour what was essentially an eighteenth- and nineteenth-century plantation society functioning in the middle of the twentieth century. The labourers are seen collecting fallen coconuts which they speared with cutlasses and tossed with great skill and rapidity into large baskets carried on their heads. As in Bourne's day the coconuts were then husked among the coconut groves on a stake-like device stuck in the ground. From there the nuts were taken by donkey and horsedrawn carts to East Point where women were waiting to break them into pieces with pestles and then, with the help of children, to chop them into even smaller bits. These were then spread out to dry on large concrete beds which, in the event of rain, could be covered in a matter of moments by corrugated-iron shelters on wheels. Finally, the copra was dried in hot-air chambers heated from below by burning coconut husks. Most of the dried copra was then exported by boat to Mauritius for the extraction of oil for cooking and soap. However, a small amount of oil for local needs was produced on the spot in a primitive mill composed of a beam in a large metal drum propelled by donkey power. These mills can still be seen at East Point. What was left over after the oil had been extracted was known as 'poonac' and was fed to pigs and poultry.

The same film also shows a weather balloon being released at the meteorological station at East Point, still a key element in particular for cyclone forecasting in that pre-satellite age.

The film gives a glimpse of the range of physical types among the islanders, from African to Malagasy to Creole, as they went about their work, propelling punt-like craft in the lagoon with long poles, and hanging up octopuses to dry to provide a culinary feast.

Neither the islanders nor indeed Scott could have had any inkling that the plantation era was soon to end, although his book contains some prophetic remarks about the artificial nature of the small society on Diego Garcia and the uncertainty of its long-term viability. The imbalance in sexes, with women in a distinct minority, and a low birth-rate characteristic of marginal populations, persisted. The drift away from the island to the bright lights and wider prospects of Mauritius was quickening. The population fell by 50 per cent between 1952 and 1962. As a result, labour to help work the plantations had to be imported from the Seychelles. By the mid-1960s imported labour outnumbered those born in Diego Garcia by two to one. Previously in the history of the Chagos Group, other islands had been abandoned as a result of commercial decisions; Three Brothers in the 1850s and the Egmonts and Eagle Island as recently as the 1930s. The events soon to take place on Diego Garcia were therefore by no means unprecedented.

Dependent on a single major staple crop, the plantation economy on Diego Garcia was in any case vulnerable and its future doubtful. By the early 1960s, the copra industry was in serious decline world-wide. As Scott put it:

a population was drafted to the lesser Dependencies in the first place because there was work for it there. It moved from group to group as opportunities for paid work expanded and contracted. It was not a natural island society, and even today [1960], it shows little inclination to exploit the natural bounties of the island.³

Certainly no community could have survived the closure of the plantations. So even had the outside world not again projected itself into the islands, the long-term continuance

of the way of life there must have been in doubt. History sadly shows a catalogue of such evacuations elsewhere in the world; St Kilda in the North Atlantic off the Scottish coast for example, and perhaps eventually Pitcairn in the Pacific.

Annex 137

J. Addison & K. Hazareesingh, *A New History of Mauritius* (1993)

J. ADDISON & K. HAZAREESINGH

A NEW HISTORY OF MAURITIUS

Revised Edition



EDITIONS DE L'OCEAN INDIEN

A NEW HISTORY OF MAURITIUS

**John ADDISON
and
K. HAZAREESINGH**

Revised Edition

EDITIONS DE L'OCEAN INDIEN

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CHAPTER 1

Introduction: geographical background and early exploration

Mauritius is a predominantly green island with a considerable area of rocky volcanic mountains. These run roughly from north-east to south-west and rise to a height of well over 2000 feet in the south. Some of the sharply rising peaks look much higher than this and the land in their vicinity is so steep and rocky that neither crops nor any other vegetation will grow there. The lower slopes of the mountains are covered with forests and grassland. Most of the rest of the island, nearly 40 per cent of its area, is today covered with sugar cane fields which give it its dominant soft green colour. The soil is fertile and water supplies are good; but over the years vast quantities of rocks and boulders have been moved to make way for sugar cultivation. Mauritius possesses almost nothing of value in the way of natural resources or raw materials. It lies in the path of destructive cyclones which periodically cause widespread devastation to crops and property.

Those who have visited the island over the years have often depicted it in glowing and idyllic terms. In 1629 Thomas Herbert, an English writer and one of the first Englishmen to visit Mauritius, described it as 'an island paradise', a phrase used today in many tourist advertisements. In the nineteenth century the American author Mark Twain once said that God made Mauritius first and then modelled Heaven on the island. The fact that it took so long for men and women to settle there in any significant numbers, however, suggests that it was more difficult to live there permanently than to pay a short visit as an early 'tourist' or member of a visiting ship's crew.

Today Mauritius is one of the world's most densely populated countries and its population is one of the world's most culturally mixed. Yet the island had no indigenous people and it is less than 400 years since the first of its inhabitants settled there. It is very isolated: 500 miles

from Madagascar, over 1000 miles from the nearest point on the East African coast and 2000 miles from India. It is this isolation which partly explains why it remained uninhabited for so long.

The first people to attempt to settle in Mauritius were the Dutch in the seventeenth century. The history of Mauritius effectively begins with these Dutch settlers of the seventeenth century. Long before that date, nearly a thousand years before the birth of Christ, it is possible that Phoenician sailors, setting out from what is today the Gulf of Aqaba, may have sailed into the southern parts of the Indian Ocean and visited Mauritius. If they did, however, we have no records to confirm it. In the fourth and fifth centuries A.D. Polynesians may have visited the island in their canoes on their way to settle in Madagascar. Again, however, there is no proof that they did so.

Arab traders

It is necessary to move on to the end of the first millennium A.D. before we have reliable evidence that traders were active in the vicinity of Mauritius. Arab merchants certainly began trading with the East African coast as far south as Mozambique and the Comoro Islands well before 1000 A.D. By mingling with African peoples on that coast they built up a new culture and civilisation known as the Swahili culture. This was the product of the mixing of Arab and African people, their languages and their ways of life.

Arab and Swahili traders visited the Comoro Islands and Madagascar and from the evidence of early maps they also seem to have visited the Seychelles and the Mascarenes. These two groups of islands are marked on medieval Arab maps. Rodrigues is called Dina arabi, Mauritius is Dina mozare and Réunion is Dina margabim. None of these people attempted to settle on any of these islands. They were first



An Arab dhow

and foremost traders and since the islands were all uninhabited, there were no possibilities for trading. Moreover it was dangerous for the Arab and Swahili sailors to venture regularly as far into the Indian Ocean as the Mascarene islands in their small ships, the triangular-sailed 'dhows' or 'sambouks'.

Eventually the Arabs controlled a rich trading empire stretching in a great arc around the shores of the Indian Ocean, from the East African coast to Indonesia via Arabia, Persia, India and Malaysia. In carrying on their trade with this empire they kept as close as possible to the main coastline, though they were aware of, and used, the steady seasonal monsoon winds for voyages across the Indian Ocean.

It was the desire of Christian Europe, for a combination of reasons, to attack and eventually take over this Muslim trading empire that led the European powers for the first time into the Indian Ocean. For the first Europeans, the Portuguese, it was, partly at least, a religious crusading spirit which lay behind their voyages of exploration and conquest in the fifteenth and sixteenth centuries. The most powerful motive, however, which drove others

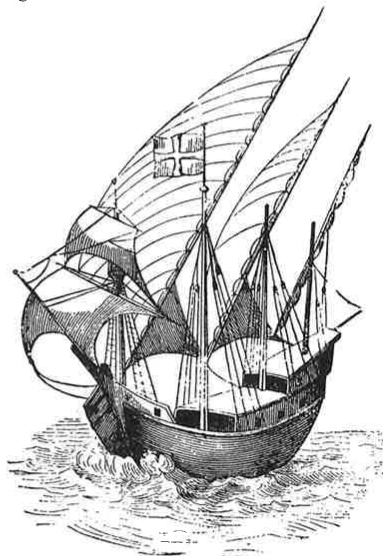
to follow, was the prospect of profit from the valuable trade of the area.

Portuguese exploration and trade

In 1498 the Portuguese explorer Vasco da Gama rounded the Cape of Good Hope and entered the Indian Ocean. He called at some of the Arab-Swahili cities as he sailed northwards up the East African coast and from Malindi an Arab pilot showed him the way to Goa in India. In the next few years other Portuguese expeditions followed. The East African cities from Sofala, in modern Mozambique, to Mogadishu, near the Horn of Africa in modern Somalia, were taken over, if necessary by force. In 1510 the Portuguese captured Goa and in 1511 Malacca in Malaysia. The way to the Spice Islands and China lay open to them.

In East Africa they eventually abandoned the northern section of the coast and Mozambique became their main base. Their route to India was via the Mozambique Channel. It was known as the 'inner route'. Though their ships, whether the light 'caravels' or the heavier 'carracks', were more suited to voyages in the

A Portuguese caravel of the fifteenth century



open oceans than the Arab 'dhows', the Portuguese followed the traditional monsoon routes to and from India which had been used by Arab sailors for centuries. The Portuguese were skilled navigators, many of them trained in the famous school of navigation founded by Prince Henry the Navigator at Sagres in the south-west of Portugal. Their captains charted the Indian Ocean. They 'discovered' Madagascar, the Comoros and the Seychelles within ten years of rounding the Cape. For a short time they attempted to establish a base on the Comoros but the islanders, who were staunch Muslims, were hostile and the Portuguese withdrew. Fernandez Pereira sighted Mauritius in 1507 and gave it the name of his ship, Cerne. The island and its near neighbours were given the name of the Mascarenes after another Portuguese captain, Pero Mascarenhas. The number of islands with Portuguese names in the area is an indication of the importance of the Portuguese contribution to the exploration of the Indian Ocean.

Dutch traders

In spite of this, the Portuguese showed no interest in colonising any of the small groups of

Don Pero Mascarenhas



*Maurice of Nassau, Prince of Orange
1567-1625*

islands. They soon had more than enough to do in merely holding on to the scattered bases which protected their new trade routes. Before 1600 the Dutch and the English had followed the Portuguese into the Indian Ocean. They both established East India Companies, the English in 1600 and the Dutch in 1602, to monopolise the trade of the two countries with India and the vast area between the Cape of Good Hope and Cape Horn. In 1598 a Dutch admiral, van Warwyck, called at Mauritius with a small expedition and took possession of the island in the name of the Dutch. They called it Mauritius in honour of Prince Maurice of Nassau, a member of the House of Orange and Stadtholder of Holland. At the time the Dutch were in rebellion against the Spanish and Portugal was ruled by the King of Spain. Portuguese ships and trade and Portuguese possessions were, therefore, targets for the Dutch ships in the Indian Ocean. Though they had claimed Mauritius as a Dutch possession, the Dutch made no attempt to settle or colonise the island for some years. In the meantime English, Dutch and, soon, French ships occa-

sionally used the island as a port of call for their vessels. They were all interested in trade rather than territory at that time.

During the first half of the seventeenth century the Dutch built up an unchallenged supremacy in Indonesia and the Spice Islands. Their rivals, the English and the Portuguese, were forced to recognise this Dutch supremacy, and the islands now making the state of Indonesia became known as the Dutch East Indies. The main Dutch base was established in Batavia in Java in 1619. The English and the Portuguese, driven out of this area, continued to trade alongside the Dutch in India. The route to India followed by the Dutch and the English passed close to the Mascarene islands. This route was developed after 1611 and became known as the 'great route'. As a result the number of ships calling at Mauritius increased and they soon included French as well as Dutch and English ships. They took on supplies of food and fresh water. Occasionally they repaired their vessels. The island had plentiful supplies of timber, including ebony. Trees were often felled and the valuable cargo was taken off. European commercial activity in the Indian Ocean was rapidly building up and the rivalry and competition between the four

main powers was increasing. Although they were all primarily interested in trade, this was a period when it was normal for each power to try to establish a monopoly of trade with a certain area. It was obvious that each power needed to establish and maintain bases if its merchants' trading rights were to be protected.

Suggestions for further work

- 1 Find out more about Portuguese and Arab ships of the period. In what ways were the Portuguese and other European ships superior to those of the Arab sailors of the period?
- 2 Who was Maurice of Nassau and for what reasons did he become famous as a leader of the Dutch?
- 3 Mark on a map of the Indian Ocean the main trading places occupied by the Portuguese in the early sixteenth century. Make a list of the main items of trade carried by merchants in the Indian Ocean at this time.
- 4 Make sure you understand the meaning of the following words: indigenous and millenium (page 1), crusading (page 2), monopoly and Stadtholder (page 3).

CHAPTER 15

From oligarchy and colonial status to democracy and independence

Dr Seewoosagur Ramgoolam: early political career

For nearly a decade before this process began, a new figure had been emerging on the political scene as a champion of the oppressed Indian community and a leading member of the Labour Party. This was Dr Seewoosagur Ramgoolam, who returned to Mauritius in 1935 after fourteen years in Britain where he had completed his training as a doctor. Whilst in Britain he had served a useful political apprenticeship. He became a member of the Fabian Society and was, for a time, the secretary of the London branch of the Indian National Congress. In 1931, at the time of the Round Table Conference, he had met Mahatma Gandhi, Rabindranath Tagore and Srinivasa Sastri. He had made the acquaintance of several socialist politicians, including George Lansbury and Arthur Creech Jones, who became the Labour Party's spokesman on colonial affairs and, unofficially, a representative of colonial peoples and their interests. Dr Ramgoolam's return to Mauritius coincided with preparations for the centenary celebrations of the beginning of Indian immigration. He contributed an article to the *Indian Centenary Book*, published to mark the occasion. In it he wrote of the need to end 'the social cruelties rampant in our society'.

He knew that this would take a long time and would mean a long hard struggle against powerful vested interests. He was realistic about the patient groundwork that would be needed to influence public opinion and make the Indian workers aware of their political rights and responsibilities. With the help of socialist friends he established a daily newspaper, *Advance*. On Sundays he regularly visited Indian workers in their villages and

began their political education. Slowly he built up support amongst the workers and earned the respect of the authorities. He was elected a member of the Port Louis Municipal Council.

Not long after this, in November 1940, he was nominated by the governor, Sir Bede Clifford, to replace one of the two Indians on the Council of Government who represented the interests of small planters and workers. His appointment was a break with tradition, for no one with such radical views had previously been nominated to the Council. His appointment did not mean that he had been won over to the establishment. He made it clear at once that he wanted genuine social reform which would benefit the workers. In his first speech in the Council he demanded that workers should be given the right to form themselves into trade unions and to take strike action.

In 1942 Sir Bede Clifford was replaced as governor by Sir Donald Mackenzie-Kennedy. Increasingly Dr Ramgoolam found himself out of sympathy with the new governor's approach and policies. He decided that his only course was to join the opposition so that he would be free to campaign openly for such causes as the extension of the franchise to the workers. When Mackenzie-Kennedy put forward his first constitutional proposals in October 1946, they did not go far enough for socialist leaders in Mauritius, for the franchise qualifications would still have excluded the mass of the people and left power in the hands of the whites. B. Bissoondoyal organised demonstrations against the proposals in Port Louis.

One of the most effective of these took the form of boycotting for the first time the 'Last Races' in 1947. Race meetings in Port Louis were organised by the Turf Club, an exclusive club whose membership at that time was restricted to Franco-Mauritians. The workers obtained a special leave on that day to attend the races. However, this gave the Franco-Mauritians an opportunity to look down on the labourers and their way of life and the special



Dr Ramgoolam, who became Sir Seewoosagur Ramgoolam in June 1965

day was dubbed in Creole 'les courses Malbar' which carried a pejorative meaning. Bissoon-doyal campaigned against attending the races on that day and his move met with complete success. As from that year that particular race meeting no longer enjoyed popular support and, perforce, the appellation was dropped.

Dr Ramgoolam, with the support of men like Emmanuel Anquetil and Renganaden Seeneevassen, continued to press for a wider extension of the right to vote. Their cause was helped by a number of developments. The Labour Party had come to power in Britain in the first post-war general election. The war itself had brought a revolution in public opinion all over the world on issues like colonialism, self-determination and human freedoms and rights. It was becoming increasingly difficult for colonial powers such as Britain to ignore the mounting demands for freedom from foreign domination coming from rising nationalist movements in Asia and Africa. Lastly but by no means least in its

impact on Mauritius, India gained her independence in 1947.

It did not take long for Britain's post-war Labour Government, elected in 1945 and faced with these pressures, to reach a decision in principle to work towards the granting of self-government and independence to all Britain's colonial territories. Once taken, this decision was maintained as a fundamental strand in Britain's policy towards her colonial territories. Subsequent British governments in the 1950s and 1960s, whether Labour or Conservative, continued with its gradual implementation. Alongside the pressures from nationalist and independence movements it was a major factor in bringing about the decolonisation of all Britain's colonial territories between 1947 and the late 1960s. The only alternative to such a policy would have been to resist, by force, the nationalist movements which began to emerge and gain momentum everywhere soon after the end of the Second World War. This would have been contrary to Britain's commitment to democratic principles. Equally important, it would have been unacceptably costly both financially and in terms of human resources and lives.

Mauritius was a part of Britain's colonial empire. The pressures there from nationalist movements were small in comparison with those in other larger territories. Nevertheless Governor Mackenzie-Kennedy was under pressure both from Britain, from the outside world and from inside Mauritius to move beyond his 1946 proposals for constitutional reform. In a letter to Creech Jones, who was now himself Colonial Secretary in the Labour Government, he admitted that his earlier proposals would no longer be acceptable in the atmosphere of 1948. Nevertheless both the Governor and the Colonial Secretary believed that it was too soon to move to universal suffrage. A commission appointed to make new proposals recommended in 1947 that the vote should be extended to anyone able to read and write simple sentences in any language used in Mauritius. This went far beyond the previous suggestion that the vote should be restricted to those holding the Primary Leaving Certificate. Anyone who had served in the armed forces should also qualify for the vote.

The Mackenzie-Kennedy Constitution 1947

The new proposals were accepted by the Colonial Office and were the basis for the election held in 1948. This was a real landmark in the constitutional history of Mauritius. In the previous election held in 1936 there had been 11,427 registered voters. In 1948 the number had risen to 71,236. Nearly two-fifths of the adult population could now vote. For the first time in the island's history the electorate included a significant number of workers. The governor presided over a Legislative Council consisting of nineteen elected, twelve nominated and three official members. For the first time the elected members in the Council outnumbered the nominated and official members. The island was divided into five electoral districts. Six members represented Plaines Wilhems and Rivière Noire; four represented Port Louis; and three members represented each of the districts of Moka-Flacq, Grand Port-Savanne and Pamplemousses-Rivière du Rempart.

The election of 1948

In the election of 1948, twelve of those returned to the Legislative Council were members of the Labour Party and these included several Indo-Mauritians. The struggle for the effective transfer of power from the old oligarchy to new men had really begun. Dr Ramgoolam and his colleagues, amongst the new men, made it clear that this was only the beginning. They had new objectives for the immediate future; and within the next decade they achieved most of them. These included the introduction of universal suffrage; an increase in the number of elected members in the Legislative Council; and the establishment of the principle that ministers should be responsible to the elected council.

These achievements were made in the face of opposition from the conservative elements in the country, who organised themselves after the election and fought a strong rearguard action to try to retain their old position of privilege as long as possible. They made as much as they could of the alleged danger of 'communalism': that is the danger that politics and political parties would develop and

operate round the sectional interests of the different communities that made up the multi-racial society of Mauritius. There was, it was claimed, evidence that the voting in the 1948 election had followed a communal pattern in that eleven candidates had been elected largely on Hindu votes in rural districts, eight by Creoles and one by Europeans. It is, however, not surprising that, with the extension of the franchise, the different groups should vote for candidates who they felt would support their own interests; and indeed this was the traditional pattern of voting when power was in the hands of the Franco-Mauritians. After the election, Dr Ramgoolam and others who genuinely wanted to encourage national unity and play down communalism tried to broaden the base of the Labour Party by attracting support from the different communities, particularly the non-European community. The main opposition to further change after 1948 was led by Jules Koenig and his Franco-Mauritian party, the Ralliement Mauricien or Parti Mauricien. They raised the bogey of Hindu domination, and until the next election they still held political power in Mauritius because they had the support of the nominated and official members of the Council.

The election of 1953

The election of 1953 brought genuine democracy a step nearer. The Labour Party increased its share of the elected seats to fourteen; but this was not enough to give the party an overall majority. The conservatives were still supported by most of the nominated and official members. Soon after the election the Labour Party newspaper, *Advance*, complained bitterly that in exercising his right to choose the nominated members, the governor had flouted the electors' wishes. Instead of reflecting the preference the electors had shown for Labour candidates he had chosen men who would prolong the political domination of the Franco-Mauritians. Further change was needed before the voice of the people in elections could become really effective. Dr Ramgoolam and the Labour Party demanded three main types of change: firstly, universal suffrage; secondly, a further increase in the number of elected members in the Legislative Council; and thirdly, the

introduction of ministerial responsibility.

In 1953 the Labour Party managed to persuade the Legislative Council to pass a resolution calling for an extension of the franchise. Talks followed in London and the outcome was the offer of a new constitution in February 1956. It was proposed that the number of elected members of the Council should be increased to twenty-five; that universal suffrage should be introduced and that seven of the twelve members of the Executive Council should be chosen from the legislature. However, the second proposal was linked with another which made it unacceptable to the Labour Party; this was that elections should be held under a system of proportional representation. The Labour Party objected to proportional representation because they feared that in a multi-racial society such as that in Mauritius it would encourage people to vote in their communal groups. They also feared that it could undermine the strength and unity of the party.

The emergence of new parties and the election of 1959

In the face of this opposition the proposal of proportional representation was dropped. The details of the electoral system were to be worked out by an electoral commission under the chairmanship of Trustram Eve. The commission reported in 1958 and recommended an increase in the number of elected members to forty. On this basis the 1959 election was held. Before the election a number of changes had taken place in the pattern of political parties in Mauritius. The main opposition party, the Ralliement Mauricien, had taken a new name: the Parti Mauricien Social Démocrate (PMSD). It had done this largely because it realised that, in order to have a future, it must attract more support from the non-white population, particularly from the Creoles.

The Muslims had formed the Muslim Committee of Action (MCA), the Comité d'Action Musulmane (CAM). Its leader, Sir Abdool Razack Mohamed, had represented Muslim opinion at the London constitutional talks in 1955. At the time he was a member of the Ralliement Mauricien. The MCA was formed in 1958 when the Muslims realised that they were merely being used by the Europeans as

allies against the Labour Party.

A fourth party, the Independent Forward Bloc (IFB), was also founded in 1958. It stood for the energetic revival of Indian culture and the consequent rejection of political systems based on Western culture.

The leading part in the founding of the IFB was played by Sookdeo Bissoondoyal, brother of Basudeo Bissoondoyal who had influenced his political thinking. Sookdeo Bissoondoyal had turned from school teaching to politics in 1948. In the election of that year he was elected to the Legislative Council as one of the members for the constituency of Grand Port/Savanne and one of the group of twelve Labour Party members. He also served as a member of the Executive Committee, but from 1953 he became increasingly critical of the Labour Party, believing that it had swerved from its original objective, namely the promotion of the ordinary working people's interests, and had forgotten its socialist aims. In 1957 he called for a boycott of the visit of Princess Margaret to Mauritius as a protest against corruption in the administration. It was during one of several terms of imprisonment in 1957 that he decided to form the IFB. Although he did not always agree with the policies of the Labour Party, Sookdeo Bissoondoyal did not hesitate to ally with it to seek the independence of Mauritius.

In spite of the existence of these two parties which were bound to attract some of the Indian votes, the Labour Party's fortunes reached a peak in the 1959 election. Of the forty elected seats, the party gained twenty-four. The IFB won six seats, the MCA five. Jules Koenig's PMSD won only three seats; and the remaining two went to Independent candidates.

One of the three PMSD seats was won by Gaëtan Duval, a young lawyer with a flamboyant personality, who was later to lead the party in succession to Jules Koenig. As a result of its decisive victory in this election the Labour Party was in a strong position to press for an early realisation of its final objectives: self-government and independence.

The 1961 Constitutional Conference

A constitutional conference at which all the Mauritian political parties were represented

was held in London in June 1961. It soon became obvious that there was a serious rift between the PMSD and all the other parties. The PMSD did not want independence; the other parties did. The PMSD favoured some form of integration or association with Britain. The difference of opinion was easily explained. The PMSD, as the party representing Creoles and the Franco-Mauritian minority, was afraid of independence and of the political dominance of Indo-Mauritians which they believed would follow. Its fears were similar to those expressed by parties representing minority groups in other colonial territories, especially in Africa. As the date of independence came nearer, such fears became more real.

The PMSD claimed that most Mauritians were not yet ready to assume the responsibility of running their own affairs. This again was an argument that had been heard, and continued to be heard, from settler groups in African

territories like Kenya and Northern and Southern Rhodesia. The PMSD argued that, if independence was inevitable, it should come slowly and with adequate safeguards for the minority groups. In Mauritius, as in other colonial territories, the British showed sympathy with these arguments.

Two stages to Independence

The PMSD was outnumbered, however, by the Labour Party and its allies who favoured as quick a transition to self-government and independence as possible. The PMSD representatives withdrew from the conference before any decisions were reached. It was agreed that self-government should be reached in two stages. In the first stage, effected in 1962, Dr Ramgoolam took the title of Chief Minister. The governor was to seek his advice on all ministerial appointments and on the question of the duration and date of dissolution of the Legislative Assembly. Dr Ramgoolam decided

Mauritians demonstrate at the constitutional talks in London, 1965



to speed up the transition to the second stage by bringing forward the date of the election from 1964 to 1963.

The election of 1963

In this election the Labour Party suffered a check. They won only nineteen seats out of forty and thus lost their overall majority, but they remained easily the largest party. The PMSD made some recovery with eight seats. The IFB had seven seats, the MCA four and the Independents two. The PMSD had benefited from the attractive personality of Gaëtan Duval. He was a colourful figure who had entered the legislature at the previous election and was to succeed Koenig as leader of the party in 1966.

In consultation with the Colonial Office, Ramgoolam formed an all-party coalition government after the election. Both the British Government and Ramgoolam were anxious to reassure the electorate and all sections of the community that their interests would not be overlooked. The second stage of progress towards self-government could now be effected. In March 1964 Dr Ramgoolam became Premier and the Executive Council became a council of ministers responsible to the Legislature. The coalition ministry proved to be a fragile one. The difference of opinion between the PMSD on the one hand and the Labour Party and its allies on the other persisted.

Constitutional Conference of 1965

Once again in 1965 all parties were represented in constitutional talks in London with the Colonial Secretary. Labour and its allies pressed for early independence. The PMSD put forward a scheme for 'associated status' with Britain, under which certain matters, including defence, foreign affairs and some constitutional decisions would have been kept under British control. They also asked that no final decision should be taken on the future of Mauritius before a referendum was held.

At the Constitutional Conference in London



Mr Anthony Greenwood, the Colonial Secretary, and Sir Seewoosagur Ramgoolam, Premier of Mauritius

the British negotiators seemed reluctant to agree to an early move towards independence and showed sympathy with, and a readiness to listen to, the proposals of the PMSD. The prospects of Mauritius being granted independence as the MLP wished seemed to be threatened. This British attitude, however, was probably adopted as a means of persuading Sir Seewoosagur and the MLP to agree to the transfer to Britain of the Chagos Islands, as the price of a British grant of independence. If this was the case, the strategy worked. The MLP agreed not to raise objections to the transfer of the Chagos group to Britain as part of the British Indian Ocean Territories and to the evacuation of their inhabitants to Mauritius.

Other considerations, however, certainly influenced the final outcome. Sir Seewoosagur's reputation for moderation and tolerance and his long-standing connections with old Labour politicians in Britain were crucial. He was prepared to offer guarantees to the minorities including the appointment of an ombudsman¹,

1 *Ombudsman: an official first employed in Scandinavian countries and more recently in some other European countries to act as an arbiter between an ordinary citizen and government in cases where a citizen feels himself to be a victim of some form of injustice or discrimination.*

as proposed by Sookdeo Bissoondoyal, who would not be a Mauritian. Finally, with some misgivings but no doubt with African precedents in mind, the decision was taken that independence should be granted, provided a further election showed a clear demand for independence from the Mauritian people. It was to be granted, however, under a new electoral system designed to ensure the adequate representation of all minority groups. The end of 1966 was suggested as a possible date for independence after a six-month period of self-government. The Colonial Secretary ruled out both the PMSD's suggestion of a referendum and of a form of association with Britain. This was partly on the grounds that both did not conform to current British constitutional practice. They were, of course, though this was not said, peculiarly French.

The new electoral system

The final advance to independence was delayed by difficulties in reaching agreement on the form of the new electoral system. The PMSD made the most of these disagreements. An electoral commission, the Barnwell Commission, arrived in Mauritius early in 1966. Its recommendations were complicated and were felt to be too favourable to the urban electorate. Ramgoolam feared that the system would produce splinter groups and make stable government difficult. John Stonehouse, the Under Secretary for the Colonies, arrived in Mauritius to resolve the crisis. In the end the following arrangements were made. Mauritius was divided into twenty constituencies, each represented by three members. The island of Rodrigues was to form a two-member constituency. Eight seats would not be contested in the initial voting. They would be held in reserve and allocated to the eight best losers from the four groups which were judged to be inadequately represented after the main election. The main purpose of this 'corrective machinery' was to ensure adequate representation for the minority groups.

The election of 1967

The 'independence' election was finally held under this complicated system in August 1967. It was to take place under the scrutiny of observers from the Commonwealth, who would

pass judgement on its fairness. Three parties, Labour, the MCA and the IFB, fought the election as the 'Independence Party'. The PMSD, now led by Duval, campaigned on the platform of something less than complete independence. The central issue was, therefore, clear-cut and the electorate's decision was equally decisive. The 'Independence Party' won thirty-nine seats shared as follows: Labour twenty-four, MCA four and IFB eleven. They polled 54.8 per cent of the votes. The PMSD won twenty-three seats with 43 per cent of the votes. The Commonwealth observers reported that, with few reservations, they were satisfied that the elections had been conducted fairly and with a minimum of violence. The very small number of spoiled ballot papers seemed to show that the great majority of the electors had understood the complicated electoral system. The final stage of the exercise, the allocation of the eight reserved seats, awarded an equal share to the government and opposition parties.

Self-government and independence

At last the way lay open for a rapid advance to independence. Mauritius became self-governing on 12 August 1967, immediately after the election. At the first meeting of the new Legislative Assembly on 22 August 1967, Sir Seewoosagur Ramgoolam put down for debate the resolution 'That this Assembly requests Her Majesty's Government in the United Kingdom to take the necessary steps to give effect, as soon as practicable this year, to the desire of the people of Mauritius to accede to Independence within the Commonwealth of Nations and that Mauritius be admitted to membership of the Commonwealth on the attainment of Independence.'

The resolution was passed and the British Government fixed 12 March 1968 as Independence Day. During the debate Sir Seewoosagur spoke hopefully of the country's future:

We are meeting today on an historic and solemn occasion. By our decision today, Sir, we shall put Mauritius on the path of her destiny. It is a day of joy for all patriotic men and women, for on this day we are taking the formal step which will confer on our



Independence celebrations 1968

people freedom and bring them into their heritage...

With Independence there will come among the people of this country a sense of regeneration and there will arise in the hearts of our fellow countrymen a fervour and a determination to go forward and build for themselves and for future generations a strong and happy Mauritius...

Let us resolve that in our determination to build a better future for ourselves and our children we shall all be inspired by the loftiest principles of patriotism and love for our island home.

We have striven for many years now to create a new sense of unity out of our rich diversity and in the words of the poet let it be said for the glory of those who are fortunate to live at this hour:

'Bliss was it in that dawn to be alive.'

Such sentiments are expected of political leaders on these occasions; but what really mattered was the extent to which the hopes and ideals were realised in the future. It is time to examine how Mauritius has fared since her 'day of destiny'.

Suggestions for revision

The main concern of this chapter is the story of the struggle for, and the main steps towards, independence in Mauritius. You should know:

- a) the main stages and landmarks on the road to independence, such as the new Constitution of 1948, the Constitutional Conference of 1961, and the elections of 1948, 1953, 1959, 1963 and 1967;
- b) the names of and the difference between, the main political parties that emerged during this period, for example, the Ralliement Mauricien (later the PMSD), the MCA and the IFB;
- c) the part played by, and the ideas of, leading politicians and officials such as Dr Seewoosagur Ramgoolam, Gaëtan Duval, Jules Koenig, Sir Donald Mackenzie-Kennedy and the Bissoondoyal brothers.

Suggestions for further work

- 1 Once again, it would be interesting to do some 'oral' research with the help of older people in your family or your friends' families. Try to talk to people who had different views about whether it was best for Mauritius to become independent as soon as possible after the election of 1967 or whether it would have been better to have a longer period of self-government, as a preparation for complete independence.
- 2 Make sure you know the meaning of the following words: franchise (page 86), suffrage (page 88), proportional representation (page 89) and coalition (page 91).

Annex 138

Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (1995)

Self-determination of peoples

A legal reappraisal

ANTONIO CASSESE

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Treaty law

The United Nations Charter

During the Second World War, as early as 1941, the US and the UK proclaimed self-determination as one of the objectives to be attained and put into practice at the end of the conflict. The Atlantic Charter drafted by President F. D. Roosevelt and Winston Churchill, and made public on 14 August 1941, proclaimed self-determination as a general standard governing territorial changes, as well as a principle concerning the free choice of rulers in every sovereign State (internal self-determination).¹ However, Churchill hastened to place a restrictive interpretation on the Atlantic Charter: on 9 September 1941 he clearly stated to the House of Commons that the principle of self-determination proclaimed in the Charter did not apply to colonial peoples (in particular, to India, Burma, and other parts of the British Empire) but only aimed at restoring 'the sovereignty, self-government and national life of the States and nations of Europe under the Nazi yoke', besides providing for 'any alterations in the territorial boundaries which may have to be made'.²

¹ 'Second, they [the two drafters of the Declaration] desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned; third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.' Text in J. A. S. Grenville, *The Major International Treaties, 1914–1973 – A History and Guide with Texts*, London 1974, 198 ff.

² Parliamentary Debates, Fifth Series, vol. 374, *House of Commons, Official Report*, eighth vol. of Session 1940–41, 68–69. Churchill's statement is mentioned by E. R. Stettinius, Jr, *Roosevelt and the Russians – The Yalta Conference*, Garden City, New York 1949, 244 ff. See also R. C. Hula, 'National Self-Determination Reconsidered', 10 *Social Research*,

Self-determination: a legal standard

In 1944, representatives of the US, the UK, the Soviet Union, and China entered into secret and informal negotiations with the aim of setting the foundations for a world organization. They emerged from the talks at Dumbarton Oaks with several proposals for a UN Charter. However, despite the fact that the Allies had embraced the principle of self-determination in several policy documents adopted between 1941 and 1944,³ it did not appear anywhere in the draft Charter, which however included a provision, although somewhat weak, on human rights.⁴ It seemed that the UN Charter was destined, like the League of Nations Covenant, to be silent with regard to the rights of peoples.

By the end of April 1945, when the United Nations Conference on International Organization met in San Francisco, the Four Powers had, however, reconsidered the issue at the insistence of the USSR.⁵ Thus, among the amendments renegotiated and presented in San Francisco was a provision stating that the Organization aimed 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'.⁶ Although the Four Powers had not devised an effective means for the use and expansion of the principle, they had at least identified self-determination as a major objective of the new world organization.

In the relevant body of the San Francisco Conference (Committee I of Commission I) several States approved of the new provision, the Philippines, Egypt, the Ukraine, Iran, Syria, and Yugoslavia among

1943, 1–21. On the Atlantic Charter and self-determination, see generally G. Decker, *Das Selbstbestimmungsrecht der Nationen*, 177–86; K. J. Partsch, 'Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination', in K. Vasak (ed.), *The International Dimensions of Human Rights*, vol. I, Paris 1982, 64–5.

³ For a discussion of these documents, which include the Atlantic Charter, see in particular Brownlie, 'An Essay in the History of the Principle of Self-Determination', 96–8. See also A. Cassese, 'Political Self-Determination – Old Concepts and New Developments', in A. Cassese (ed.), *U.N. Law – Fundamental Rights: Two Topics in International Law*, Alphen aan der Rijn 1979, 161, note 2.

⁴ For the text of the Dumbarton Oaks Proposals, see *Postwar Foreign Policy Preparation 1939–1945*, Department of State Publication 3580, Washington, DC, Government Printing Office, 1949, 611 ff.

⁵ On the role of the Soviet Union in insisting on the proclamation of the right to self-determination, see R. B. Russel, *A History of the United Nations Charter*, Washington 1958, 62 ff., 810; G. Starushenko, *The Principle of National Self-Determination in Soviet Foreign Policy*, 142–7; Brownlie, 'An Essay in the History', 98.

⁶ See UNCIO, vol. VI, 1945, 296.

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them.⁷ However, not all of the States were amenable to the idea that self-determination ought to be included in the Charter. Some, most notably Belgium, were in fact very critical. The Belgian representative, the distinguished international lawyer H. Rolin, issued a brief memorandum containing two major criticisms, both focusing on the provision's departure from the traditional State-oriented approach. He first asserted that the provision referring to self-determination had been founded on 'confusion'; and he pointed out that 'one speaks generally of the equality of *States*' not of peoples. His second argument was:

It would be dangerous to put forth the peoples' right of self-determination as a basis for the friendly relations *between the nations*. This would open the door to inadmissible interventions if, as seems probable, one wishes to take inspiration from the peoples' right of self-determination in the action of the Organization and not in the relations between the peoples.⁸

After stressing that the world was still far from full self-determination, the Belgian delegate raised several important concerns. Specifically, he wondered whether in the case where a national minority in a given country claimed the right to self-determination, the Organization would be expected to step in and other States would feel duty-bound to intervene on the strength of the concept of 'friendly relations'. Rolin then proposed that the entire provision be withdrawn.⁹

It would seem that the Belgian delegate did not take into account self-determination as an anti-colonial principle. He only perceived it as a criterion for protecting *nationalities* or *minorities* but even from this angle he dismissed it. In its place, Belgium put forward counter-proposals aimed at strengthening the protection of human rights¹⁰ but later withdrew them.

Other States also expressed doubts about the proposed Charter provision, mostly out of fear that a provision on self-determination would foster civil strife and secessionist movements. Venezuela voiced concern.¹¹ Colombia formally declared:

If it [self-determination] means self-government, the right of a country to provide its own government, yes, we would certainly like it to be included; but if it were to

⁷ See the microfilmed minutes (unpublished) of the debates of the First Committee of the First Commission of the San Francisco Conference, 14–15 May and 1 and 11 June, 1945, Library of the Palais des Nations, Geneva [hereinafter *Debates*].

⁸ UNCIO, vol. VI, 300.

⁹ See *Debates*, 14 May (afternoon session), 12 and 14.

¹⁰ *Debates*, 14 May, 13. See also UNCIO, vol. VI, 640.

¹¹ *Debates*, 15 May (morning session), 14.

Self-determination: a legal standard

be interpreted, on the other hand, as connoting a withdrawal, the *right of withdrawal or secession*, then we should regard that as tantamount to *international anarchy*, and we should not desire that it should be included in the text of the Charter.¹²

Fomenting secessionist movements was not, however, the only fear. The potential misuse of the principle of self-determination was also raised. For example, Egypt, making a veiled reference to Germany and Italy, observed that the principle lent itself to manipulation. Politicians could easily invoke the principle – as did Hitler – to justify military invasions and annexations. This led the Syrian delegate to point out that the principle of self-determination contemplates free expression; if a people is unable to express its genuine will, self-determination cannot be considered to have been achieved.¹³

Subsequently, the Committee responsible for the drafting of the relevant provision agreed on four points. First, 'this principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Chapter [of the UN Charter]'.¹⁴ Second, 'the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession'.¹⁵ Third, it was agreed that the principle of self-determination 'as one whole extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose'.¹⁶ Fourth, it was agreed that 'an essential element of the principle [of self-determination] is free and genuine expression of the will of the people, which avoids cases of the alleged expression of the popular will, such as those used for their own ends by Germany and Italy in later years'.¹⁷

This last passage might be construed to mean that the framers of the Charter – intent on emphasizing that many authoritarian governments which claim the support of the 'popular will' do not in fact rule with the 'free and genuine' will of the people – considered the realization of self-determination to be coterminous with 'freedom of political expression and from authoritarian government'. However, a careful examination of the unpublished minutes of the debates that led to the adoption of the passage

¹² Debates, 15 May, 20 (my italics).

¹³ Debates, 14 May, 24 ff. (Egypt); 15 May (morning session), 12 (Syria).

¹⁴ See UNCIO, vol. VI, 296.

¹⁵ *Ibid.* The French text was as follows: 'On a déclaré que ce principe n'était compatible avec les buts de la Charte que dans la mesure où il impliquait, pour les peuples, le droit de s'administrer eux-mêmes, mais non pas le droit de sécession', *ibid.*, 298.

¹⁶ *Ibid.*, 704.

¹⁷ UNCIO, vol. VI, 455.

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quoted warns against such a conclusion. The preparatory work suggests that the Wilsonian dream of representative governments for all was not contemplated. The emphasis on the need for a 'genuine' choice was only intended to stress that where a people is afforded the right to express its views, it must truly be free to do so.¹⁸

The final text of UN Charter does not confine itself to the political 'rhetoric' of self-determination of the League of Nations' Covenant (the name of the new Organization also includes the word 'Nations', and the preamble starts with the well-known, rather hypocritical and misleading sentence 'We the peoples of the United Nations . . .'). The UN Charter goes beyond that and includes Article 1(2), which provides that one of the purposes of the United Nations is:

to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.¹⁹

The lively debate on self-determination and the Syrian Rapporteur's report to the Commission²⁰ suggest that four main features characterize the concept eventually proclaimed in Article 1(2).²¹

¹⁸ See Cassese, 'Political Self-determination', 139 and notes 5 and 6.

¹⁹ See also Articles 55 and 56 of the UN Charter. Article 55 provides that: 'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.' Article 56 provides that: 'All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.'

²⁰ UNCIO, vol. VI, 455 and 714 ff.

²¹ On Articles 1(2), 55–6, 73 and 76, in addition to the classic commentaries on the UN Charter, see, among others, S. Calogeropoulos-Stratis, *Le droit des peuples à disposer d'eux-mêmes*, 108–15, 263–5; Guilhaudis, *Le droit des peuples à disposer d'eux-mêmes*, 168–73; K. Doehring, 'Das Selbstbestimmungsrecht der deutschen Nation', in *Recht und Staat im sozialen Wandel. Festschrift für H. U. Scupin*, Berlin 1983, 555–60; Thürer, 'Das Selbstbestimmungsrecht der Völker. Ein Ueberblick', 118–19; D. Thürer, 'Self-Determination' in *Encyclopedia*, vol. VIII, 1985 at 471–2; F. Lattanzi, 'Autodeterminazione dei popoli', in *Digesto delle Discipline Pubblicistiche*, vol. II, Turin 1987, 5–9; G. Arangio-Ruiz, 'Autodeterminazione (diritto dei popoli alla)', in *Enciclopedia Giuridica*, vol. IV, Rome 1988, 2–3; E. Gayim, *The Principle of Self-Determination – A Study of its Historical and Contemporary Legal Evolution*, Oslo 1990, 21–6; M. Bedjaoui, in J. P. Cot and A. Pellet (eds.), *La Charte des Nations Unies*, 2nd edn, Paris 1991, 1070–83; K. J. Partsch

Self-determination: a legal standard

First, States were unable positively to define self-determination. The concept of self-determination upheld in the Charter can only be negatively inferred from the debate preceding the adoption of Article 1(2). Self-determination *did not mean* (a) the right of a minority or an ethnic or national group to secede from a sovereign country; (b) the right of a colonial people to achieve political independence; for these peoples self-determination could only mean 'self-government' (this conclusion can be drawn from the clear agreement reached when drafting the provision to the effect that self-determination only meant 'self-government' and also from the fact that Article 76 of the UN Charter, laying down the basic objectives of the trusteeship system, contemplated 'their progressive development towards self-government or independence'; a systematic interpretation of the Charter would thus warrant the conclusion that, by implication, 'self-government' did not mean 'independence'); (c) the right of the people of a sovereign State freely to choose its rulers through regular, democratic and free elections; for these peoples also self-determination only meant 'self-government'; (d) the right of two or more nations belonging either to a sovereign country or two sovereign countries to merge; this right is ruled out by the ban on secession (plainly, the right at issue would imply that nations belonging to one or more States could secede, in order to achieve the 'possible amalgamation of nationalities' referred to by the Syrian Rapporteur).²²

It follows that the principle enshrined in the UN Charter boils down to very little; it is only a principle suggesting that States should grant *self-government* as much as possible to the communities over which they exercise jurisdiction.²³

'Selbstbestimmung' in R. Wolfrum (ed.), *Handbuch der Vereinten Nationen*, Munich 1991, 745–52; K. Doehring, in B. Simma (ed.), *Charta der Vereinten Nationen – Ein Kommentar*, Munich 1991, 15–32; B. Driessen, *A Concept of Nation in International Law*, The Hague 1992, 118–24.

²² Consequently, the reference to 'amalgamation' can only be taken to mean the merger of two sovereign countries based on the same nationality (think, for instance, of the unification of the two German States, which actually took place in recent years).

²³ Cf. UNCIO, vol. VI, 296. The Charter's other provisions, Chapters XII and XIII and Article 73 in particular, support the thesis that Article 1(2) enshrined the moderate version of self-determination. Chapters XII and XIII ensured that there was no radical break with the colonial system by providing for an international trusteeship system. Article 73 provided for colonial power rule the so-called 'non-self-governing territories'. Article 76 imposed upon the colonial powers the rather vague obligation 'to develop self-government' in the non-self-governing territories. Article 76, part of the trusteeship programme, was more pointed; 'the basic objectives' of the trusteeship system included,

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So much for the *notion* of self-determination. As for the second feature of the principle in the UN Charter, it should be stressed that Article 1(2) merely laid down one of many lofty *goals of the Organization*. The threat to State interests was thus minimized.

The third feature of the principle is that self-determination, conceived of as a postulate deeply rooted in the concept of the equal rights of peoples or, as explained by the Philippine delegate, in the 'equality of races',²⁴ was considered to be a means of furthering the development of *friendly relations among States*: it would foster universal peace. This last qualifier, *a fortiori*, limited the power of the principle. Since self-determination was not considered to have a value independent of its use as an instrument of peace, it could easily be set aside when its fulfilment raised the possibility of conflicts between States.

Fourthly, since self-determination was envisaged primarily as a programme or aim of the Organization, and since the UN Charter neither defined self-determination precisely nor distinguished between 'external' and 'internal' self-determination, the Charter *did not impose direct and immediate legal obligations on Member States* in this area (the obligation laid down in Article 56 of the Charter is very loose and in any case does not impose the taking of direct and specific action by each Member State of the UN).

In spite of all these limitations and shortcomings, the fact remains that this was the first time that self-determination had been laid down in a multilateral treaty – a treaty, one should add, that had been conceived of as one of the major pieces of legislation of the new world community. Thus, the adoption of the UN Charter marks an important turning-point; it signals the maturing of the political postulate of self-determination into a legal standard of behaviour. In 1945 this legal standard was primarily intended to guide the action of the Organization. Over the years Member States of the UN gradually turned that standard into a precept that was also directly binding on States.

in addition to 'self-government', 'independence'. Thus, although the level of self-government afforded was to be 'appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement', Chapter XIII actually afforded peoples greater rights than Article 1(2) (the general provision on self-determination) — or at least offered a limited class of dependent peoples greater rights.

²⁴ UNCIO, vol. VI, 704.

Customary rules: external self-determination

particular the right of peoples under foreign domination. Thirdly, the situation of the black populations of Southern Rhodesia and South Africa prompted the same majority of States to frame this situation as a question of the (internal) self-determination of the black population. As it was unthinkable – on account of Western opposition – for treaty rules to be agreed upon on these matters, the best way out was found in the gradual evolution of general standards. One of the advantages of these standards was that their relatively slow formation and their necessarily flexible content would make them more palatable to the West.

It follows from the above remarks that although in the next pages I shall primarily concentrate on UN practice and pronouncements of individual States for the purpose of ascertaining the content and import of general rules, this does in no way imply that treaty rules are excluded from the picture. It is only for the sake of clarity and a more precise exposition, that treaty rules and their implementation will not be mentioned again from this different angle – that is, *qua* part and parcel of the customary process.

The role of UN Resolutions in the crystallization of customary rules

A second caveat is necessary. The problem area we are discussing shows a distinct feature: although customary rules have resulted from the usual combination of *usus* and *opinio juris*, these two elements have not played the normal role that can be discerned in other – less political and more technical – areas of international relations. In these other areas, the first element that normally emerges is the repetition of conduct by an increasing number of States, accompanied at some stage by the belief that this conduct is not only dictated by practical (economic, military, political) reasons, but is also imposed by some sort of legal command. By contrast, in the case of self-determination – as in similar highly sensitive areas fraught with ideological and political dissension – the first push to the emergence of general standards has been given by the *political will* of the majority of Member States of the UN, which has then coalesced in the form of General Assembly resolutions. Strictly speaking, these resolutions are neither *opinio juris* nor *usus*. Rather they constitute the major factor triggering (a) the taking of a legal stand by many Member States of the UN (which thereby express their legal view on the matter)³ and (b)

³ In the *Nicaragua* case the International Court of Justice pointed out that '*opinio juris* may, though with all due caution, be deduced from, *inter alia*, . . . the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625(XXV) [on



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the gradual adoption by these States of attitudes consistent with the resolutions.

It follows that, when discussing customary international law in the area of self-determination, special emphasis will be placed here on two UN Documents: the 1960 Declaration Granting Independence to Colonial Countries and Peoples⁴ and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN.⁵ The former, in conjunction with the UN Charter, contributed to the gradual transformation of the 'principle' of self-determination into a legal right for non-self-governing peoples. The latter was instrumental in crystallizing a growing consensus concerning the extension of self-determination to other areas. Both are vital in developing an understanding of how general international law regulates self-determination.

These two documents, however, should not be looked at *per se*, but within the general context of their adoption. In other words, they are significant in that their elaboration prompted Member States of the UN to express their views and take a stand on self-determination. The pronouncements of States before, during, and after the adoption of the two Declarations, in conjunction with the actual behaviour of States in international dealings, constitute important elements of State practice. Together with statements made by individual States in other fora (for instance, declarations of government representatives in national parliaments) and rulings of international courts, they make up the bulk of *usus* and *opinio juris* in the matter.

For the sake of clarity, I shall analyse the formation of customary law in the area of 'external' and 'internal' self-determination⁶ separately.

Friendly Relations]'. The Court went on to state the following: 'The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves' (ICJ, Reports 1986, 99-100, para. 188).

⁴ GA Resolution 1514(XV), 14 December 1960.

⁵ GA Resolution 2625(XXV), 24 October 1970.

⁶ This distinction can already be found in W. Wengler, 'Le droit à la libre disposition des peuples comme principe de droit international', 10 *Revue hellénique de droit international*, 1957, 27, and W. Wengler, *Völkerrecht*, vol. II, Berlin 1964, 1032-3. It has been taken up by various authors, including A. V. Lombardi, *Bürgerkrieg und Völkerrecht*, Berlin 1976, 181, 335-9, 341-2. It would seem that A. Verdross and B. Simma, *Universelles Völkerrecht*, 3rd edn, Berlin 1984, at 320, erroneously attributed the distinction to Lombardi's work cited above.

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have been limited by the perceived need to safeguard territorial integrity and political unity.

Before analysing the manner in which the practice of the United Nations evolved, it should be emphasized that the legal regulation just mentioned manifested *three major flaws*.

Firstly, the internal self-determination of colonial peoples was totally disregarded, that is, their right freely to choose their form of government, their rulers, etc. Their liberation from colonial rule, in order to achieve independence (or association or integration with another State) was what was seen as important. Admittedly, it would have been historically difficult and, in practice, complicated to provide for free and democratic political elections so as to ensure respect for pluralistic democracy in those territories. The fact remains however that no attention was paid to this 'internal' dimension of self-determination.

Secondly, the norms that gradually evolved eventually gave pride of place to the territorial integrity of colonial territories, thus ruling out the possibility for ethnic groups that constituted a 'colonial people' freely to choose their international status. The resultant self-determination was therefore rather truncated in this second respect.

Thirdly, it was taken for granted that whenever it appeared that the people of a colonial territory wished to opt for independence, it was not necessary to establish this wish by means of a plebiscite or a referendum. In other words, it was felt that the wish for independence – however manifested or ascertained – did not need to be verified by resorting to the means that the practical implementation of self-determination normally required.

THE ACTUAL IMPLEMENTATION OF THE STANDARDS

An overview of UN practice with regard to colonial situations

The UN record in the field of decolonization is impressive.¹⁵ According to a 1979 report prepared for the UN by Héctor Gros Espiell, the then

¹⁵ On the role of self-determination in the process of decolonization, and the UN practice in this matter, see in particular: C. Eagleton, 'Excesses of Self-Determination', 31 FA, 1952–3, 592 ff., and 'Self-Determination in the United Nations', 47 AJIL, 1953, 88 ff.; R. Emerson, *Self-Determination Revisited in the Era of Decolonization*, Cambridge, Mass. 1964, 25 ff.; J. Kunz, 'The Principle of Self-Determination of Peoples, Particularly in the Practice of the United Nations', in K. Rabl (ed.), *Inhalt, Wesen und gegenwärtige praktische Bedeutung des Selbstbestimmungsrechts der Völker*, Munich 1964, 137–70; M. K. Nawaz, 'The Meaning and Range of the Principle of Self-Determination', 82 *Duke Law*

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Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, seventy territories achieved independence between 1945 and 1979.¹⁶ In only a limited number of cases was the right of self-determination exercised and independence not achieved.¹⁷ In the years following the publication of Gros Espiell's report, several territories included in his list of twenty-eight situations still to be resolved achieved independence.¹⁸ Others on the list, South Africa and the territories occupied by Israel in particular, do not, it is submitted, come within the purview of 'colonial situations' included within the report. Thus, at present, there are approximately a dozen 'situations' still outstanding and

Journal, 1965, 82 ff.; D. W. Bowett, 'Self-Determination and Political Rights in the Developing Countries', 60 *Proceedings ASIL*, 1966, 129–35; R. Emerson, 'Self-Determination', *ibid.*, 135–41; W. B. Ofuatey-Kodjoe, *Self-Determination in International Law: Towards a Definition of the Principle*, PhD thesis, Columbia University 1970, 245–74; U. Umzurike, *Self-Determination in International Law*, Hamden, Conn. 1972; A. Rigo Sureda, *The Evolution of the Right of Self-Determination: A Study of the United Nations Practice*, Leiden, 1973; T. M. Franck and P. Hoffman, 'The Right of Self-Determination in Very Small Places', 8 *NYUJILP*, 1976, 331 ff.; W. Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law*, New York 1977, 97–147; J. F. Engers, 'From Sacred Trust to Self-Determination', 24 *NILR*, 1977, 85 ff.; J. Crawford, *The Creation of States in International Law*, Oxford 1979, 89 ff.; anon., 'The Decolonization of Belize: Self-Determination v. Territorial Integrity', 22 *Virginia Journal of International Law* 1982, 849 ff.; Pomerance, *Self-Determination in Law and Practice*, 1982, 9–36; J. Charpentier, 'Autodétermination et décolonisation', in *Mélanges C. Chaumont*, Paris 1984, 117–33; O. Kimmich, 'Die Renaissance des Selbstbestimmungsrechts nach dem Ende des Kolonialismus', *Fest. für B. Meissner*, Berlin 1985, 601 ff.; M. Shaw, *Title to Territory in Africa*, Oxford 1986, 92–144; Z. Drnas de Clément, 'El derecho de libre determinación de los pueblos: colonialismo formal, Neocolonialismo, colonialismo interno', 3 *Anuario Argentino de Derecho Internacional*, 1987–9, especially 214 ff.; Bennouna, 'Tiers Monde et autodétermination', in *Le droit à l'autodétermination*, 83–94; Lombardi, *Bürgerkrieg und Völkerrecht*, 189 ff.; Blay, 'Self-Determination versus Territorial Integrity in Decolonization', 441 ff.; T. M. Franck, *The Power of Legitimacy among Nations*, New York and Oxford 1990, 160 ff.

¹⁶ H. Gros Espiell, Special Rapporteur, *Implementation of United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination*, Study for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, United Nations, New York, 1980. Text originally issued under the symbol E/CN.4/Sub.2/405 (vols. I and II).

¹⁷ West Irian became part of Indonesia; Ifni was incorporated into Morocco; the Mariana Islands became a free associated state with the US; and Niue achieved 'self-government in free association' with New Zealand.

¹⁸ South Rhodesia, now called Zimbabwe; Belize; Brunei; Saint Christopher and Nevis; Saint Lucia; Saint Vincent and the Grenadines; and most recently, Namibia (however, as we shall see, to some extent the question of Namibia is not only a colonial question, but also an issue of foreign illegal occupation).

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one case, that of East Timor (annexed by Indonesia in 1975), which was settled with total disregard for UN pronouncements and without UN approval.

Among the remaining situations, three stand out in particular, they being indicative of the inherent difficulties in resolving self-determination claims and the predicament the UN faces in the field: Gibraltar, the Falklands/Malvinas, and Western Sahara.

To what extent has the United Nations taken notice of the freely expressed will of colonial peoples?

The United Nations' practice has to a great extent upheld and applied the standards which have been referred to above. However, it has placed a liberal interpretation on them, in two respects.

Firstly the World Organization has sought to emphasize the requirement that self-determination should always be based on the freely expressed will of peoples. Accordingly, since 1954 the United Nations has organized, and often supervised, elections or plebiscites in non-self-governing territories, before their accession to independence or their association or integration with other countries.¹⁹ Mention can be made of the plebiscites or elections held in the British Togoland Trust Territory in 1956,²⁰ French Togoland in 1958,²¹ the British Northern Cameroons

¹⁹ See M. Merle, 'Les plébiscites organisés par les Nations Unies', AFDI, 1961, 425–44. See also H. S. Johnson, *Self-Determination within the Community of Nations*, Leiden 1967, 59–98. It is interesting to note that in 1952 the US delegate in the UN Economic and Social Council (ECOSOC) criticized the practice of UN supervised plebiscites. In a statement of 31 July 1952, commenting on a draft resolution, he pointed out the following: 'The United States feels that the paragraph [of the draft resolution] unduly restricts the methods by which the wishes of non-self-governing people may be ascertained in the future by placing virtually sole reliance upon the UN supervised plebiscite. The adoption of the U.N. Charter does not require all nations to conduct all their foreign affairs through the United Nations; other means of international dealings have distinct advantages. Similarly, in the dealings between an administering country and the non-self-governing people, these people themselves may desire direct methods of contact which may not always be associated with the United Nations. For example, the United States recently arranged to determine the wishes of the people of Puerto Rico, Alaska and Hawaii, without a U.N. plebiscite' (30 *Dept. St. Bul.*, 1952, at 270).

²⁰ A plebiscite was held in British Togoland in May 1956 (upon the recommendation of the UN GA Res. 944(X) of 15 December 1955). The population voted in favour of the union of their territory with an independent Gold Coast (the other option being the separation of Togoland under British administration and continuance of a trusteeship pending a decision as regards independence). See UN Ybk, 1956, 368 ff.

²¹ By virtue of Res. 1182(XII) the UN General Assembly accepted the invitation of the government of Togoland to supervise elections, which were held on 27 April 1958. On

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in 1959²² and the British Southern Cameroons in 1961,²³ Rwanda-Urundi in 1961,²⁴ Western Samoa in 1962,²⁵ the Cook Islands in 1965,²⁶ Equatorial Guinea in 1968,²⁷ Papua-New Guinea in 1972,²⁸ the New Zealand Territory of Niue in 1974,²⁹ the Ellice Islands in 1974 (the voters decided to become a separate territory under the name of Tuvalu),³⁰ the

23 October 1958 the Chamber of Deputies of Togoland voted in favour of independence. See UN Ybk, 1958, 355 ff.

²² On 13 May 1959 the UN GA decided, by virtue of Res. 1350(XIII) to hold separate plebiscites under UN supervision in Northern and Southern Cameroons (under British administration). A plebiscite was held in Northern Cameroons on 7 November 1959 and people chose to postpone a decision (the alternative being that of joining Nigeria immediately). Arrangements were made for another referendum to be held in 1961. See UN Ybk, 1959, 361.

²³ UN supervised plebiscites were held in the two territories on 11 and 12 February 1961. Northern Cameroons decided to join Nigeria, Southern Cameroon decided to join the Republic of Cameroun. The results were later endorsed by the UN GA by virtue of Res. 1608(XV) of 21 April 1961. See UN Ybk, 1961, 494 ff.

²⁴ The future of the monarchy in Rwanda was submitted to a UN supervised referendum (UN GA Res. 1580(XV)). The referendum was held in Rwanda on 25 September 1961 alongside the general elections. People voted against the monarchy and consequently a republic was proclaimed. See UN Ybk, 1961, 484 ff.

²⁵ A plebiscite was held on 9 May 1961 in order to ascertain the wishes of the inhabitants concerning their future (UN GA Res. 1569(XV) of 18 December 1960). The constitution adopted by the Constitutional Convention on 28 October 1960 was endorsed and it was decided that Western Samoa would become an independent State on the basis of that same constitution on 1 January 1962. See UN Ybk, 1961, 495 ff.

²⁶ On 18 February 1965 the UN GA (Res. 2005(XIX)) authorized the Secretary-General to appoint a UN representative to supervise general elections, which were held on the Cook Islands on 21 April 1965. See UN Ybk, 1965, 570 ff.

²⁷ A UN supervised referendum on the question of independence was held in Equatorial Guinea on 11 August 1968. The mission stayed on to supervise general elections, which were held on 22 and 29 September. See UN Ybk, 1968, 741.

²⁸ By virtue of Res. 2156(XXVIII) of 18 June 1971 the Trusteeship Council decided to send a visiting mission to Papua-New Guinea to observe the elections to the House of Assembly. The mission visited the country from 15 February to 17 March 1972. See UN Ybk, 1972, 522.

²⁹ A referendum on self-determination was held in Niue in September 1974. The administering authority, New Zealand, invited the UN to send observers. The vote was in favour of self-government in free association with New Zealand. The results were endorsed by the G.A. by virtue of Res. 3285(XXIX) of 13 December 1974. See UN Ybk, 1974, 792 ff.

³⁰ On 12 November 1974 a UN visiting mission was sent to Ellice Island at the request of the United Kingdom, to supervise a referendum on separation from the Gilbert islands. Ellice islanders voted in favour of separation. By virtue of Res. 3288(XXIX) of 13 December 1974 the GA expressed their appreciation of the mission's work. See UN Ybk, 1974, 791.

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Northern Marianas in 1975,³¹ and the French Comores Islands in 1974 and 1976.³² Only in few cases did the UN fail to organize such plebiscites or elections. According to a distinguished commentator,³³ the cases of Gibraltar, West Irian, and Western Sahara stand out in this respect.

Secondly, in at least two cases (Rwanda-Urundi and the British Cameroons) the United Nations did not give primacy to the principle of territorial integrity. In the case of Rwanda-Urundi (a Belgian-administered territory) between 1959 and 1962 the United Nations overcame strong resistance to the splitting of the territory on the part of many African States, which were convinced that the best future for the territory lay 'in the evolution of a single, united and composite State'. As UN visiting missions had found compelling evidence of a strong feeling among the population that the separate personalities of Rwanda and Burundi should be respected, the Organization set up and supervised free elections from which the will of the two peoples to separate became apparent. In 1962, the General Assembly, by Resolution 1746(XVI) thus agreed to let Rwanda and Burundi 'emerge as two independent and sovereign States'. In the case of the British Cameroons, the United Nations' visiting mission concluded that the people of the Northern Cameroons preferred integration into Nigeria to political independence as a sovereign State. As for the inhabitants of Southern Cameroons (also under British administration), it was not clear whether they wished independence or integration into Cameroun (a former French colony). The United Nations therefore decided to call for separate UN-supervised plebiscites. The result was that the people of the Northern Cameroons opted for union with Nigeria and those of the Southern Cameroons voted for integration with Cameroun. In this case too, the United Nations was thus instrumental in making the principle of self-determination prevail over that of territorial integrity.

This practice should not, however, be overemphasized. The first of the two trends referred to above merely shows that the UN endeavoured, as

³¹ By virtue of Res. 2160(XLII) of 4 June 1975 the Trusteeship Council decided to send a visiting mission to observe the plebiscite in the Mariana Islands district of the Trust Territory of the Pacific Islands. See UN Ybk, 1975, 744.

³² Plebiscites were held in the Comoro Islands in 1974 and in 1976. In 1974 the three main islands (Anjouan, Grande Comore, and Moheli) opted for independence, whereas the majority in Mayotte rejected independence. A special referendum was again held concerning Mayotte in 1976 and the vast majority voted in favour of remaining with France. See 22 AFDI, 1976, 964-7; D. Rouzié, 'Note', in 103 *Journal de Droit International*, 1976, 392-405. For the reactions to the referendum in Mayotte in the General Assembly and Security Council, see Pomerance, *Self-Determination in Law and Practice*, 30-1.

³³ T. M. Franck, 'The Stealing of the Sahara', 70 AJIL, 1976, 700 ff.

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far as possible, to meet the basic requirements of the principle of self-determination. It is not clear, however, whether the States concerned regarded themselves as legally bound to hold a referendum or a plebiscite in each case of decolonization. As for the second of the trends above mentioned, it should be underlined that the two territories at issue were even at the time of colonization distinct and separate in many respects. We are therefore confronted here with cases where the setting up of one independent State would have been blatantly contrary to the history and wishes of the populations concerned. The practice followed by the UN in these two cases cannot however be transposed to other instances, such as that of a colonial people consisting of various ethnic groups artificially welded together by the colonial Power. Indeed in these cases, the United Nations did not inquire as to the possible wishes of the various groups but simply endorsed the achievement of independence by the colonial territory.

Cases where the principle of self-determination was blatantly set aside

Against this background of a fairly consistent implementation of self-determination in the colonial sphere, some instances of a gross disregard for the principle stand out; (i) India's annexation of the Portuguese enclaves within its territory of *Goa, Damao and Din*, in 1961; (ii) the annexation of *West Irian* by Indonesia in 1969; (iii) the occupation and subsequent annexation of *East Timor* by Indonesia in 1975. This last case will be the subject of closer scrutiny in Chapter 9 (pp. 223–30). Therefore, only the first two cases will be dealt with here. (Some commentators add to this list the territories of

³⁴ As is well known, under the Treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong islands and a part of the Kowloon Peninsula were ceded to Great Britain in perpetuity. The rest of the territory (the New Territories plus the rest of Kowloon) comprising 92 per cent of the total land area was leased to Great Britain for ninety-nine years under a third Treaty, the Convention of Peking executed in 1898. The Chinese government has consistently argued that the whole of Hong Kong is Chinese territory and that the aforementioned treaties were unequal. Recently, negotiations commenced between the two governments concerning the whole area (the 8 per cent of Hong Kong's land area would not be viable without the New Territories, which contain most of the territory's agriculture and industry, its power stations, airport and container port). In 1984 the two governments signed a Joint Declaration whereby Hong Kong would revert to China in 1997.

On a few occasions, in discussions before the UN Human Rights Committee on the British periodic reports on the Covenant on Civil and Political Rights, the British government has reported on measures taken to respect self-determination. Thus, in 1991, answering questions on self-determination in Hong Kong, the British delegate pointed out that: 'Following the signing of the Joint Declaration in 1984, an Assessment

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Hong Kong³⁴ and Macao,³⁵ but this inclusion may be questionable, in view of the historical particularities of the territories; in any case, in the face of the lukewarm attitude taken by the UN,³⁶ it would seem that, at least in the case of Hong Kong, the two parties concerned have attached importance to the wishes of the population.)³⁷

With regard to the three enclaves of Goa, Damao, and Din,³⁸ Portugal

Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Basic Law Drafting Committee consisted of 59 members, 23 of whom were from Hong Kong, and a Basic Law Consultative Committee, consisting exclusively of Hong Kong representatives, had been set up to determine public opinion in the Territory with regard to the draft Basic Law. The Hong Kong Government had issued a statement to the effect that it welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process and that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process' (see *Report of the Human Rights Committee to the General Assembly*, 1991, UN Doc. A/46/40, para. 367; see also paras. 354, 368–9). The issue had already been discussed in 1988 (see *Report of the Human Rights Committee to the General Assembly*, 1989, UN Doc. A/44/40, paras. 143, 152–4).

³⁵ As for Macao, which will be returned by Portugal to China in 1999, see, *inter alia*, the discussion in 1990 on the Portuguese periodic report on the UN Covenant on Civil and Political Rights, before the Human Rights Committee: *Report of the Human Rights Committee to the General Assembly*, 1990, vol. I, UN Doc. A/45/40, paras. 124, 126.

³⁶ It is worth recalling that in 1972 the United Nations, at the request of China, decided that Hong Kong and Macao and dependencies were 'part of Chinese territory occupied' respectively 'by the British and Portuguese authorities' and consequently must be removed from the list of non-self-governing Territories (see UN Ybk, 1972, 543, where mention is made of the Chinese request of 8 March 1972 and the subsequent decision of the Committee of 24). See also the endorsement by the General Assembly, in Resolution 2908(XXVII) (*ibid.*, 550–1; and cf. 625), which has the consequence that the exercise of reversionary rights by China will be carried out without any consultation of the population concerned. This position is accounted for by the political and military importance of China and the consequent fear, by other countries, that China might reclaim the territories in question by resort to force, without being checked by the UN Security Council. However, the particularities of the case that may have warranted the setting aside of self-determination include at least two important elements: (i) the population of the territory has remained to a very large extent Chinese; (ii) the transfer of the two territories to Great Britain was effected on the basis of a Treaty that provided for a lease and not a cession proper.

³⁷ See below, Chapter 12.

³⁸ On the question of Goa, see in particular Q. Wright, 'The Goa Incident', 56 AJIL, 1962, 617 ff.; I. Brownlie, *International Law and the Use of Force by States*, Oxford 1964, 349, 379–83; Higgins, *The Development of International Law, Through the Political Organs of the United Nations*, London 1963, 187–8; Blay, 'Self-Determination v. Territorial Integrity', 466–7; J. Crawford, *The Creation of States in International Law*, cit., 112–13; R. C. A. White, 'Self-Determination: Time for a Re-Assessment?', 28 NILR, 1981, 158; Emerson, *Self-Determination Revisited in the Era of Decolonization* 19–24; Rigo Sureda, *The Evolution of the Right of Self-Determination*, 172–7, 329–32; M. Shaw, *Title to Territory in Africa*, cit., 151.

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was slow to put in motion the process of decolonization but India decided not to wait for a plebiscite or referendum and so invaded this territory on 12–13 December 1961. When the UN Security Council met at the request of Portugal, India, supported by Liberia, asserted that its armed action was justified because Portugal had no sovereign right over non-self-governing territories in Asia, its occupation of those territories was illegal, and furthermore ‘the people of Goa are as much Indians as people of any other part of India’.³⁹ This view was rejected by some members of the Security Council, namely the US, the UK, France, Turkey, and China, who all put forward various arguments mainly related to the illegal use of force (but the US also mentioned, in passing, the principle of self-determination).⁴⁰ Two other States, namely Chile and Ecuador, also criticised the stand taken by India but explicitly referred to self-determination. Thus, the Chilean delegate pointed out the following:

In the present case, we think the parties should take into consideration the wishes of the inhabitants of Goa, Damao and Din. There is no doubt whatsoever that the Portuguese possessions in India are historical vestiges of a colonial past . . . Neither historical possessions [by Portugal] nor violent possessions [by India] should prevail, but the freely expressed wishes of the inhabitants of the disputed territories.⁴¹

The United Arab Republic (as it then was) and Ceylon also relied on self-determination but their conclusion was different to that of Chile and Ecuador. According to them, since the people of the enclaves had not been allowed by Portugal to exercise their right to self-determination, India’s resort to force did not amount to an act of aggression.⁴²

The formal outcome of this situation is well known. A draft resolution submitted by France, Turkey, the UK, and the US, which, among other things, referred in its preamble to the principle of self-determination as laid down in Article 1(2) of the UN Charter, was not adopted because of a negative vote cast by the USSR.⁴³ The Indian annexation of the three Portuguese enclaves, although briefly challenged in the Security Council, was thus endorsed *de facto* by the world community, without the slightest regard being paid to the wishes of the population concerned.

³⁹ SCOR, 987th Meeting, para. 46; 988th Meeting, para. 77. As for the position of Liberia, see SCOR, 987th Meeting, paras. 93–5.

⁴⁰ The US stated among other things: ‘The U.S. stand on the colonial question is that we wholeheartedly believe in progress, in self-government and in self-determination for colonial peoples’ (SCOR, 988th Meeting, para. 90).

⁴¹ SCOR, 988th Meeting, para. 30.

⁴² SCOR, 987th Meeting, para. 125.

⁴³ See UN Ybk, 1961, 131.

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Let us now turn to the question of West Irian (West New Guinea).⁴⁴

In 1954 Indonesia, which had achieved independence in 1949, asked the UN General Assembly to discuss the question of the status of the territory. According to Indonesia, West Irian had always been an integral part of Indonesia, and must therefore be returned to this State. The Netherlands, supported by other Western countries (Australia, Belgium, Colombia, France, and New Zealand) contended that the Dutch administration of West Irian constituted a peaceful attempt to create conditions for the self-determination of the population; in its view, the interests of the non-self-governing people concerned should prevail above all else.⁴⁵ Other States, including Brazil, El Salvador, Pakistan, Peru, and Uruguay, after voicing their opposition to colonialism in all its forms, considered that the General Assembly should adopt a resolution stressing the importance, not of bilateral negotiations between the two States concerned but rather of the attainment of self-determination by the people of West Irian.⁴⁶ However, by reason of the lack of agreement no resolution was adopted. In subsequent years the parties reiterated their positions, The Netherlands insisting that the question of sovereignty over the territory was to be ultimately resolved by the inhabitants themselves and Indonesia seeking instead a negotiated settlement between the two States.⁴⁷

⁴⁴ On this question, see in particular Emerson, *Self-Determination Revisited*, 53–62; H. von Mangoldt, 'Die West-Irian Frage und das Selbstbestimmungsrecht der Völker', 313 *Zeit.*, 1971, 197–245; Rigo Sureda, *The Evolution of the Right of Self-Determination*, 143–51; Blay, 'Self-Determination versus Territorial Integrity', 450–2, as well as the writings by T.M. Franck and M. Pomerance quoted below (notes 58 and 59).

⁴⁵ UN Ybk, 1954, 57–8.

⁴⁶ *Ibid.*, 58.

⁴⁷ See UN Ybk, 1955, 61–2; UN Ybk, 1956, 125–7; UN Ybk, 1957, 76–9. The position of the two parties was clearly restated in 1957. As is recorded in the UN Ybk, 1957 (at 77), the Indonesian stand was as follows: 'Instead of the United Nations being allowed to serve as an instrument for reconciling the differences between the two States, numerous pretexts were being invoked to prevent a peaceful settlement, notably the principle of "self-determination". The Indonesian representative found it curious that certain powers which had proclaimed their adherence to the principle of reunification of divided States were conducting a movement exactly in reverse of that principle with respect to West Irian. Indonesia was fighting against the amputation of West Irian from the rest of Indonesia and for the principle of reunification and national unity. Any thought of splitting Indonesia into several smaller States was illusory. If Indonesia were to disintegrate and if the present democratic character of the State were to come to an end and be replaced by a different political system, it would not be a development designed to increase the stability or ensure the peace and security of South-East Asia.'

The Dutch stand was as follows (*ibid.*, 77–8): 'The representative of the Netherlands summed up the basic position of his Government as follows: (1) The Netherlands, in

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The situation remained as stated until 1961, when the question was once again brought before the General Assembly. In this forum the parties underlined their positions: The Netherlands insisted on the principle of self-determination and Indonesia on the principle of negotiation between the two States. It should be noted, in this respect, that the Dutch proposal to consult the population concerned offered a wide range of options: independence, integration into Indonesia, association with the other part of New Guinea or other islands in the Pacific region.⁴⁸ Western States sided with The Netherlands while Indonesia mustered the support of socialist and developing countries. However, the basic disagreement existing among States once again made it impossible for a resolution to be adopted.⁴⁹

Subsequently, an agreement was reached by the two States on 15 August 1962; under this agreement The Netherlands would transfer the administration of the territory to a United Nations Temporary Executive Authority (UNTEA), established by, and under the jurisdiction of, the Secretary-General, who would appoint a UN Administrator to lead it. The Administrator would have the discretion to transfer all or part of the administration of the territory to Indonesia at any time after 1 May 1963. The inhabitants of West Irian were to exercise their right of self-

accordance with Chapter XI of the United Nations Charter, was responsible for the administration of Netherlands New Guinea and was fulfilling its obligations under Article 73. (2) If the Netherlands were to agree to transfer the territory to Indonesia without first ascertaining the wishes of the inhabitants, it would be forsaking its duty to them and to the United Nations. (3) The Netherlands had solemnly promised the territory's inhabitants that they would be granted the opportunity to decide their own political future as soon as they were able to express their will on this. (4) In the absence of such a decision, the Netherlands could not and would not comply with any Indonesian demands for the annexation of the territory. Nor would it enter into any negotiations about its future status.... The Netherlands representative further stated that Indonesia was not really advocating negotiations with the Netherlands so as to reach a solution by common consent which would take the wishes of the territory's inhabitants into account. On the contrary, it was urging the General Assembly to advocate negotiations on the basis of two assumptions: (1) that Netherlands New Guinea was legally part of Indonesia and illegally occupied by the Netherlands, and (2) that the territory should be transferred to Indonesia without its population being previously consulted.

The Netherlands, he added, was willing to have the first assumption tested by the International Court of Justice. The second assumption, he thought, was a denial of the right of self-determination and thus contrary to the Charter.⁷

⁴⁸ See UN Doc. A/4954, of 4 November 1961 (letter from the Dutch representative to the President of the UN General Assembly).

⁴⁹ UN Ybk, 1961, 51-7.

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determination before the end of 1969 and to decide whether they wished to remain with Indonesia or to sever their ties with it.⁵⁰ As far as the procedure for establishing the wishes of the inhabitants was concerned, the agreement provided that the act of self-determination was to be held 'in accordance with international practice' and with the participation of 'all adults, male and female, not foreign nationals'. The agreement also referred to the Indonesian system of *musjawarah*, a traditional method of consultation consisting in reaching 'a decision based on discussion, understanding and knowledge of a problem';⁵¹ however, resort to this system was only provided for with respect to the preliminary issue of the 'procedures and appropriate methods' to be followed in the 'act of self-determination'. The General Assembly approved the treaty by virtue of Resolution 1752(XVII) of 21 September 1962. Control of the territory was eventually handed over to Indonesia after 1 May 1963. In 1969 an 'act of free choice' was held, in accordance with GA Resolution 1752(XVII); the population opted for Indonesia and the General Assembly took note of this choice in its Resolution 2504(XXIV) of 19 November 1969.

In spite of this 'act of free choice', the integration of West Irian into Indonesia amounted to a substantial denial of self-determination. First, the choice provided for in the bilateral agreement of 1962 was limited to 'whether they wished to remain with Indonesia' and 'whether they wished to sever their ties with Indonesia'. No reference was made to the possible alternatives in case the vote was in favour of leaving Indonesia.⁵² Second, the criteria for establishing whether a territory ceased to be non-self-governing, listed in GA Resolutions 742(VIII) and 1541(XV) were not met by the bilateral agreement of 1962, as was pointed out by Rigo Sureda;⁵³ consequently, 'the attitude taken by the General Assembly can be assumed to mean that West Irian was regarded as an "integral part" of Indonesia and, therefore, that there was no need for it to go through the process indicated by the General Assembly to achieve self-determination'.⁵⁴ Third, the method of consultation was that of the *musjawarah* system, which undoubtedly did not meet the requirements set forth by the General Assembly. Fourth, no real and direct consultation of the population was made; the 'consultation' was indirect, in that Regional Councils (enlarged by three classes of representatives: regional, organizational, and tribal)

⁵⁰ UN Ybk, 1962, 124-7.

⁵¹ See below, note 55.

⁵² Cf. Rigo Sureda, *The Evolution of the Right of Self-Determination*, 232.

⁵³ *Ibid.*, 151. ⁵⁴ *Ibid.*, 151.

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were called upon to decide which of the options to accept.⁵⁵ Fifth, by reason of the reduction of UN personnel (due to budget cuts by The Netherlands and Indonesia and to the inability of the Indonesian authorities to provide the UN mission with adequate housing in the capital city of West Irian), the UN staff were unable properly to supervise the elections for the consultative assemblies.⁵⁶ Sixth, the Indonesian authorities put strong pressure on the population of West Irian in order to secure support for integration into Indonesia.⁵⁷

⁵⁵ The Indonesian authorities refused to accept the suggestions for consultation made by the UN Representative. According to his report, in November 1968, at a meeting with Indonesian authorities, 'I pointed out that, in my capacity as United Nations Representative, I could suggest no other method for this delicate political exercise than the democratic, orthodox and universally accepted method of "one man, one vote". However, while maintaining firmly my conviction that the people of West Irian might be given as ample and as complete an opportunity as possible to express their opinion, I recognized that the geographical and human realities in the territory required the application of a realistic criterion. I therefore suggested that the system of "one man, one vote"' should be used in the urban areas, where the communications and transportation, the comparatively advanced cultural level of the population and the availability of adequate administrative facilities made it possible, and that this might be complemented by collective consultations in the less accessible and less advanced areas of the interior. A mixed system of that type would have the merit of being the best possible in the circumstances and would enable the Indonesian Government and the United Nations to state that the orthodox and perfect method of 'one man, one vote' had been used in the act of free choice to the maximum extent compatible with reality. I added that the staff of my mission would be ready to co-operate in the preparations for the exercise and in the registration of the voters and the tabulation of the results. The modalities of the collective consultations in the areas where that system would be applied would have to be the subject of future discussions' (*Report of the [UN] Secretary-General Concerning the Act of Self-Determination in West Irian*, 24 General Assembly, Agenda Item 98, UN Doc. A/7723, 6 November 1969, 29 (para. 82)).

The response of the Indonesian government, given in February 1969, was that its 'intention was to consult the representative councils in order to obtain their approval for implementing the act of free choice through the eight representative councils, which would be enlarged to form consultative assemblies where each member would represent approximately 750 inhabitants. The consultative assemblies would not reach a decision through voting but through *musjawarah* which, as explained at that meeting, consisted in reaching a "decision based on discussion, understanding and knowledge of a problem".

This meant that the Government still intended to apply the consultation (*musjawarah*) method of decision through representatives of the people but, in contradistinction to the ideas expressed on 1 October . . . it planned to carry out the act of free choice not through one body of 200 representatives but consecutively through eight consultative assemblies, comprising some 1,025 representatives' (*ibid.*, 30, paras 84–5).

⁵⁶ *Ibid.*, 312.

⁵⁷ Cf. *Report of the [UN] Secretary-General Regarding the Act of Self-Determination in West Irian*, 54–6, 70. As the UN Representatives pointed out: 'I regret to have to express my reservation regarding the implementation of article XXII of the Agreement, relating to "the rights, including the rights of free speech, freedom of movement and of assembly,

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The critical comments that have been made concerning this pseudo-choice – which, as shown above, actually proved to be a charade and a substantive betrayal of the principle of self-determination – by such authors as Pomerance⁵⁸ and Franck⁵⁹ are fully justified, as are the views put forth by the Dutch delegate to the General Assembly in 1962,⁶⁰ which were rightly referred to by Franck as ‘an eloquent epitaph to self-determination’.⁶¹

Three outstanding situations

Three situations still await a proper solution based on respect for the will of the population concerned: Western Sahara, Gibraltar, and the Falklands/Malvinas. Since the first two will be discussed at some length in Chapter 9, only the third case will be briefly dealt with here. Nevertheless, in so doing, reference will be made, if somewhat briefly, to the Gibraltar question, with which that of the Falklands/Malvinas has some common elements.⁶²

It is indeed interesting at the outset to note these common features. Both the Falklands/Malvinas and Gibraltar have been under British control for more than 150 years, the former since 1833, as a result of military occupation, and the latter since 1713, as a result of a treaty of cession with Spain subsequent to its occupation in 1704 by the United Kingdom. Both

of the inhabitants of the area”. In spite of my constant efforts, this important provision was not fully implemented and the Administration exercised at all times a tight political control over the population’ (*ibid.*, 70, para. 251).

⁵⁸ M. Pomerance, ‘Methods of Self-Determination and the Argument of “Primitiveness”’, 12 CYIL, 1974, 65; Pomerance, *Self-Determination in Law and Practice*, 26, 32–5.

⁵⁹ T. M. Franck, *Nation against Nation*, New York and Oxford 1985, 76–81.

⁶⁰ He stated the following: ‘Of what happened . . . I will say only this: that the Netherlands Government regrets that in this instance no effective remedy was to be found against the use of force, contrary to the obligations of the States under the Charter of the United Nations. As a result, the Netherlands was faced with the choice between fighting in self-defense or resigning itself to transfer of the territory to Indonesia without a previous expression of the will of the population. War would have meant exposing the Papuans and their country to death and destruction and many Dutchmen and Indonesians to the horrors of combat – without even providing a sensible solution to the problem. And so, with a heavy heart, the Netherlands Government decided to agree to the transfer of the territory to Indonesia on the best conditions obtainable for the Papuan population’ (GAOR, XVII, 1127th Pl. Mtg., 21 September 1961, 51).

⁶¹ *Ibid.*, 81.

⁶² On the question of Gibraltar and Falklands/Malvinas, see in particular Blay, ‘Self-Determination v. Territorial Integrity’, 463–5 and the bibliography quoted there. See also M. Iovane, ‘Le Falkland/Malvinas: autodeterminazione o colonizzazione?’, in N. Ronzitti (ed.), *La questione delle Falkland/Malvinas nel diritto internazionale*, Milan 1984, 85–122; R. Dolzer, ‘Falkland Islands (Malvinas)’, 12 *Encyclopedia*, 1990, 103–8.

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are a considerable geographical distance from the administering country. Furthermore, the inhabitants of both the Falklands/Malvinas and Gibraltar are essentially of 'colonial' (i.e. British) stock (although the present inhabitants of Gibraltar are of a less homogeneous origin, since many of them are also descended from Spaniards or other groups who have moved to Gibraltar over the years). Finally, in both cases the 'contiguous' country – Argentina in the case of the Falklands/Malvinas, Spain in the case of Gibraltar – claims a reversionary title to sovereignty over the territory in question.

As is well known, an armed conflict broke out in the Falklands/Malvinas in 1982, when Argentina attempted to take the islands by force. At the end of the war, Britain, having won a decisive victory, reaffirmed her right to the islands. The self-determination issue, however, remains unresolved. Argentina's claims – based on the reversion of territorial sovereignty, contiguity, and anti-colonialism – remain in fundamental opposition to Britain's claim to title resulting from conquest, the continuing display of territorial sovereignty, and self-determination.⁶³

In general, the UN's failures in the Falklands/Malvinas, Gibraltar, and the Western Sahara, and in the other situations still pending, are rooted more in the intricacies of each situation than in the principle of self-determination itself. In some cases the composition of the population and the existence of conflicting claims of sovereign States make the actual implementation of self-determination impracticable. However, the existence of the right demands that those in power take into account the wishes or the interests of the territory's population when a solution is finally worked out. Therefore, despite the present impracticability of the principle in question, it retains a potential role. In other cases, the intractability of the problem is rooted in overriding economic and strategic interests.

However, regardless of the UN's failures – stemming, to some extent, from the non-existence of a UN enforcement mechanism – one point

⁶³ For a reasoned statement on the official British stand on the question of the Falklands/Malvinas and the role of self-determination, see 53 BYIL, 1982, 367 ff. See also 61 BYIL, 1990, 507. It should be noted that in 1991, when discussing in the UN Human Rights Committee the 3rd British Periodic Report on the implementation of the UN Covenant on Civil and Political Rights, the British delegate pointed out the following: '[T]he people of the Falkland Islands expressed their views in regular elections and . . . there was no doubt that their wish was to remain under British sovereignty. Since the 1990 agreement between the United Kingdom and Argentina, the two Governments had been able to agree on a number of issues relating to activities in the Islands and in the South Atlantic region in general' (*Report of the Human Rights Committee to the G.A.*, 1991, UN Doc. A/46/40, para. 366).

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needs to be emphasized: in each case the UN has pursued the most logical and realistic course of action. The UN must be credited with promoting *negotiations* between the States claiming title to the Falklands/Malvinas and Gibraltar. Its insistence that all negotiations fully recognize the wishes and interests of the populations concerned is to be welcomed. In addition, it seems difficult to criticize the UN's hesitancy to resolve outstanding differences by merely resorting to the traditional means of implementing self-determination (referendums and plebiscites) in the cases of the Falklands/Malvinas and Gibraltar. Since the British – rightly or wrongly – have for a long time maintained policies designed to keep the two territories in the hands of British people and to exclude Argentinians and Spaniards respectively, perhaps one should not reject out of hand the argument that in the Falklands/Malvinas and Gibraltar cases one ought in principle to take account of the interests and concerns of the ‘contiguous’ State as well.

Be that as it may, by reaffirming the principle of self-determination as the *basic standard of conduct* while at the same time calling for *direct negotiations* between all parties concerned, the UN has assumed an active and important role in the field of self-determination (see, on this matter, my comments in Chapter 8).

THE PRONOUNCEMENTS OF THE INTERNATIONAL COURT OF JUSTICE

The legal regulation of the self-determination of colonial peoples was authoritatively stated by the ICJ, first in its Advisory Opinion on *Namibia*,⁶⁴ of 1971 and then in the Advisory Opinion on *Western Sahara*, of 1975. In the latter Opinion the Court actually placed an interpretation on the existing standards that broadened the purport and impact of self-determination. After mentioning the GA Resolution 1514(XV), the Court pointed out that:

The above provisions, in particular paragraph 2 [defining self-determination], thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.⁶⁵

The Court then went on to quote two other resolutions of the General Assembly, namely Resolution 1541 (XV), that has been discussed above and the 1970 Declaration on Friendly Relations (Resolution 2625(XXV)). It then concluded as follows:

⁶⁴ See above, p. 72 note 12. ⁶⁵ ICJ, Reports 1975, 32, para. 55.

does not seem that the pronouncements of States and the international practice in this matter have hardened into a specific customary rule to the effect that the population concerned must always be enabled to express its free and genuine will as to whether or not to be transferred to another country (to use the language of the Atlantic Charter, this would be a rule providing that no 'territorial changes' are permissible 'that do not accord with the freely expressed wishes of the people concerned').⁵⁶ Nor, on the other hand, does a rule exist stating that the people's views are irrelevant or should not be sought. Here the principle at hand comes into play and requires that no cession or transfer should be carried out if the population concerned is not in agreement (see below, pp. 189–90).⁵⁷

*Self-determination as imposing obligations towards the whole international community
and as part of jus cogens*

Two distinguishing features of the law on self-determination should now be emphasized, which are indicative, at the legal level, of the overriding importance self-determination has now acquired in the world community.

⁵⁶ However, some national Constitutions lay down the principle. Mention can be made, for example, of the French Constitution of 1958, Art. 53(3) which provides that 'Nulle cession, nul échange, nulle adjonction de territoire n'est valable sans le consentement des populations intéressées' (this provision takes up Art. 27(2) of the 1946 French Constitution). Art. 53(3) was applied by the 'Conseil Constitutionnel' with regard to the Comoros Islands in 1975 (see J.-C. Mestre, 'L'indivisibilité de la République française et l'exercice du droit à l'autodétermination', RDP, 1976, 431–62; L. Favoreu, 'La décision du 30 décembre 1975 dans l'affaire des Comores', *ibid.*, 537–81).

⁵⁷ In spite of the joint working and interplay of the principle and the rules on self-determination, the fact remains that the international regulation of this matter is far from satisfactory. In this connection, it is fitting to recall the wise remarks set out in 1958 by W. Wengler: 'Plus on étudie donc le principe de la libre disposition des peuples jusque dans les détails de son application pratique, plus il paraît nécessaire de le compléter par d'autres règles du droit international. Il faut des garanties internationales pour la liberté des plébiscites. Si la population du territoire, qui est choisie comme base d'un plébiscite, n'est pas d'opinion unanime et si une majorité l'emporte sur une minorité, le droit de disposer d'elle-même exercé par la collectivité doit être complété par le droit d'option et par une protection efficace internationale de la minorité. La libre disposition des peuples exige aussi une réglementation internationale des migrations, basée sur la liberté de mouvements de l'individu, l'interdiction de priver un homme de son foyer, et l'interdiction des manipulations gouvernementales destinées à changer la composition de la population d'un territoire. Il faut surtout réprimer l'abus du droit de la libre disposition par la population habitant un territoire contenant des richesses naturelles nécessaires à l'humanité entière' ('Le droit de libre disposition des peuples', 38–9).

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First, the obligations flowing from the principle and rules on self-determination are *erga omnes*, that is, they belong to that class of international legal obligations which are not 'bilateral' or reciprocal, but arise in favour of all members of the international community. As is well known, following the celebrated dictum of the ICJ in the *Barcelona Traction* case,⁵⁸ there is now a firm distinction between two sets of international legal obligations: (a) those which (i) only arise as between pairs of States and (ii) are reciprocal or 'synallagmatic' in kind, in that their fulfilment by each State is conditioned by that of the other State, and (b) the obligations which (i) are incumbent on a State towards all the other members of the international community, (ii) must be fulfilled regardless of the behaviour of other States in the same field, and (iii) give rise to a claim for their execution that accrues to any other member of the international community.⁵⁹

There can be no gainsaying that the set of norms on self-determination, to which attention has been drawn above, imposes obligations *erga omnes*. This proposition is supported by the fact that both within and outside the United Nations States have consistently taken the view that (a) self-determination must be respected by any State (be it a colonial State or a Power occupying a foreign territory or a State denying a racial group equal access to government), (b) it must be respected regardless of whether or not third States, finding themselves in the same situation, comply with the norms on self-determination and (c) any other international subject is entitled to demand respect for self-determination. However, we shall see below (pp. 147–58) that in actual practice States have only seldom made use of their right to demand compliance with international standards on self-determination by a given State.

Let us now turn to the question of *jus cogens*. According to a number of commentators,⁶⁰ self-determination has now become a peremptory norm

⁵⁸ ICJ, Reports 1970, 32.

⁵⁹ On obligations *erga omnes*, see: J. Juste Ruiz, 'Las obligaciones *erga omnes* en Derecho internacional público', *Estudios de derecho internacional – Homenaje al Profesor Miñja de La Muela*, vol. I, Madrid 1979, 219 ff.; P. Weil, 'Towards Relative Normativity in International Law?' 77 *AJIL*, 1983, 413 ff.; J. Frowein, 'Die Verpflichtungen *erga omnes* in Völkerrecht und ihre Durchsetzung', *Fest. H. Mosler*, Berlin, Heidelberg, and New York 1983, 241 ff.; P. Picone, 'Obblighi reciproci e obbligazioni *erga omnes* degli Stati nel campo della protezione internazionale dell'ambiente marino dall'inquinamento', in V. Starace (ed.), *Diritto internazionale e protezione dell'ambiente marino*, 1983, 15 ff.

⁶⁰ See Brownlie, *Principles of Public International Law*, 513, 515; H. Bokor-Szegö, 'The International Legal Content of the Right of Self-Determination as Reflected by the

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of international law from which no derogation is admissible by means of a treaty or any similar international transaction. These authors, however, do not provide any element of State practice or *opinio juris* in support of their view.

Two issues should be discussed in this respect. Firstly, on what basis can it be contended that self-determination belongs to the body of international peremptory norms? Secondly, given the distinction outlined above between a principle proper of self-determination and a set of specific customary rules, which of them can be said to be part of *jus cogens*?

As far as the first issue is concerned, the legal basis for the transformation of self-determination into *jus cogens* cannot of course be found in views – however authoritative – put forward by persons acting in their individual capacity. I am referring to the well-known separate opinion of Judge Ammoun in the *Barcelona Traction* case,⁶¹ to the opinion of some members of the International Law Commission,⁶² as well as the views expressed in the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities,⁶³ and, more recently, in the UN International

Disintegration of the Colonial System', in *Questions of International Law*, Budapest 1966, 39–41; H. Gross-Espiehl, 'Self-Determination and Jus Cogens', in A. Cassese (ed.), *United Nations. Fundamental Rights*, Alphen aan den Rijn 1979, 167; Ermacora, 'The Protection of Minorities before the United Nations', 325; E. Klein, 'Vereinte Nationen und Selbstbestimmungsrecht', in D. Blumenwitz and B. Meissner (eds.), *Das Selbstbestimmungsrecht der Völker und die deutsche Frage*, Cologne 1984, 121; Shaw, *Title to Territory in Africa*, 91; A. Kiss, 'The Peoples' Right to Self-determination', at 174; N. Quoc Dinh, P. Daillier, and A. Pellet, *Droit international public*, 4th edn, Paris 1992, 490; A. Pellet, 'The Destruction of Troy Will Not Take Place', in Playfair, *International Law and the Administration of Occupied Territories*, 184; J. A. Frowein, 'Self-Determination as a Limit to Obligations under International Law', in Tomuschat, *Modern Law of Self-Determination*, 218–21. Cf. also Cassese, *International Law in a Divided World*, 136.

By far the most extensive treatment of this issue can be found in L. Hannikainen, *Peremptory Norms (jus cogens) in International Law*, Helsinki 1988, 357–424. This author concludes that 'all States are under the peremptory obligation: (1) not to forcibly subject alien peoples to a colonial-type domination; (2) not to keep alien peoples by forcible or deceitful means under a colonial-type domination; and (3) not to exploit the natural resources of those alien territories, which are under their colonial-type domination, to the serious detriment of the people of those territories' (at 421).

That self-determination has become part of *jus cogens* is denied by Calogeropoulos-Stratis, *Le droit des peuples à disposer d'eux-mêmes*, 269–71; Crawford, *The Creation of States in International Law*, at 81; Pomerance, *Self-Determination in Law and Practice*, 70–2; and B. Driessen, *A Concept of Nation in International Law*, 60–1, at note 57.

⁶¹ ICJ, Reports 1970, 304, 312.

⁶² See, e.g., *Yearbook of the ILC*, 1963, vol. II, 199.

⁶³ In 1978, in reporting to the UN Human Rights Commission on the work of the Sub-Commission (a body consisting of experts acting in a personal capacity), T. van Boven, Director of the UN Division of Human Rights, stated that: 'The view had been

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Law Commission by the Special Rapporteur on State Responsibility, G. Arangio-Ruiz.⁶⁴ These views cannot be held to reflect State practice, although they are highly indicative of the new trends emerging in the international community and may contribute, and have indeed contributed, to the evolution of State practice. More weight should of course be attributed to statements made by State organs (it should be noted, in passing, that in the absence of State practice proper, for the purpose of classifying an international rule as belonging to *jus cogens*, the *opinio juris* of States as to the legal standing of that rule may prove sufficient).⁶⁵

In this respect, reference can be made to the pronouncements of various States in the UN General Assembly on the occasion of a discussion on the Draft Articles on the Law of Treaties in 1963,⁶⁶ at the Vienna Conference on the Law of Treaties in 1968–9,⁶⁷ as well as in the General Assembly in 1970, on the occasion of the discussion on the Declaration on Friendly

widely expressed in the Sub-Commission that the principle of self-determination had the character of *jus cogens* – a peremptory norm of international law' (UN Doc. E/CN.4/SR 1431, at 3, para. 6). The same view was expressed in the Human Rights Commission by the representative of the PLO (*ibid.*, 1437, at 8, para. 26), but it is doubtful whether it can be equated to that of a State, for the purpose of the formation of international practice.

⁶⁴ G. Arangio-Ruiz, *Fourth Report on State Responsibility*, UN Doc. A/CN.4/444/Add. 1 (25 May 1992), at 31 (para. 91).

⁶⁵ Recently, it has been authoritatively held by C. Dominicé ('Le grand retour du droit naturel en droit des gens', *Mélanges J.-M. Grossen*, Basle and Frankfurt am Main 1992, especially 401–9; cf. also J. Verhoeven, 'Le droit, le juge et la violence', RGDIP 1987, 1205) that some general precepts based upon *ethical* values, and in particular those precepts which belong to *jus cogens*, can acquire the status of legally binding rules or even peremptory norms of international law without the confirmation by any State practice proper, provided the element of *opinio juris* is present.

⁶⁶ See GAOR, XXIst Session, VIth Committee, 905th Meeting.

⁶⁷ See the statements of the delegates of the USSR (United Nations Conference on the Law of Treaties, First Session, 1968, *Official Records*, 294, para. 3), Sierra Leone (*ibid.*, 300, para. 9), Ghana (*ibid.*, 301, para. 16), Cyprus (*ibid.*, 306, para. 69), Poland (United Nations Conference on the Law of Treaties, Second Session, 1969, *Official Records* 99, para. 71), Byelorussia (*ibid.*, 105, para. 48). See also the statements of those delegates who affirmed that all the principles laid down in Art. 1 (or Arts. 1 and 2) of the UN Charter belong to *jus cogens*: Poland (United Nations Conference on the Law of Treaties, First Session, *Official Records*, 302, para. 35; see also Second Session, *Official Records*, 99, para. 70), Romania (First Session, *Official Records*, 312, para. 55), Czechoslovakia (*ibid.*, 318, para. 25), Ecuador (Second Session, *Official Records*, 96, para. 35), Cuba (*ibid.*, 97, para. 42), Ukraine (*ibid.*, 100, para. 75), the USSR (*ibid.*, 104, para. 41).

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Relations.⁶⁸ Reference can also be made to the submissions made in 1975 before the ICJ both by a Western State (Spain) and by Algeria and Morocco (this last State asserted, however, that only the ‘principle of decolonization’ – of which self-determination is only one of the possible methods of implementation – has the status of *jus cogens*).⁶⁹

The problem with these pronouncements is that they mostly emanate from two groups of States: that is, the developing and ‘socialist’ States (as they were then called) but not from Western countries. Thus, in the UN General Assembly a view favourable to regarding self-determination as *jus cogens* was taken by Ukraine, Czechoslovakia, the USSR, Peru and Pakistan, Iraq, Ethiopia, and Trinidad and Tobago while at the Vienna Conference a similar view was expressed by the USSR, Sierra Leone, Ghana, Cyprus, Byelorussia, and Poland. As for Western countries, it would seem that only Greece in 1970,⁷⁰ Spain,⁷¹ and Italy in 1975⁷² are on record as upholding the view at issue. However, an important statement by the US should also be mentioned. It was made in 1979 by the Legal Adviser to the US State Department in a memorandum submitted to the then Acting Secretary of State Warren Christopher. In this document the Legal Adviser stated that the Soviet invasion of Afghanistan was contrary to Article 2(4) of the UN Charter as well as to the principle of self-determination of peoples, to which that provision referred. As Article 2(4)

⁶⁸ See the statements of Iraq (GAOR, 25th Session, Sixth Committee, A/C.6/SR.1180, para. 6), Ethiopia (*ibid.*, 1182, para. 49) and Trinidad and Tobago (*ibid.*, 1183, para. 5). A contrary view was taken by Hungary (*ibid.*, 1179, para. 35: ‘The Declaration would not have the status of a treaty and could not be considered *jus cogens*’).

⁶⁹ See, e.g., the Memorial of the Spanish Government to the ICJ in the *Western Sahara* case, ICJ, *Pleadings. Oral Arguments. Documents*, Western Sahara, vol. I, 206–8; the oral statement of Mr Bedjaoui, counsel for Algeria, *ibid.*, vol. IV, 497–500 and vol. V, 319–20; and the oral statement of Mr Vedel, counsel for Morocco, *ibid.*, vol. V, 179–80.

⁷⁰ In 1970, in the UN General Assembly, on the occasion of the debate on the Declaration on Friendly Relations, the Greek delegate stated that ‘The Declaration would constitute an important contribution to the safeguarding of international peace and security, and the consensus reached on the text of the seven principles furnished greatly needed clarification of the content of the related *jus cogens* provisions of the Charter’ (GAOR, 25th Session, VIth Committee, A/C.6/SR.1181, para. 31).

⁷¹ See above, note 69.

⁷² In 1975, Prof. G. Sperduti, in his capacity as Italian delegate to the UN Human Rights Committee stated that ‘The right of peoples to self-determination was not just one of the fundamental principles of the new world order. It could also be classified in a new category of international legal rules recently stated and still in the course of codification. The principle might be reckoned among those which came under the head of *jus cogens*. If it was thus classified, it would have very important repercussions and the two Special Rapporteurs appointed by the Sub-Commission should try to study the problem from that standpoint too’ (UN Doc. E/CN.4/SR.1300, 91).

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was to be regarded as a peremptory norm of international law, the Treaty of 1978 between Afghanistan and the USSR, to the extent that it would support the Soviet intervention, was to be regarded as null and void as being in conflict with *jus cogens*.⁷³ No doubt this was a very skilful and subtle way of elevating self-determination – albeit in an indirect and roundabout way – to the rank of *jus cogens*. It can be contended that a more straightforward way of relying on self-determination would consist in arguing that any invasion of a foreign territory such as that of Afghanistan amounts to the breach of two distinct and closely intertwined peremptory norms: the one prohibiting any unauthorized use of force and the norm on the right of peoples to self-determination. The US adverted instead to self-determination only insofar as it is referred to in Article 2(4). Nevertheless, whichever of these two views is regarded as the more correct, the fact remains that the US statement constitutes an important contribution to the consolidation of self-determination as a norm of *jus cogens*.

One should also mention that in its Opinion no. 1, of 11 January 1992, the ‘Arbitration Committee’ set up by the EC ‘Conference on Yugoslavia’ held that ‘the peremptory norms of general international law and, in particular, respect for the fundamental rights of the individuals and the rights of peoples and minorities, are binding on all the parties to the

⁷³ It is worth quoting the relevant passages of this important pronouncement by the US authorities: ‘1. By the terms of Article 2(4) of the UN Charter, the USSR is bound “to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”. Among those Purposes are “respect for the principle of equal rights and self-determination of peoples” (Article 1(2)). The use of Soviet troops forcibly to depose one ruler and substitute another clearly is a use of force against the political independence of Afghanistan; and it just as clearly contravenes the principle of Afghanistan’s equal international rights and the self-determination of the Afghan people . . . 3. No treaty between the USSR and Afghanistan can overcome these Charter obligations of the USSR. Article 103 of the Charter provides: “In the event of conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” 4. Nor is it clear that the treaty between the USSR and Afghanistan, concluded in 1978 between the revolutionary Taraki Government and the USSR, is valid. If it actually does lend itself to support of Soviet intervention of the type in question in Afghanistan, it would be void under contemporary principles of international law, since it would conflict with what the Vienna Convention on the Law of Treaties describes as a “peremptory norm of general international law” (Article 53), namely, that contained in Article 2(4) of the Charter. While agreement on precisely what are the peremptory norms of international law is not broad, there is universal agreement that the exemplary illustration of a peremptory norm is Article 2(4)’ (in 74 AJIL, 1980, 418 ff.).

Customary rules: internal self-determination

succession [to Yugoslavia]'.⁷⁴ Although this ruling, restated in Opinion no. 9, of 4 July 1992,⁷⁵ may be regarded as too sweeping and in addition emanates from a body consisting of individuals and not of States, it is nevertheless indicative of the increasingly strong movement among Western countries towards *jus cogens*.⁷⁶

The criticism may, however, be made that these elements of Western State practice are too few and far between to signal a consistent and generalized attitude. If this view is accepted, one could adopt the following line of reasoning. It is well known that for a norm of *jus cogens* to have developed the 'acceptance and recognition' of 'the international community of States as a whole' is required (ex Article 53 of the Vienna Convention on the Law of Treaties, which in this respect can be regarded as part of customary law).⁷⁷ The lack of support by an important segment of the world community might therefore lead to the conclusion that self-determination has not acquired the rank and force of *jus cogens*. Arguably, however, for a norm of *jus cogens* to evolve, it is not always necessary for all States to say in so many words that they consider that norm as existing. Although such formal 'labelling' proves important and in some cases indispensable, there may be instances where the upgrading of a rule to *jus cogens* may result *implicitly* from the attitude taken by States in their international dealings and in collective fora. Self-determination is a case in point. Undisputedly Western countries have stated time and again that self-determination is one of the fundamental principles of the world community; they have consequently agreed to such international instruments as the 1970 UN Declaration on Friendly Relations and the 1975 Helsinki Final Act; they have also insisted on the universality of self-determination, thereby showing that they intend to assign to self-determination a scope and impact extending far beyond the meaning advocated by the developing and the then socialist countries. By the same token, Western countries, except for France, have eventually accepted the formation of *jus cogens* as a class of 'special' international norms.⁷⁸ It would

⁷⁴ For the text of the Opinion, see 3 EJIL, 1992, 182–3.

⁷⁵ For the text, see 4 EJIL, 1993, at 89.

⁷⁶ In addition and *generally speaking*, one should not underevaluate, as an element of international practice, the arbitral award in the *Guinea-Bissau v. Senegal* case (*Détermination de la frontière maritime*) of 31 July 1989; the Tribunal *implicitly* regarded self-determination as a peremptory norm of international law (see 94 RGDIP 1990, 234–5).

⁷⁷ See Cassese, *International Law in a Divided World*, 175–9.

⁷⁸ See also the dictum of the International Court of Justice in the *Nicaragua* case (ICJ, Reports 1986, 100–1, para. 190).

Self-determination: a legal standard

therefore seem appropriate, in this case, to rely upon a syllogism: (i) Western countries have accepted *jus cogens*; (ii) they regard the principle of self-determination as fundamental and universal in international relations; (iii) they consequently may be assumed to consider self-determination as non-derogable on the part of States. It is submitted that resort to this 'syllogistic reasoning' is warranted in this case (but possibly not in others) because of the exceptional wealth of pronouncements by Western States on the fundamental importance of self-determination in its various versions that have become accepted at the normative level.

The aforementioned reasoning can therefore make up for the lack, among Western countries, of widespread explicit support for considering self-determination as a part of *jus cogens*. Consequently, the conclusion is justified that self-determination constitutes a peremptory norm of international law. This view, it should be added, is warranted even though so far no case has been raised in the appropriate fora of the world community of a possible conflict of a treaty with *jus cogens* (the case of East Timor, as we shall see, has been brought by Portugal before the ICJ as an instance of State responsibility because the lack of the necessary procedural requirements has prevented Portugal from raising the question of the possible nullity of the treaty in question).

Let us now turn to the second issue raised above, namely the question of whether the peremptory nature of self-determination is a quality attaching to the aforementioned general principle or to the various customary rules specifying and elaborating this principle. Given the close link and indeed complementarity of the principle and the rules, it would be artificial and improper to attribute a different legal force to each of the two classes of standards. Furthermore, it is no coincidence that whenever States have referred to self-determination as belonging to *jus cogens*, they have not specified either the areas of application of self-determination, the means or methods of its implementation, or the permissible outcome of self-determination. States have generically adverted to the 'principle' (*lato sensu*) or, more simply, to self-determination. It follows that the whole cluster of legal standards (the general principle and the customary rules) on self-determination should be regarded as belonging to the body of peremptory norms.

Annex 139

Note Verbale from the High Commission of India in Port Louis to the Mauritius Ministry of Foreign Affairs, POR/162/1/97 (9 May 1997)

Cable "HICOMIND"
Port Louis

भारतीय उच्चायोग

पोर्टलुई - मारीशस

Phone 208-3775 / 6
Telex : 4523 HICOMIN - IW
Fax 230 / 208-6859



HIGH COMMISSION OF INDIA
PORT LOUIS - MAURITIUS

No. POR/162/1/97

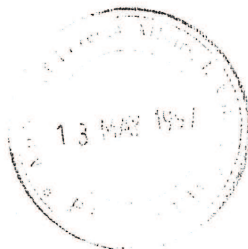
09 May 1997

The High Commission of India presents its compliments to the Ministry of Foreign Affairs, International and Regional Cooperation, Government of the Republic of Mauritius, and has the honour to reproduce herewith extracts relating to Chagos Archipelago from the Declaration adopted by the 12th Ministerial Conference of Movement of Non-Aligned Countries held in New Delhi on April 7-8, 1997.

"133. The Ministers reiterated the support of the Non-Aligned Movement for the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, and called on the former colonial power to pursue the dialogue with the Government of Mauritius for the early return of the Archipelago. In this respect, they noted with satisfaction the initiation of certain confidence-building measures by the two parties."

The High Commission of India avails itself of this opportunity to renew to the Ministry of Foreign Affairs, International and Regional Cooperation, Government of the Republic of Mauritius, the assurances of its highest consideration.

The Ministry of Foreign Affairs,
International and Regional Cooperation,
Government of the Republic of Mauritius,
Port Louis



Annex 140

Organization of African Unity, Assembly of Heads of State and Government, 36th Ordinary Session, *Decision on Chagos Archipelago*, AHG/Dec.159(XXXVI) (10-12 July 2000)

ORGANIZATION OF AFRICAN UNITY



ORGANISATION DE L'UNITE AFRICAINE

P.O. Box 3243, Addis Ababa - ETHIOPIA

Telephone 251 1 517700

Fax 251 1 517844

Reference : CID/DOC/14/18.00

The General Secretariat of the Organization of African Unity presents its compliments to the Ministries of Foreign Affairs/External Relations of all the Member States and has the honour to draw their attention to and inadvertent typing error in Paragraph 3 of the English and Portuguese versions of Decision AIG/Dec.159(XXXVI) on Chagos Archipelago, adopted by the 36th Ordinary Session of the OAU Assembly of Heads of State and Government, held from 10 to 12 July 2000 in Lome, Togo.

Paragraph 3 of this Decision must read in English and Portuguese as stated in the respective copies attached hereto as follows:

"URGES the UK Government to immediately enter into direct and constructive dialogue with Mauritius so as to enable the early return of the Chagos Archipelago to the sovereignty of Mauritius."

The French and Arabic texts, being correct, remain unchanged.

The General Secretariat apologizes this typing error and avails itself of this opportunity to renew to the Ministries of Foreign Affairs/External Relations of all the Member States the assurance of its highest consideration.

Addis Ababa, 3 October 2000

TO: *Ministries of Foreign Affairs/External Relations
of all Member States*

cc: *Embassies of all OAU Member States
Addis Ababa*



RECEIVED

10 OCT 2000

AHG/Dec.159 (XXXVI)

DECISION ON CHAGOS ARCHIPELAGO

Assembly:

1. **EXPRESSES CONCERN** that the Chagos Archipelago was unilaterally and illegally excised by the colonial power from Mauritius prior to its independence in violation of UN Resolution 1514;
2. **NOTES WITH DISMAY** that the bilateral talks between Mauritius and UK on this matter has not yet yielded any significant progress;
3. **URGES** the UK Government to immediately enter into direct and constructive dialogue with Mauritius so as to enable the early return of the Chagos Archipelago to the sovereignty of Mauritius.

Annex 141

Letter from the Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to the Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000)



Ministry of Foreign Affairs and Regional Co-operation
Republic of Mauritius

The Minister

21st December 2000

H.E. Mr. R. Cook
Secretary of State
Foreign & Commonwealth Office
London SW1A 2AG
ENGLAND

Your Excellency

May I thank you for your letter dated 6th December 2000 which was delivered by hand to me in Port Louis on 20th December 2000. I have taken note of its contents.

I wish to express my appreciation for the full, forceful and frank discussions I had with your officials in Gaborone as well as with your colleague, Minister Peter Hain. I am sure they have briefed you fully.

While going through your letter I have noticed some significant departures from the position that Her Majesty's Government has taken in the past.

For the sake of the record I am mindful of the fact that your Government had taken the position that the Chagos Archipelago would be ceded to Mauritius when it was no longer needed for the defence of the West.

It appears that you are now modifying this stand by including new elements.

Mauritius does not subscribe to your "willingness to cede the islands of the Chagos Archipelago subject to the requirement of International Law"

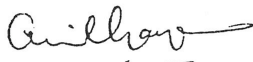
We note also that there is no strategic or defence impediment for the return of those persons of Mauritian origin who were living on the Chagos Archipelago to what you term the "outer islands".

As you are aware, Mauritius has officially announced that we have no objection to the continued presence of the US military base on Diego Garcia and we have informed the United States that there is no risk with regard to their security of tenure on the island.

Mauritius considers that the time has come to engage in constructive negotiations with a view to working out the modalities for an early return of sovereignty on the Chagos Archipelago to Mauritius.

Mauritius and the United Kingdom enjoy excellent bilateral relations and we are sure that we will be able to find a way round this dispute in a friendly and constructive atmosphere.

Yours sincerely



A. K. Gayan
Minister of Foreign Affairs
& Regional Cooperation

Annex 142

Notes Verbales from the Embassy of the Republic of Mauritius in Brussels to the Commission of the European Communities and Council of the European Union, No. MBX/ACP/5005 (13 Feb. 2001 & 5 Mar. 2001)

01 MAR 18:39 FAX 32 2 7344021

AMBASSADE DE MAURICE

32 2 7344021



Embassy of the
Republic of Mauritius

Our Reference: MBX/ACP/5005

The Embassy of the Republic of Mauritius presents its compliments to the Commission of the European Communities - Protocol - and, with reference to the Proposal of the Commission for a Council Decision on the association of the Overseas Countries and Territories with the European Community, has the honour to state the position of the Government of Mauritius regarding the inclusion of the Chagos Archipelago, including Diego Garcia, (the so-called British Indian Ocean Territory) as follows:

The Government of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius. Mauritius has never recognised the so-called British Indian Ocean Territory.

The Government of Mauritius strongly rejects the inclusion of the so-called British Indian Ocean Territory in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland in the **Proposal of the Commission of the European Communities dated 15 November 2000 (bearing reference COM (2000) 732 Final) for a Council Decision on the association of the overseas countries and territories with the European Community.**

The Commission of the European Communities is, therefore, hereby requested to delete the so-called British Indian Ocean Territory as an Overseas Country and/or Territory (OCT) of the United Kingdom of Great Britain and Northern Ireland from the Annex to the Proposal contained in document COM (2000) 732 Final.

The Embassy of the Republic of Mauritius would be grateful to the Commission of the European Communities to kindly acknowledge receipt of this Note Verbale.

The Embassy of the Republic of Mauritius avails itself of this opportunity to renew to the Commission of the European Communities - Protocol - the assurances of its highest consideration.

Brussels, 13 February 2001



**COMMISSION OF THE EUROPEAN COMMUNITIES
PROTOCOL
RUE DE LA LOI 200
B-1049 BRUSSELS**

9. JUN. 2005 9:07

EMB. OF MAURITIUS BRUSSELS

N° 480

P. 2/3



*Embassy of the
Republic of Mauritius*

Our Reference: MEX/ACP/5005

The Embassy of the Republic of Mauritius presents its compliments to the Council of the European Union - Protocol Directorate General - and, with reference to the Proposal of the Commission for a Council Decision on the association of the Overseas Countries and Territories with the European Community, has the honour to state the position of the Government of Mauritius regarding the inclusion of the Chagos Archipelago, including Diego Garcia, (the so-called British Indian Ocean Territory) as follows:

The Government of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius. Mauritius has never recognised the so-called British Indian Ocean Territory.

The Government of Mauritius strongly rejects the inclusion of the so-called British Indian Ocean Territory in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland in the Proposal of the Commission of the European Communities dated 15 November 2000 (bearing reference COM (2000) 732 Final) for a Council Decision on the association of the overseas countries and territories with the European Community.

The Council of the European Union is, therefore, hereby requested to delete the so-called British Indian Ocean Territory as an Overseas Country and/or Territory (OCT) of the United Kingdom of Great Britain and Northern Ireland from the Annex to the Proposal contained in document COM (2000) 732 Final.

The Embassy of the Republic of Mauritius would be grateful to the Council of the European Union to kindly acknowledge receipt of this Note Verbale.

The Embassy of the Republic of Mauritius avails itself of this opportunity to renew to the Council of the European Union - Protocol Directorate General - the assurances of its highest consideration.

Brussels, 05 March 2001



**COUNCIL OF THE EUROPEAN UNION
PROTOCOL DIRECTORATE GENERAL
RUE DE LA LOI 175
B-1048 BRUSSELS**

Annex 143

Catriona Drew, “The East Timor Story: International Law on Trial”, *Eur. J. Int’l L.*, Vol. 12
(2001)

.....

The East Timor Story: International Law on Trial

Catriona Drew*

Abstract

This article considers the story of East Timor in the light of the international legal rules on self-determination. It is argued that such an analysis is both timely and necessary. For more than 20 years, international lawyers have brought the force of international legal norms to bear upon the 'Question of East Timor'. This article aims to do the reverse: to bring the force of the East Timorese debacle to bear upon international law. Following on from the Introduction, the argument proceeds in three parts. Part 2 considers the legal basis for East Timor's right of self-determination. Part 3 argues that, contrary to its populist characterization as excessively indeterminate, the right of self-determination has a discernible core content which confers on beneficiary peoples, such as the East Timorese, two distinct sets of entitlements: self-determination as process, and self-determination as substance. Finally, having established the basic legal framework, Part 4 compares two moments of high-level institutional engagement with (the two aspects of) East Timor's self-determination entitlement: the case brought by Portugal against Australia before the ICJ in 1995; and the UN-sponsored 'popular consultation' of August 1999. It is argued that the institutional shift from the ICJ to the UN was also characterized by a shift from formalism to pragmatism, and that both institutions failed to uphold the international legal rights of the East Timorese.

* School of Law, University of Glasgow. This is a revised and expanded version of a paper presented at Suffolk Law School, Boston, at the annual dinner of Boston-based international lawyers in October 1999. I benefited greatly from the questions and discussion of the participants. Most of the research was completed while I was a Visiting Fellow at the Human Rights Program, Harvard Law School, 1999/2000. This was a collegiate and challenging environment and I would like to thank all my colleagues at the Human Rights Program as well as elsewhere in the Law School: Abigail Abrash, Yishai Blank, Deborah Cass, Susan Culhane, Rosalind Dixon, Daniela Dohmes-Ockenfels, Michael Ikhariale, Shawqi Issa, Catherine Le Magueresse, Zachary Lomo, Dominic McGoldrick, Moria Paz, Mindy Roseman, Peter Rosenblum, Alvaro Santos, Hani Sayed, Leslie Sebba, Susan Sessler, Gerry Simpson, Christine Soh, Dori Spivak, K. Sritharan, Henry Steiner, Anje Van-Berckelaer and Yosuke Yotoriyama. I would also like to acknowledge a more general debt to David Kennedy's inspirational international law class (1999/2000) which greatly influenced the writing of this article. Particular thanks to John Saul Marco for research assistance, and to Nathaniel Berman, Graeme Laurie and Iain Scobbie for comments and encouragement.

It is, by now, a familiar pattern: egregious human rights violations . . . an assertion of international authority . . . a solution of sorts . . . demands for those responsible for atrocities to be brought to account under international law. For East Timor — like Bosnia before it — the closing stages of its self-determination struggle are likely to be played out against the backdrop of formal or informal ‘trials’: of *individuals* at the hands of some newly established ad hoc tribunal¹ or truth and reconciliation commission;² of complicit *states*³ at the bar of world opinion. East Timor shall have its independence, and the international community shall have its culprits.⁴ Or so, one

¹ While there have been calls for the Security Council to establish an ICTY/ICTR-style International Criminal Tribunal (see e.g. Amnesty International, ‘Letter to UN Secretary-General on East Timor Commission of Inquiry’, 30 September 1999 or, more recently, CAFOD *et al.*, *Justice for East Timor*, 13 June 2001), the Secretary-General and the Security Council early on favoured allowing Indonesia to ‘do a credible and transparent job of holding people accountable for their crimes’. See the UN Secretary-General’s ‘Briefing Report’, 29 February 2000. See also ‘Letter from the President of the Security Council, Arnaldo Manuel Listre, to the Secretary-General’, 18 February 2000, S/2000/137; ‘United Nations–Indonesia Accord on Judicial Cooperation in East Timor’, 5 April 2000. On 24 April 2001, President Wahid issued a decree establishing an Indonesian ad hoc tribunal to deal with gross human rights abuses committed in the aftermath of the popular consultation on 30 August 1999. In East Timor itself, the Serious Crimes Investigation Unit has begun prosecuting two categories of crimes committed in the September 1999 violence: serious crimes under the Indonesian penal code and crimes against humanity. For details, see ‘Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the Period 27 July 2000 to 16 January 2001)’, S/2001/42, 16 January 2001, para. 24. On the problems of pursuing a large number of trials in the context of ‘transitional’ countries such as East Timor, and the proposal to try only ‘serious crimes’, see Hayner and van Zyl, ‘The Challenge of Reconciliation in East Timor’, in *Report on a Mission to East Timor June 18–28 2000 on Behalf of the Human Rights Office of UNTAET*, July 2000 (on file with author).

² For details of the National Council of Timorese Resistance (CNRT) early proposal for a ‘Commission for Reception and National Reconciliation’, see Hayner and van Zyl, *supra* note 1. On 13 December 2000, the East Timor Transitional Cabinet agreed to establish a ‘Truth, Reception and Reconciliation Commission’, with a mandate to facilitate the reintegration of returning refugees, document human rights abuses since 1975 and promote community reconciliation by dealing with low-level offences committed in 1999. See ‘Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the Period 27 July 2000 to 16 January 2001)’, S/2001/42, 16 January 2001, para. 26.

³ For criticism of the role of the Western powers (Australia, the United States and the United Kingdom), see Budiardjo, ‘A Global Failure of Human Rights in East Timor’, in a special issue of the *Human Rights Law Review*, edited by E. Hedman, entitled ‘East Timor in Transition: Sovereignty, Self-Determination and Human Rights’, 4 *Human Rights Law Review* (1999) 20. Yet revisionist histories are already in the writing. For example, Australia has been praised for ‘its leading role . . . in transforming the fortunes and prospects of East Timor’. UN Secretary-General, ‘Briefing to the Security Council’, New York, 29 February 2000.

⁴ Curiously, the international community appears to be interested mainly in pursuing investigations into the violence of 1999 and not the widely documented human rights atrocities of the earlier period since the Indonesian occupation began in 1975. See ‘Report of the United Nations International Commission of Inquiry on East Timor’ (A/54/726-S/2000/59). Similarly, the ‘Report of the Commission to Investigate Violations of Human Rights’ established by the Indonesian National Commission for Human Rights deals with the period from January 1999 to the immediate aftermath of the ballot. It is unclear why the genocidal policies of the Indonesians in the earlier period of the occupation should continue to attract immunity. This point was brought to my attention by students at Northeastern Law School during a panel discussion on East Timor in October 1999. In East Timor itself, however, the proposed ‘Truth, Reception and Reconciliation Commission’ is to have a mandate to create a record of human rights abuses since 1975. For discussions of early proposals to backdate investigations, see Hayner and van Zyl, *supra* note 1.

imagines, the rest of the story will go. Of course, what is suppressed in this Hollywood ending — the triumph of right (self-determination) over might (the Indonesian army), of law over brute politics — is any suggestion that, in revisiting earlier chapters of the East Timor story, international law itself — its doctrines, its institutions — may be cast in a leading role as one of the ‘bad guys’.

1 A Formal Analysis of the Right of Self-Determination: Dispensing with Two Preliminary Objections

Before turning to my substantive arguments, it is perhaps necessary to make a pre-emptive strike on what I anticipate are two likely objections to any proposal to embark on a formal analysis of the East Timor Story in the light of the international law of self-determination. First, there could be the ‘indeterminacy’ objection. According to this — now standard — critique, the right of self-determination is simply one of the most normatively confused and indeterminate principles in the canon of international legal doctrine.⁵ Moreover, as commentators have shown,⁶ traditionally it was formal legal analysis that was deployed to deny, rather than endorse, the existence of a legal right of self-determination.⁷ To adopt a formalist posture in favour of the right of self-determination may thus appear positively oxymoronic.

A second — perhaps more compelling — objection might be on the grounds of political redundancy. The recent history of East Timor is well known.⁸ On 30 August 1999, in a United Nations-sponsored ‘popular consultation’, the people of East Timor voted overwhelmingly⁹ to reject the Indonesian offer of ‘special autonomy’ in favour of a United Nations-supervised transition to independent statehood. From then on, events moved apace. On 15 September 1999, the Security Council authorised the establishment of a multinational force (INTERFET) with a mandate to restore peace

⁵ See e.g. Cass, ‘Rethinking Self-Determination: A Critical Analysis of Current International Law Theories’, 18 *Syracuse Journal of International Law and Commerce* (1992) 21; Koskeniemi, ‘National Self-Determination Today: Problems of Legal Theory and Practice’, 43 *International Law and Comparative Law Quarterly* (1994) 241.

⁶ Berman, ‘Sovereignty in Abeyance: Self-Determination and International Law’, 7 *Wisconsin International Law Journal* (1988) 51, at 61–62.

⁷ See e.g. Fitzmaurice, ‘The Future of Public International Law and the International Legal System in the Circumstances of Today’, in Institut de Droit International, *Evolution et Perspectives du Droit International* (1973) 196, at 233, discussed in Berman, *supra* note 6.

⁸ For background, see the UN’s excellent website, www.un.org/peace/etimor/etimor.htm. For critical reflections in the lead-up to the ballot, see the collection of papers in Hedman, *supra* note 3.

⁹ 78.5 per cent. For discussion, see Part 4 below.

and security in East Timor.¹⁰ On 15 October 1999, the Indonesian People's Consultative Assembly repealed the infamous law of July 1976 under which East Timor had been annexed,¹¹ paving the way for the United Nations Transitional Administration in East Timor (UNTAET) to assume control of the territory.¹² And by November 1999, the last of the Indonesian troops had, finally, left East Timor.

In short, is not the 'Question of East Timor' passé?¹³ Self-determination has 'happened'. It is no longer interesting. To be sure, the actual process of exercising self-determination encountered some regrettable 'operational' difficulties.¹⁴ But these were due to the unpredictable excesses of disgruntled militias and 'rogue' members of the Indonesian security forces. As such, they lie firmly beyond the remit of the international lawyer. Today, there are simply far more pressing and exciting issues to engage the Timor-minded legal scholar. Should there be war crimes trials or a truth commission? How best can we foster Timorese civil society based on the rule of law and human rights?¹⁵ Or what precisely is the legal status of East Timor during the United Nations-administered transitional phase?

¹⁰ This was 'requested' by Indonesia on 12 September 1999 and authorized by Security Council Resolution 1264 (1999), 15 September 1999. Security Council Resolution 1264 is thus an interesting hybrid. In the preamble, the Security Council welcomes Indonesia's readiness to accept an 'international peacekeeping force', yet paragraph 3 makes clear that the establishment of the multinational force is more accurately characterized as a (non-consensual) Chapter VII peace-enforcement action rather than (consensual) peacekeeping. The Australian-led multinational force was deployed on 20 September 1999. It finally handed over to UNTAET peacekeeping troops on 22 February 2000.

¹¹ 19 October 1999. This was pursuant to Article 6 of the Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor (hereinafter the 'General Agreement'), A/53/951, Annex 1 of the 'Report of the Secretary-General', S/1999/513 (the Agreement is reproduced in Hedman, *supra* note 3; and is available on the UN website, www.un.org/peace/etimor/etimor.htm). Article 6 of the General Agreement provides: 'If the Secretary-General determines, on the basis of the result of the popular consultation and in accordance with this Agreement, that the proposed constitutional framework for special autonomy is not acceptable to the East Timorese people, the Government of Indonesia shall take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976.' The decision of the Indonesian People's Consultative Assembly to repeal the law was welcomed in Security Council Resolution 1272 (1999), 25 October 1999 and in General Assembly Resolution A/54/194, 15 December 1999. For the background to the 1976 law, see e.g. Clark, 'The "Decolonization" of East Timor and the United Nations Norms on Self-Determination and Aggression', in CIIR and IPJET (International Platform of Jurists for East Timor), *International Law and the Question of East Timor* (1995) 65, at 69–73.

¹² UNTAET was established by the Security Council on 25 October 1999. Security Council Resolution 1272 (1999), 25 October 1999. Its initial mandate was to January 2001. On 31 January 2001, the Security Council decided to extend the current mandate of UNTAET until 21 January 2002. Security Council Resolution 1338 (2001), 31 January 2001.

¹³ This is certainly the view of the General Assembly which decided to conclude its consideration of the agenda item 'The Question of East Timor' and include a new agenda item entitled 'The Situation in East Timor During its Transition to Independence'. General Assembly Resolution A/54/194, 15 December 1999, para. 3. The question has, of course, been more famously asked of the right of self-determination in general. See Sinha, 'Is Self-Determination Passé?', 12 *Columbia Journal of Transnational Law* (1973) 260.

¹⁴ See Part 4 below.

¹⁵ In November 1999, ECOSOC requested the United Nations High Commissioner for Human Rights to prepare a comprehensive programme of technical cooperation in human rights focusing on capacity-building and reconciliation.

It is the premise of this article, however, that neither the ‘indeterminacy’ nor the ‘politically redundant’ objection is well founded. First, by way of a formalist defence, it will be shown that, contrary to its populist characterization as excessively indeterminate, the right of self-determination has a discernible core content which provides a normative yardstick against which to measure the international community’s treatment of East Timor’s legal claim.

Secondly, it is submitted that, far from being passé, a formal analysis of the East Timor Story in the light of the international legal rules on self-determination is both timely and necessary. For more than 20 years, following in the pioneering footsteps of scholars such as Thomas Franck¹⁶ and Roger Clark,¹⁷ international lawyers¹⁸ have brought the force of international legal norms to bear upon the ‘Question of East Timor’.¹⁹ This article aims to do the reverse: to bring the force of the East Timorese debacle to bear upon international law. In other words, I wish to resist the appeal of the imminent, cast a retrospective eye, and explore what, if anything, the unhappy — genocidal²⁰ — story of East Timor has to tell us about the ‘moral hygiene’²¹ of the international law of self-determination.

Following on from the introduction, the argument will proceed in three parts. In Part 2, I will consider the legal basis for East Timor’s right of self-determination and argue that this should be characterised as a case of decolonization. The applicable legal rules are thus readily identifiable as those that emerged during the decolonization practice of the United Nations. In Part 3, I will confront the ‘indeterminacy objection’ and argue that, contrary to conventional accounts, the right of self-determination has a discernible core content which confers on beneficiary peoples such as the East Timorese two distinct sets of entitlements: self-determination as process, and self-determination as substance. Finally, having established the basic legal framework, in Part 4, I will compare two moments of high-level institutional engagement with (the two aspects of) East Timor’s self-determination entitlement: the case brought by Portugal against Australia before the International Court of Justice in 1995; and the United Nations-sponsored ‘popular consultation’ of August 1999. It will be argued that the institutional shift from the International Court of Justice to the UN was also characterized by a shift from formalism to pragmatism, and that

¹⁶ Franck and Hoffman, ‘The Right of Self-Determination in Very Small Places’, 8 *New York Journal of International Law and Policy* (1975–1976) 331.

¹⁷ The seminal article is Clark, ‘“The Decolonization” of East Timor and the United Nations Norms on Self-Determination and Aggression’, 7 *Yale Journal of World Public Order* (1980–1981) 2.

¹⁸ For example, the International Platform of Jurists for East Timor (IPJET) founded in 1991 by Pedro Pinto Leite has organized a number of international law conferences and published two edited collections: CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11; and IPJET, *The East Timor Problem and the Role of Europe* (1998).

¹⁹ For a sceptical account of such efforts in the context of IPJET, see Kennedy, ‘An Autumn Weekend: An Essay on Law and Everyday Life’, in D. Danielson and K. Engle (eds), *After Identity: A Reader in Law and Culture* (1995) 191.

²⁰ See e.g. M. Jardine, *Genocide in Paradise* (1999).

²¹ The phrase is David Kennedy’s, *Lectures* (1999).

both institutions — the formalist International Court of Justice, the pragmatic United Nations — failed to uphold the international legal rights of the East Timorese.

2 East Timor's Right to Self-Determination: Decolonization in a Secessionist Era

As has been established elsewhere,²² the existence of East Timor's right to self-determination under international law is unassailable. As a Portuguese colony from 1856²³ and a UN-designated non-self-governing territory since 1960, East Timor qualified under the 'first phase' right of self-determination, which emerged during the decolonization period of the 1960s.²⁴ Neither the (unlawful) Indonesian invasion in December 1975, nor its subsequent (unlawful) annexation,²⁵ could dislodge East Timor's vested entitlement. Thus, as affirmed by the International Court of Justice in 1995,²⁶ despite its *de facto* transition from Portuguese colony to Indonesian province, East Timor remained, *de jure*, a non-self-governing territory²⁷ with the right of self-determination under the law applicable to decolonization.²⁸

But, if it can readily be established that the legal basis for East Timor's right of self-determination lay in its relations with Portugal (colonialism) rather than with

²² See e.g. Clark, *supra* note 17; Franck and Hoffman, *supra* note 16; and A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995) 223–230.

²³ On the history of Portuguese colonialism in East Timor, see generally J.G. Taylor, *Indonesia's Forgotten War: The Hidden History of East Timor* (1995) 1–15.

²⁴ See e.g. General Assembly Resolution 1514 (XV) 1960, 'The Declaration on the Granting of Independence to Colonial Countries and Peoples'; United Nations General Assembly Resolution 1541 (XV) 1960, 'Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73(e) of the Charter'. See further *Legal Consequences for States of the Continued Presence of South Africa in Namibia/South West Africa Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) 31.

²⁵ For discussion of the background to the 'Act of Integration', see e.g. Clark, *supra* note 17; Taylor, *supra* note 23, at 73–74.

²⁶ *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, paras 31 and 37. It should be noted that the Court restricts itself to affirming that 'for both parties the territory of East Timor remains a non-self-governing territory and its people has the right of self-determination' (emphasis added); *ibid.* The Court itself does not make an independent finding.

²⁷ *Ibid.*

²⁸ The ICJ in its Advisory Opinion on Namibia held that: 'The subsequent development of international law in regard to non-self-governing territories as enshrined in the Charter of the United Nations made the principle of self-determination applicable to all of them.' *Legal Consequences for States of the Continued Presence of South Africa in Namibia/South West Africa Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) at para. 52.

Indonesia (secession),²⁹ the question remains: why does it matter? What purpose does it serve to establish that East Timor was a case of decolonization in a secessionist era?

It is submitted that establishing the correct legal basis for East Timor's right of self-determination is no mere academic exercise, but rather entails three practical consequences. In the first place, as recent events in Kosovo³⁰ and Chechnya³¹ demonstrate, the existence of any legal right of secession under international law — even in situations involving gross human rights abuse³² — remains highly contentious. Meagre doctrinal development in favour of a limited right of secession³³ has manifestly not been matched by any corresponding shift in state practice. Accordingly, had the East Timorese based their claim on a purported right of secession triggered by, say, Indonesian human rights abuse, they may have faced the initial obstacle that such a right does not in fact exist. Secondly, establishing colonialism as the correct legal basis *should* have allowed the international community and third states to emphasize the *sui generis* nature of the East Timorese claim as a means of countering domestic Indonesian fears/accusations that allowing East Timor to

²⁹ This point is also dealt with by Gerry Simpson. See Simpson, 'The Politics of Self-Determination in the Case Concerning East Timor', in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 258.

³⁰ The Security Council resolutions on Kosovo consistently affirmed the territorial integrity of the Federal Republic of Yugoslavia. See e.g. Security Council Resolution 1160 (1998), 31 March 1998, especially para. 5; Security Council Resolution 1244 (1999), 10 June 1999. The resolutions call for 'substantial autonomy', and 'meaningful self-administration' rather than, say, 'secession' or 'meaningful self-determination' (which would require an exercise of free choice including the option of independent statehood; see below). But compare the Report of the Independent International Commission on Kosovo, October 2000. This concludes that 'the Security Council Resolution's commitment to FRY sovereignty and Kosovo autonomy may not be incompatible in theory but they have become incompatible in practice', and recommends that Kosovo be granted 'conditional independence'. The Commission's report, 'Report of the Independent Commission on Kosovo', can be found at www.kosovocommission.org.

³¹ See e.g. 'Statement by the High Commissioner for Human Rights on the Situation in Chechnya, Russian Federation', HR/99/104, 16 November 1999.

³² For the thesis that secession should be available as a remedy of last resort for gross human rights abuse, see e.g. L.C. Buchheit, *Secession: The Legitimacy of Self-Determination* (1978). For an early statement of this possibility in the context of the Aaland Island question, see League of Nations, 'Report Presented to the Council of the League by the Commission of Rapporteurs', Council Doc. B7/21/68/106, 16 April 1921, at 28.

³³ United Nations General Assembly Resolution 2625 (XXV) 1970, 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with Charter of the United Nations', has been interpreted by commentators as providing a possible legal basis for a right of secession. See e.g. White, 'Self-Determination: Time for a Reassessment', 28 *Netherlands International Law Review* (1981) 161. This interpretation has, however, found only limited doctrinal support. See the *obiter* statements in *Katangese Peoples' Congress v. Zaire*, Communication No. 75/92, 3 *International Human Rights Reports* (1996) at 136, para. 6; *Reference Re Secession of Quebec*, Supreme Court of Canada reproduced in (1998) 37 ILM 1340, para. 134; and Part 9, 'The Future Status of Kosovo', of 'Report of the Independent Commission', *supra* note 30, at www.kosovocommission.org/reports/13-future.html.

exercise its right of self-determination would lead inexorably to the break up of the Indonesian State.³⁴

Finally, and perhaps more crucially for present purposes, it is only in the colonial context that there exists a sufficient level of international consensus on the rules governing the exercise of the right of self-determination to protect the East Timorese against the indeterminacy objection outlined earlier. Beyond colonialism, the right of self-determination is plagued by an excess of indeterminacy both in terms of scope and content. By contrast, the rules relating to the exercise of the right of self-determination in the colonial context are — as we shall see — relatively settled. Identifying colonialism as the proper basis for East Timorese self-determination is thus important because it precludes the argument that the right of self-determination is so indeterminate that it provides no meaningful, normative yardstick against which to measure the international community's treatment of the East Timorese claim.

3 The Content of East Timor's Right of Self-Determination

As observed by an international meeting of experts in 1989, the contemporary debate in international law is no longer about the existence of the right of self-determination but about its content.³⁵ The point appears to be amply borne out if we consider that, in contemporary political discourse, self-determination is variously invoked to mean: independent statehood, autonomy, negotiations, limited self-government, land rights, self-management, and democratic governance (to name but a few). For the East Timorese, however, it is unlikely that this caricature of the right of self-determination as meaning all things to all peoples bears scrutiny. While the post-colonial dialogue unquestionably labours under a high degree of normative confusion, a review of international practice in the decolonization period reveals that the rules relating to the exercise of self-determination by a non-self-governing territory — such as East Timor — are both determinate and discernible. In elucidating this content, it is useful to distinguish between two core sets of entitlements: self-determination as process, and self-determination as substance.

A Self-Determination as Process

If we consider the standard definition of self-determination in international law, it is clear that it is depicted as the right of a people to a particular process: the right of all peoples freely to 'determine their political status and freely pursue their economic, social and cultural development'.³⁶ Thus the most fundamental right conferred on a people by virtue of the right of self-determination is the right of a people freely to

³⁴ Similarly, West Irian is a *sui generis* case based on a flawed decolonization process. On the failure of the United Nations to ensure a proper act of self-determination in West Irian, see e.g. R. Sureta, *The Evolution of the Right of Self-Determination* (1973) 143–151; Cassese, *supra* note 22, at 82–86.

³⁵ UNESCO *International Meeting of Experts on the Further Study of the Concept of the Rights of Peoples* (1989) para. 19.

³⁶ General Assembly Resolution 1514 (XV) 1960, at para. 2.

determine the destiny of its territory. Its essence is free choice.³⁷ Early resolutions, such as the historic United Nations General Assembly Resolution 1514 on the Granting of Independence to Colonial Countries and Peoples,³⁸ which stressed objective outcomes (independent statehood)³⁹ rather than subjective process (free and genuine expression of the will of the people)⁴⁰ were thus hastily superseded.

What is striking, however, about the international legal definition of self-determination is how little it tells us about its operational content. Self-determination is depicted as a right to a process — the right of a people freely to choose — yet questions abound as to the procedures to be adopted. What exactly amounts to a *free* choice? How is the 'free choice' to be ascertained? In the context of assessing the international community's treatment of the East Timorese self-determination entitlement, these questions take on a specific guise: does self-determination require a referendum to be held? If so, how widely must the self-determination options be framed? And must they include the option of independent statehood?

Of course, these questions are nothing new. It was precisely such problems of process that dogged United Nations debates over the decolonization of the Western Sahara in 1974–1975 and led the General Assembly to request an Advisory Opinion from the International Court of Justice.⁴¹ Indeed, it was the need to assist the General Assembly in determining the process of self-determination in the Western Sahara that was central to the ICJ's decision to comply with the request for an Advisory Opinion.

This point has long been neglected. According to the standard account,⁴² the General Assembly's request for an Advisory Opinion on the legal status of the Western Sahara at the time of its colonization⁴³ presented the International Court of Justice with a potential stand-off between the historic rights of States on the one hand (Morocco and Mauritania) and a people's right to self-determination on the other (the Western Sahara). Indeed, the Opinion is much vaunted for its pithy pronouncements on the alleged triumph of peoples' rights over states' rights in this normative zero-sum game.⁴⁴ But a closer reading of the judgment reveals that, on the Court's own

³⁷ See e.g. *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, paras 55 and 59; and *infra*.

³⁸ General Assembly Resolution 1514 (XV) 1960.

³⁹ *Ibid.*, at para. 5. Its sister resolution, United Nations General Assembly Resolution 1541 (XV) 1960, also implicitly favours independent statehood as an outcome. Thus, although it provides that self-determination can be achieved by three means — independent statehood, free association or integration — it is procedurally weighted in favour of independent statehood.

⁴⁰ General Assembly Resolution 2625 (XXV) 1970; and *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, para. 55. For discussion of this point, see generally Cassese, *supra* note 22, at 89.

⁴¹ See General Assembly Resolution 3292 (XXIX), 13 December 1974, at para. 3. For discussion of the background to this resolution, see *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, paras 60–69.

⁴² See e.g. Cassese, *supra* note 22, at 214–218.

⁴³ The General Assembly requested an Advisory Opinion on the following two questions: 'I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)? If the answer to the first question is in the negative, II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?'

⁴⁴ For example, Judge Dillard famously stated that: 'It is for the people to determine the destiny of the territory and not the territory the destiny of the people.' See Separate Opinion of Judge Dillard, at 122.

interpretation, what was at issue in the decolonization of the Western Sahara was not so much a choice between the *historic rights of third states* versus the *self-determination of peoples* but, rather, a choice as to the procedures to be adopted in the self-determination process. Ascertaining the existence of historic ties between Western Sahara, and Morocco and the Mauritanian entity was relevant only to the extent that such ties would inform — not supplant — that self-determination process.

This becomes evident if we consider the fate of the Spanish objection that the Court should refuse the General Assembly's request for an Advisory Opinion on the grounds that it lacked object and purpose. Spain argued that, as the United Nations had already determined the method of decolonization applicable to the Western Sahara (a consultation of the indigenous population by means of a referendum), the questions posed by the General Assembly were irrelevant, and any answer by the Court would be to no practical effect.⁴⁵

In dispensing with the Spanish objection, the Court agreed that the decolonization process to be accelerated in the Western Sahara (as envisaged by the General Assembly) was to be based on the right of self-determination: 'the right of the population of Western Sahara to determine their future political status by their own freely expressed will.'⁴⁶ Significantly, it also concluded that the right of self-determination was thus 'not affected' by the General Assembly's request for an Advisory Opinion, but, rather, constituted 'a basic assumption of the questions put to the Court'.⁴⁷ However, the Court nevertheless went on to reject Spanish claims that the application of the right of self-determination to the decolonization process in the Western Sahara rendered the two questions in the Advisory Opinion without object and purpose.⁴⁸ The right of self-determination, said the Court, leaves a 'measure of discretion' to the General Assembly as to the 'forms and procedures' by which it is to be realized.⁴⁹ 'Various possibilities' exist with respect to 'consultations between the interested States' and the 'procedures and guarantees' required for ensuring the free expression of the will of a people.⁵⁰ The function of an Advisory Opinion on the nature of historic ties between the Western Sahara and Morocco and the Mauritanian entity would thus be to assist the General Assembly in determining the procedures to be adopted in the self-determination process.⁵¹

⁴⁵ *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 48.

⁴⁶ *Ibid.*, at para. 70.

⁴⁷ *Ibid.* The Court's conclusion that it had 'not found ties of such a nature as might affect the application of Resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the Territory' must be read in the light of these earlier findings that the right of self-determination was not prejudiced by the request for the Advisory Opinion. *Ibid.*, at paras 162 and 70.

⁴⁸ *Ibid.*, at paras 71–73.

⁴⁹ See *ibid.*, at para. 71.

⁵⁰ *Ibid.*, at para. 72. See further Separate Opinion of Judge Dillard, at 122.

⁵¹ *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 72. That a finding of the existence of historic ties might, for example, inform the wording of the referendum question was recognized as a possibility by Morocco in the oral pleadings (Hearing, 26 June 1975). See the statements from Moroccan counsel quoted in the Separate Opinion of Judge Singh, at 79. For further discussion of this point, see Separate Opinion of Judge Dillard, at 122.

For present purposes of elucidating the content of the right of self-determination under international law, two points bear emphasis here. First, in concluding that the decolonization process in the Western Sahara was to be based on ‘the right of the population of Western Sahara to determine their future political status by their own freely expressed will’,⁵² it is clear that the Court conceived of the right of self-determination exclusively in terms of a right to a process. Thus, it famously defined the principle of self-determination as ‘the need to pay regard to the freely expressed will of peoples’.⁵³ Similarly, the Separate Opinions reveal an overwhelming judicial consensus that it is the freely expressed will of the people that constitutes the ‘basic pillar’ of the right of self-determination.

Secondly, while the Advisory Opinion is unequivocal that the right of self-determination requires the freely expressed will of the people, it is less illuminating on the crucial question of *how* that free will is to be ascertained. Indeed, as we have seen, in dispensing with the Spanish objection, the Court made it clear that the question of how to realize the right of self-determination was to be left open as a matter within the discretion of the General Assembly.⁵⁴

It is clear, however, that the Court did not intend the General Assembly’s discretion to be unfettered. In the first place, any ‘forms and procedures’ adopted must be such as to ensure ‘a free and genuine expression’⁵⁵ of the will of the people. Secondly, the Court expressly endorsed certain provisions of General Assembly Resolution 1541⁵⁶ — i.e., ‘informed and democratic processes’ — as giving effect to the ‘essential feature’ of the right of self-determination.⁵⁷ Finally, the Court expressly stipulated that ‘consulting the inhabitants’ was a ‘requirement’ of self-determination with which the General Assembly had dispensed only where ‘a certain population did not constitute a “people” entitled to self-determination’ or where it was deemed ‘totally unnecessary, in view of special circumstances’.⁵⁸

In short, taking the Opinion as a whole, it is difficult to avoid the conclusion that, in the absence of special circumstances, the free choice of a people must be ascertained

⁵² *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 70.

⁵³ *Ibid.*, at para. 59. See also *ibid.*, at para. 55: ‘the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.’

⁵⁴ *Ibid.*, at para. 71.

⁵⁵ *Ibid.*, at para. 55.

⁵⁶ General Assembly Resolution 1541 (XV) 1960, Principles VII and IX.

⁵⁷ *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12, at para. 57.

⁵⁸ *Ibid.*, at para. 59. The Court did not elaborate on the meaning of ‘special circumstances’, but in his Separate Opinion Vice-President Ammoun gave as a prime example of ‘special circumstances’ the ‘legitimate struggle for liberation from foreign domination’. See Separate Opinion of Judge Ammoun, at 99. For Judge Singh, ‘the principle of self-determination could be dispensed with only if the free expression of the will of the people was found to be axiomatic in the sense that the result was known to be a foregone conclusion or that consultations had already taken place in some form or that special features of the case rendered it unnecessary’. Separate Opinion of Judge Singh, at 81.

through ‘informed and democratic processes’ such as a referendum or a plebiscite.⁵⁹ Moreover, while Judge Dillard expressly rejected Spanish arguments that the right of self-determination *necessarily* requires the option of independent statehood,⁶⁰ surely all that this means is that what amounts to a ‘free choice’ is not to be universally predetermined but rather must be judged according to the particular political desires of the particular people.⁶¹ Nonetheless, there is a substantial body of United Nations practice in the decolonization period that favours independent statehood as the preferred self-determination option.⁶² And in the particular context of East Timor, where a liberation movement enjoying the support of the majority of its people had been engaged in a 25-year struggle for independent statehood, it seems incontrovertible that the test of ‘free choice’ could only be satisfied where that referendum or plebiscite offered independent statehood ‘as a legal possibility’.⁶³

B Self-determination as Substance

From a self-determination perspective, it is worth emphasizing that in the *Western Sahara Advisory Opinion*, the ICJ was faced exclusively with questions over process: first, relating to decolonization (to be based on self-determination); and, secondly, self-determination (to be based on a free choice of the population of the Western

⁵⁹ But compare, Separate Opinion of Judge Dillard, at 122–123. Since 1954, there has been a substantial United Nations practice of organizing or supervising self-determination referenda and plebiscites in the decolonization context. For a comprehensive list of UN activities, see Cassese, *supra* note 22, at 76–78. More recent self-determination practice outside the colonial context also favours the referendum as a means of ascertaining the free will of the people. The Badinter Arbitration Committee, for example, initially refused Bosnia-Herzegovina’s application for recognition as a state, instead recommending a ‘referendum of all the citizens of [Bosnia-Herzegovina] without distinction, carried out under international supervision’. See Conference on Yugoslavia, Arbitration Commission, ‘Opinion No. 4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States’, (1992) 31 ILM 1501, at 1503. Similarly, in 1991, the provisional government of Eritrea decided to delay issuing a declaration of statehood until a referendum on independence had been held.

⁶⁰ Judge Dillard, at 122–123.

⁶¹ ‘On the contrary, it may be suggested that self-determination is satisfied by a free choice not by a particular consequence of that choice or a particular method of exercising it.’ *Ibid.*, at 123.

⁶² For a list of relevant practice, see H.G. Espiel, ‘The Right of Self-Determination: Implementation of United Nations Resolutions’ (Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities), E/CN.4/Sub.2/405/Rev.1, paras 253 and 256.

⁶³ In French Togoland in 1957, the General Assembly refused to endorse the outcome of a referendum where the referendum question had not included the option of independent statehood. Cf. Southern Camerouns. See Sureta, *supra* note 34, at 51 and 304–306. That the right of self-determination should include the option of independent statehood where a people has been involved in a liberation struggle has been affirmed by the General Assembly which expressly endorsed the right of the Palestinians to self-determination ‘without excluding the option of a State’. General Assembly Resolution A/Res./53/136, 9 December 1998. In 1999, the European Union went further and affirmed the right of the Palestinians to self-determination ‘including the option of a State’. Declaration of the European Union Summit, Berlin, 25 March 1999. Compare the Declaration of the European Union, Cardiff, 16 June 1998. Early resolutions on East Timor also refer to ‘self-determination *and* independence’. See e.g. General Assembly Resolution 32/34, 28 November 1977.

Sahara). It is hardly surprising then that the (soon-to-be-textbook) definitional legacy of the *Western Sahara Advisory Opinion* should also depict self-determination exclusively in terms of a process: the right of a people to a free choice over its political and territorial destiny.

Yet, whatever the Court's definitional emphasis on self-determination as process, it should be obvious that the right to a process does not exhaust the content of the right of self-determination under international law. To confer on a people a right of 'free choice' in the absence of more substantive entitlements — to territory, natural resources, etc. — would simply be meaningless. Clearly, the right of self-determination cannot be exercised in a substantive vacuum.

This is both implicit and explicit in the law. For example, implicit in any recognition of a people's right to self-determination is recognition of the legitimacy of that people's claim to a particular territory and/or set of resources.⁶⁴ Despite its textbook characterization as part of human rights law, the law of self-determination has always been bound up more with notions of sovereignty and title to territory than what we traditionally consider to be 'human rights'. More explicitly, the various international instruments make specific provision for additional substantive entitlements beyond the basic right of a people to exercise a free choice. And, while its normative contours are yet to be definitively settled, the following can be deduced as a non-exhaustive list of the substantive entitlements conferred on a people by virtue of the law of self-determination in the decolonization context: (a) the right to exist — demographically and territorially — as a people;⁶⁵ (b) the right to territorial integrity;⁶⁶ (c) the right to permanent sovereignty over natural resources;⁶⁷ (d) the right to cultural integrity and development;⁶⁸ and (e) the right to economic and social development.⁶⁹

4 East Timor's Right of Self-Determination: Institutional Engagement

It has thus far been established that, far from being excessively indeterminate, the right of self-determination has a discernible core content which confers two distinct

⁶⁴ It is this collective and ancestral attachment to the land that is often deemed to distinguish 'peoples' from 'minorities', and self-determination from minority rights. See e.g. Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation', 16 *Yale Journal of International Law* (1991) 177, especially at 189.

⁶⁵ This would include the right not to be expelled from the land and not to be demographically manipulated through, say, the implantation of settlers. For a development of this argument, see Drew, 'Self-Determination, Population Transfer and the Middle East Peace Accords', in S. Bowen (ed.), *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (1997) 119, at 133.

⁶⁶ General Assembly Resolution 1514 (XV) 1960, para. 6.

⁶⁷ General Assembly Resolution 1803 (XVI) 1962; Article 1(2) of the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR); United Nations Council for Namibia, Decree on the Natural Resources of Namibia, (1974) 13 ILM 1513; Australia–Republic of Nauru, Settlement of the Case in the International Court of Justice Concerning Certain Phosphates Lands in Nauru, 20 August 1993, (1993) 32 ILM 1471.

⁶⁸ Universal Declaration of the Rights of Peoples, Algiers, July 1976, Articles 2, 9, 13, 14 and 15.

⁶⁹ This is expressly included in the standard definition of the right to self-determination.

sets of entitlements: self-determination as process and self-determination as substance. Thus, as a colonial people, the East Timorese were entitled, not only to a particular process (one that embodied a free choice over their political and territorial destiny), but — pending that process — a number of additional substantive rights (e.g. the right to territorial integrity, demographic integrity, natural resources etc.).⁷⁰

Now, usefully for pedagogical purposes — though not, as it turned out, for the East Timorese — both aspects of the East Timorese self-determination entitlement encountered high-level institutional engagement: *self-determination as substance* (natural resources) in the case brought by Portugal against Australia to the International Court of Justice in 1995; *self-determination as process* in the United Nations-sponsored ‘popular consultation’ of August 1999. In considering each of these institutional moments by turn, it will be shown that, contrary to popular perception, there was as much a failure to implement the legal rules on self-determination in the United Nations-run popular consultation as in the ill-fated Portuguese application to the International Court of Justice. From a self-determination perspective, an excavation of ‘what-went-wrong’ in relation to both aspects of the East Timorese self-determination entitlement — in these two distinct institutional settings — reveals deficiencies in the structure of the international legal order with ramifications for the law of peoples⁷¹ that extend beyond the territorial — or moral — boundaries of East Timor.

A Self-Determination as Substance: The International Court of Justice and the Case Concerning East Timor

The first moment of institutional engagement to be considered is a highly legalistic one — the *Case Concerning East Timor* (*Portugal v. Australia*) before the International Court of Justice in 1995.⁷² The background is well known.⁷³ In 1989, Australia entered into a treaty with Indonesia — the Timor Gap Treaty⁷⁴ — for the purpose of jointly exploring and exploiting the hydrocarbon resources of an area of East Timor’s continental shelf lying between East Timor and Australia (the Timor Gap). Portugal, in its capacity as continuing Administering Power (as recognized by some rather dated United Nations resolutions⁷⁵) brought an action against Australia⁷⁶ alleging

⁷⁰ On the relationship between process and substance pending the realization of self-determination, see Drew, ‘The East Timor Popular Consultation: Self-Determination Denied’, in Hedman, *supra* note 3, at 5–6.

⁷¹ I use this term to denote the body of international law applicable to *peoples* rather than, say, states, individuals or international organizations. Compare e.g. J. Rawls, *The Law of Peoples* (1999).

⁷² *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103.

⁷³ See the various essays dedicated to discussing the background and prognosis of the *East Timor* case in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11.

⁷⁴ Australia/Indonesia Treaty on the Zone of Cooperation in an Area Between the Indonesian Province of East Timor and Northern Australia of 11 December 1989, (1990) 29 ILM 469.

⁷⁵ See e.g. General Assembly Resolution 3485 (XXX), 12 December 1975; and Security Council Resolution 384 (1975), 22 December 1975. For discussion, see *Case Concerning East Timor* (*Portugal v. Australia*), ICJ Reports (1995) 103, para. 15.

⁷⁶ No action could be brought against Indonesia as it had not accepted the compulsory jurisdiction of the International Court of Justice.

inter alia a breach both of its own rights as the Administering Power and the rights of the East Timorese people — namely, to self-determination and permanent sovereignty over natural resources. The outcome was as predictable⁷⁷ as it was disappointing. The case was dismissed on jurisdictional grounds.⁷⁸ The Court held — implicitly applying the *Monetary Gold* doctrine⁷⁹ — that it could not entertain the case ‘in the absence of the consent of Indonesia’, as any determination as to the legality of Australia’s conduct would require a prior determination regarding the conduct of a third party not before the Court — Indonesia.⁸⁰

The decision has been the subject of much subsequent discourse and criticism.⁸¹ Elsewhere,⁸² for example, it has been argued that the ‘configuration’ of the *East Timor* case was clearly distinguishable from that of *Monetary Gold Removed from Rome* and that the ICJ erred in departing from its earlier jurisprudence in the *Phosphates Lands* case.⁸³ There is no intention to re-engage in the jurisdictional niceties of the *Monetary Gold* debate here. Rather, it is my intention to revisit the case from a self-determination perspective — beyond the narrow, statist, jurisdictional framework of the judgment — with a view to assessing what, in its wider aspects, the case reveals about the state of the international law of peoples.

1 The Elevation of Self-Determination as Process Over Self-Determination as Substance

The first issue highlighted by the case, of concern to the self-determination enthusiast, is the tendency to elevate self-determination *as process* over self-determination *as substance*. Consider, for example, the Australian arguments on the merits. In response to the Portuguese claim that, by negotiating and concluding the Timor Gap Treaty, Australia had infringed the rights of the East Timorese to self-determination, Australia argued that its conclusion and implementation did not:

hinder any act of self-determination of the people of East Timor . . . Whatever the choice made, the conclusion of the Treaty does not prevent the exercise at some later date of the right of the

⁷⁷ Early warning of the potential procedural bar to the Portuguese case was given by Iain Scobbie at the IPJET conference in Lisbon in 1991. See Scobbie, ‘The East Timor Case: The Implications of Procedure for Litigation Strategy’, 9 *Oil and Gas Law and Taxation Review* (1991) 273; and Scobbie, ‘The Presence of an Absent Third: Procedural Aspects of the East Timor Case’, in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 223.

⁷⁸ *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, para. 28.

⁷⁹ *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom, and United States of America)*, ICJ Reports (1954) 19. For discussion of this doctrine — and the argument that this conclusion could have been avoided — see Scobbie and Drew, ‘Self-Determination Undetermined: The Case of East Timor’, 9 *Leiden Journal of International Law* (1996) 185, at 195–207.

⁸⁰ Indonesia had not lodged an application to intervene under Article 62 of the ICJ Statute.

⁸¹ See e.g. Chinkin, ‘The East Timor Case (Portugal v. Australia)’, 45 *International and Comparative Law Quarterly* (1996) 712, at 724–725; and Scobbie and Drew, *supra* note 79.

⁸² Scobbie and Drew, *supra* note 79, at 195–197.

⁸³ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, ICJ Reports (1992) 240. For a discussion, see Scobbie and Drew, *supra* note 79, at 207–208.

people of East Timor freely to choose their future political status in accordance with arrangements approved by the UN.⁸⁴

In other words, as exploiting oil resources presented no obvious impediment to the process of exercising a future free choice, Australia had breached none of its international duties in relation to East Timor's right of self-determination.

This argument is clearly misconceived. It portrays self-determination as no more than a one-off right of a people to participate in a *process* — a free, political choice — and ignores its core content of *substantive* entitlements (in this instance, the right of the Timorese to their oil). As Higgins argued in the oral pleadings, the effect of the Australian argument would be to empty the right of self-determination of any meaningful content.⁸⁵ Clearly, once it is recognized that self-determination entails substantive entitlements beyond the basic right to exercise a free choice, arguments that rely on such an artificial separation of process from substance are rendered logically untenable.

Now, it could, of course, be countered that the Australian arguments tell us more about the litigation strategy of a particular respondent state than they do about any general trend in the international practice relating to the law of peoples. A wider review of state practice, however, reveals that the tendency to see *self-determination as process* as exhaustive of the legal content of the right of self-determination is confined neither to Australian courtroom posturing nor to East Timor. For example, Israeli settlements in the West Bank and Gaza Strip, which strike at the very core of the Palestinian self-determination entitlement — territory, resources, demography — are routinely debated in institutional fora without any recourse to the law on self-determination. Instead, Israeli settlement activity has been variously characterized as contrary to the Fourth Geneva Convention,⁸⁶ individual human rights⁸⁷ and the all-important peace process.⁸⁸

It is my contention that the institutional failure to characterize settlements as a violation of the Palestinian right of self-determination belies a general misconception of self-determination as a right to a process devoid of substantive content. The consequences for the discourse on the peace process are manifest. Once the right of

⁸⁴ Australian Counter Memorial, para. 374. Australia further argued that 'a State can only breach the obligation to respect the right of a people to self-determination if its conduct prevents or hinders the exercise of the people of a non-self-governing territory of their right freely to determine their political status'. *Ibid.*, at para. 375.

⁸⁵ Judge Higgins refers to this as 'legal deconstructionism'. See R. Higgins, Final Oral Argument, CR 95/13.

⁸⁶ See e.g. Security Council Resolution 452 (1979), 20 July 1979; Security Council Resolution 465 (1980), 1 March 1980; General Assembly Resolution A/Res/ES-10/6; United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory Including Jerusalem, Cairo, 14 and 15 June 1999, <http://domino.un.org/UNSIPAL>.

⁸⁷ See e.g. Commission on Human Rights Resolution E/CN4/Res./2000/8, 17 April 2000. For state practice, see e.g. the view of the United Kingdom at UKMIL, 59 *British Yearbook of International Law* (1988) 574–575; UKMIL, 64 *British Yearbook of International Law* (1993) 724.

⁸⁸ For numerous views of states to this effect, see e.g. Security Council debates, 'The Situation in the Occupied Arab Territories', 30 June 1998, S/PV 3900, 30 June 1998; General Assembly Resolution 53/55, 3 December 1998; and the European Union Declaration, Brussels, 22 May 2000.

self-determination has been conceptually stripped of its core entitlements to territory and resources, it becomes possible — for states, institutions and commentators alike — to assert both the *inalienable*, *jus cogens* character of the Palestinian right to self-determination, *and* declare the future of Israeli settlements as a matter for political negotiation;⁸⁹ to affirm the primacy of the right of self-determination, including the option of a state, *and* envisage a future for Israeli settlements on the West Bank.⁹⁰

Viewed in this contemporary light, how then as international lawyers do we respond to the Australian argument that the East Timorese right of self-determination emerged unscathed from the negotiation and conclusion of a treaty dedicated to the exploration and exploitation of East Timorese oil? Do we dismiss it as the courtroom strategy of a creative litigation team charged with representing a miscreant state? Or do we acknowledge that it reflects a more general trend in contemporary practice that unduly and selectively elevates self-determination as process over self-determination as substance, with deleterious consequences for the territory and resources of peoples from East Timor to the West Bank?

2 The Elevation of the Substantive Rights of Peoples over the Procedural Rights of Peoples

A second issue highlighted by the *East Timor* case concerns the relationship between the substantive rights of peoples and procedural rights of access (for peoples).⁹¹ As noted earlier, the decision to dismiss the East Timor case on jurisdictional grounds has drawn criticism from many quarters. Christine Chinkin, for example, has argued, rightly, that the outcome of the case reveals an inherent structural bias in the international law system that favours procedural requirements over substantive principles — i.e. the procedural rights of absent third states over the substantive rights of peoples.⁹² I want to take this analysis one step further and argue that from a self-determination perspective the case highlights a second structural bias in the international system: the elevation of *substantive* rights of *peoples* over *procedural* rights of *peoples*. Thus, while on a normative level, the right of self-determination has been declared by the International Court of Justice to be an obligation *erga omnes*,⁹³ and is

⁸⁹ For an astonishing example of this, see e.g. Special Rapporteur Felber, 'Report on the Human Rights Situation in the Occupied Palestinian Territories Occupied Since 1967', E/CN.4/1995, 19 December 1994.

⁹⁰ See e.g. Cassese, 'The Israel-PLO Agreement and Self-Determination', 4 *European Journal of International Law* (1993) 564, at 569.

⁹¹ It should be stressed at the outset that here I am using the terms 'substantive' and 'procedural' to distinguish substantive legal principle from procedural rights such as *locus standi*. This is not to be confused with my earlier characterization of the content of the right of self-determination as comprising two distinct elements: *self-determination as process* and *self-determination as substance*. I am grateful to Thomas Franck for pointing out the potential for terminological confusion here.

⁹² Chinkin, *supra* note 81, at 724–725.

⁹³ *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, para. 29.

frequently cited as a candidate for the elusive *jus cogens* status,⁹⁴ when it comes to issues of enforcement or procedural rights of access, the law on self-determination remains resolutely impoverished.⁹⁵

Now it may, of course, simply be regarded as trite to point out that the East Timorese did not themselves have standing under the ICJ Statute to bring their case to the International Court of Justice: that behind the case of *Portugal v. Australia* there was the shadow case of *the East Timorese People v. the Republic of Indonesia*. But, as international lawyers, are our critical faculties bound by the non-precedential injunctions of the ICJ Statute?⁹⁶ How then do we regard Portugal's efforts to frame a case about East Timor in terms of its own — and vicarious — interests? Do we applaud the legal creativity of the Portuguese litigation team while admiring the sheer *chutzpah* of a state with a dubious colonial past? Or do we lament the strictures of an international legal order that make resort to such legal acrobatics necessary? In his separate opinion, Judge Vereshchetin argues that the East Timorese people constituted an equally absent 'third party'.⁹⁷ Do we muse on the irony that in *this* particular case the rights of an absent *state* (Indonesia) were upheld while those of the absent *people* (the East Timorese) remained *per force* beyond the jurisdictional reach of the Court? Or does it remind us that peoples have perennially been absent from the cases bearing their names — from *South West Africa* to the *Western Sahara*?⁹⁸

Perhaps we console ourselves that the explanation for the procedural exclusion of peoples lies in international law's statist past as reflected in the (now outdated) 1945 Statute of the International Court of Justice. But what then of other ostensibly non-statist institutions? The current spate of litigation against Turkey in the European Court of Human Rights arising out of the systematic persecution of the Kurdish people⁹⁹ demonstrates the limitations of litigating violations of peoples' rights through the prism of a human rights convention dedicated solely to the protection of the individual. On the standard account, the omission of a substantive provision on

⁹⁴ The *jus cogens* nature of self-determination was not argued by Portugal in the *East Timor* case, as this would have inevitably called into question the validity of the Timor Gap Treaty — thus (properly) triggering the application of the *Monetary Gold* doctrine. Article 53 of the 1969 Vienna Convention on the Law of Treaties. For the view that self-determination has attained *jus cogens* status, see e.g. Espiel, *supra* note 62, at paras 70–87; and Commission on Human Rights, Resolution E/CN.4/RES/2000/4, 7 April 2000.

⁹⁵ For the opposite view, that procedural rights of peoples (participation and process) are elevated over substantive rights in the context of the indigenous debate, see Tennant, 'Indigenous Peoples, International Institutions, and the International Legal Literature 1945–1993', 16 *Human Rights Quarterly* (1994) 1, at 45–55.

⁹⁶ Article 59 of the ICJ Statute 1945.

⁹⁷ *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, Judge Vereshchetin, Separate Opinion, at 135.

⁹⁸ Thus, even in Advisory Opinions, the directly affected people — the Sahrawi — were excluded from the Court whereas even the most indirectly affected states were eligible to take part in the oral proceedings. See the Letter from the Registrar, 25 March 1975. In the end, Morocco, Mauritania, Zaire, Algeria and Spain elected to be represented in the oral proceedings before the Court.

⁹⁹ For a critical account of Western inaction in the face of 'ethnic cleansing' against the Kurds in Turkey, see N. Chomsky, *The New Military Humanism: Lessons from Kosovo* (1999) 51–63.

peoples' rights in early human rights instruments such as the European Convention on Human Rights, has been remedied in later, third generation provisions such as the pivotal Article 1 — on self-determination of peoples — in the International Covenant on Civil and Political Rights.¹⁰⁰ Yet, the ill-fated attempts of representatives of indigenous peoples — the Grand Captain of the Mikmaq¹⁰¹ and the Chief of the Lubicom Lake Band¹⁰² — to bring claims against Canada under the Optional Protocol in respect of alleged violations of Article 1, remind us that the absence of an effective procedural mechanism for peoples to enforce the substantive right of self-determination is as much a feature of (third generation) human rights instruments¹⁰³ as of the (statist) International Court of Justice.

Alternatively, if responsibility for the procedural exclusion of peoples from international fora lies as much with our human rights present as with our statist past, perhaps we seek comfort in the prospect of an inevitably more people-inclusive future. On this reasoning, just as the substantive law of self-determination of peoples made its pilgrim's progress from political postulate to legal super-norm,¹⁰⁴ so too, with time, our international legal structures can be reformed to accommodate, procedurally, the claims of peoples. All we need is more — and better — law.¹⁰⁵ In *Katangese Peoples' Congress v. Zaire*¹⁰⁶ for example, a communication submitted by a representative of a people (the President of the Katangese Peoples' Congress) alleging a denial of self-determination under Article 20(1) of the African Charter on Human and Peoples' Rights¹⁰⁷ was received and considered (albeit negatively) by the African Commission on Human and Peoples' Rights.¹⁰⁸ Could not the procedure of the African Commission be mobilized in support of a more general reform project?

Yet the critical scholarship of Nathaniel Berman teaches us to treat with caution the view of history as the inexorable march of legal progress.¹⁰⁹ In his body of work on

¹⁰⁰ Article 1 of the ICCPR. For commentary, see D. McGoldrick, 'Commentary on Article 1', in *The Law of the Covenant* (2002 forthcoming).

¹⁰¹ Communication No. 78/1980, in *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. 2, October 1982–April 1988, at 23.

¹⁰² *Ominayak v. Canada*, Communication No. 167/1984, Views of the Human Rights Committee, 26 March 1990, UN Doc. CCPR/C/38/D 167/1984 (1990).

¹⁰³ For criticism, see e.g. Turpell, 'Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition', 25 *Cornell International Law Journal* (1992) 579, at 583–590.

¹⁰⁴ A. Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* (1981) 17–24.

¹⁰⁵ Kennedy, *supra* note 21.

¹⁰⁶ *Katangese Peoples' Congress v. Zaire*, Communication No. 75/92, *supra* note 33.

¹⁰⁷ Article 20(1) of the African Charter of Human and Peoples' Rights 1981.

¹⁰⁸ Rules of Procedure of the African Commission on Human and Peoples' Rights, 6 October 1995, at www.oau-oua.org/oau_info/rules.htm. The Commission considered that there were no violations under the African Charter.

¹⁰⁹ Contesting the 'progress narrative' is a characteristic of the so-called 'New Approaches to International Law' (NAIL) stream of international legal scholarship. Cass, 'Navigating the New Stream: Recent Critical Legal Scholarship in International Law', 65 *Nordic Journal of International Law* (1996) 337. For a critique of 'history as progress' see e.g. Kennedy, 'The Disciplines of International Law and Policy', 12 *Leiden Journal of International Law* (1999) 9, at 91–101.

the legal history of nationalism.¹¹⁰ Berman demonstrates the perennial ambivalence with which the international community has engaged the nationalist passions of peoples.¹¹¹ On this account, it is surely worth recalling that the system of minority protection under the League of Nations was criticized *inter alia*¹¹² for its failure to provide *locus standi* to minority groups both at the Council of the League of Nations¹¹³ and at the Permanent Court of International Justice.¹¹⁴ Viewed in this historical light, how then do we regard the procedural exclusion of peoples such as the East Timorese from international law fora such as the ICJ?¹¹⁵ Is it merely an oversight on the part of an international legal order otherwise dedicated to building a normative law of peoples? Or does it reflect a more deep-rooted ambivalence¹¹⁶ about the place of

¹¹⁰ See e.g. Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', 4 *Yale Journal of Law and Humanities* (1992) 351; Berman, "'But the Alternative is Despair': European Nationalism and the Modernist Renewal of International Law", 106 *Harvard Law Review* (1993) 1792; Berman, 'Between Alliance and Localisation: Nationalism and the New Oscillationism', 26 *New York University Journal of International Law and Politics* (1994) 449; and Berman, 'The International Law of Nationalism: Group Identity and Legal History', in D. Wippman (ed.), *International Law and Ethnic Conflict* (1998) 25.

¹¹¹ Berman, 'Perilous Ambivalence: Nationalist Desire, Legal Autonomy, and the Limits of the Interwar Framework', 33 *Harvard Journal of International Law* (1992) 353.

¹¹² The view of the minorities states was of course the opposite: that the League system had conceded 'too much to minority groups'. I.L. Claude, *National Minorities* (1955) 33.

¹¹³ Although the League established procedures to allow minority groups to petition the Council directly, this was of no legal effect unless endorsed by a member of the League Council. See Tittoni Report of 22 October 1920, Report 1, *League of Nations Official Journal* 8, 9 (1920). For an explanation of the decision not to accord *locus standi*, see Report of the Committee Instituted by the Council Resolution of 7 March 1929, *League of Nations Official Journal Spec. Supp.* (1929) 73. An important exception was the Geneva Convention Concerning Upper Silesia 1922. For discussion, see Berman, "'But the Alternative is Despair'", *supra* note 110, at 1897.

¹¹⁴ A draft Article of the Polish Treaty, proposed by Lord Robert Cecil in 1919, which would have allowed Polish national minorities a direct right of appeal to the Permanent Court of International Justice, was rejected by the UK and France. See J. Robinson, O. Karback *et al.*, *Were the Minorities Treaties a Failure?* (1943) 135–138. See also, on this point, Berman, "'But the Alternative is Despair'", *supra* note 110, at 1860, especially note 295; and P. Thornberry, *International Law and the Rights of Minorities* (1991) 38–54.

¹¹⁵ An important exception is of course the Working Group on Indigenous Populations established by ECOSOC Resolution 1982/34, 7 May 1982. For discussion, see Maivan Clech Lam, 'Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims for Self-Determination by Nations', 25 *Cornell International Law Journal* (1992) 603, at 619–620. It was precisely this lack of institutional access for peoples generally in the international system that led to the founding of the Unrepresented Peoples' Organization (UNPO) in 1991. See <http://www.unpo.org>.

¹¹⁶ Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', *supra* note 110. This is also reflected in the proposal of the Committee on Economic, Social and Cultural Rights to exclude questions relating to the right of self-determination from the individual right to submit communications under the proposed draft optional protocol to the International Covenant on Economic Social and Cultural Rights. It was stated that this could involve a 'grave danger of the procedure being misused'. 'Report of the Committee on Economic, Social and Cultural Rights to the Commission on Human Rights on a Draft Optional Protocol for the Consideration of Communications in Relation to the International Covenant on Economic, Social and Cultural Rights', Annex to E/CN.4/1997/105, 18 December 1996, para. 24. Chris Tennant's argument, that in the context of indigenous rights the opposite is true and there is a prioritization of procedural rights — participation and process — over substantive rights (i.e. no recognized right to self-determination), merely confirms the existence of the ambivalence. Tennant, *supra* note 95.

nationalist claims in international law that has survived ostensible 'progress' at both doctrinal and institutional levels: from minority rights, to peoples' rights; and from the paternalistic League of Nations, to the more 'enlightened' United Nations?

B Self-Determination as Process: The United Nations and the August 1999 Popular Consultation

The second institutional encounter I wish to consider is between East Timor's right to self-determination as process, and the United Nations-sponsored popular consultation of August 1999.¹¹⁷ This may seem a strange choice of moment for critical scrutiny. If the encounter with the International Court of Justice was widely hailed as a disappointment, the popular consultation has been generally celebrated as the implementation of East Timor's long overdue right of self-determination.¹¹⁸ On this, now standard, account the image of the East Timorese turning out in their droves to vote at United Nations polling stations in the face of threats from marauding militias¹¹⁹ and Indonesian security forces bears testimony to the tenacity, not only of the East Timorese people, but of the international community faced with a suppression of the 'irrepressible'¹²⁰ right of self-determination.

Yet for the self-determination formalist, the United Nations chapter of the East Timor Story is as troubling as its judicial counterpart. Questions abound. Why did the East Timorese require to be tenacious? Why were there 'marauding militias' and illegally occupying Indonesian security forces? In the era of the much-vaunted right of democratic governance¹²¹ are not votes — especially United Nations-sponsored ones — supposed to be conducted in an atmosphere which is 'free and fair'? And given the presence of marauding militias and the Indonesian army, why did the United Nations deploy a civilian mission and not, for example, a military peace-keeping force?

1 The Background to the New York Accords

For international lawyers, the background to the August 1999 popular consultation should be well known. Since July 1983,¹²² the good offices function of the United Nations Secretary-General had been deployed — to little avail — to assist Portugal and Indonesia to find an 'acceptable solution' to the Question of East Timor.

¹¹⁷ I have argued elsewhere, in advance of the popular consultation, that the proposed arrangements failed to accord with international law. Drew, *supra* note 70.

¹¹⁸ Portugal, for example, stated that the New York Accords met Portugal's objectives by recognizing the right of self-determination of the East Timorese. See Note Verbale, 2 June 1999 from *Charge d'affaires* of the Permanent Mission of Portugal to the United Nations addressed to the Secretary-General, A/54/121, 3 June 1999.

¹¹⁹ On the deleterious effects of the militia campaign of intimidation from January 1999 to August 1999, see e.g. 'Question of East Timor, Progress Report of the Secretary-General', A/54/654, 13 December 1999, paras 18–20.

¹²⁰ *Case Concerning East Timor (Portugal v. Australia)*, ICJ Reports (1995) 103, para. 29.

¹²¹ Franck, 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* (1992) 46.

¹²² The General Assembly requested the Secretary-General to initiate consultation with all parties directly concerned with a view to exploring avenues for achieving a comprehensive settlement of the problem. See General Assembly Resolution 37/30, 23 November 1982.

With the fall of General Suharto in Indonesia in May 1998,¹²³ negotiations intensified,¹²⁴ and in October 1998 the United Nations Secretary-General presented Indonesia and Portugal with a detailed draft constitutional framework for 'wide-ranging autonomy' in East Timor within the Republic of Indonesia.¹²⁵ Dispute over the autonomy plan centred less on the constitutional details than on whether East Timor's autonomy within Indonesia would constitute a final status (the Indonesian position) or an interim status pending a future act of self-determination by the East Timorese people (the Portuguese and East Timor leadership position).¹²⁶

The deadlock was resolved when — in an astonishing turnaround — on 27 January 1999, President Habibie announced that, if the people of East Timor declined the Indonesian offer of autonomy, Indonesia would be prepared to 'let East Timor go'.¹²⁷ It was this Habibie-led¹²⁸ *volte face* in Indonesian policy that paved the way for the conclusion of the historic New York Accords of 5 May 1999 between Portugal, Indonesia and the United Nations.¹²⁹

2 *The Structure of the New York Accords*

Hailed by the United Nations Secretary-General as providing an historic opportunity for a 'just, comprehensive and internationally acceptable solution to the question of East Timor',¹³⁰ the New York Accords comprised three separate agreements. First, the General Agreement,¹³¹ between Portugal and Indonesia, set forth the lynchpin principle: to request the United Nations Secretary-General to conduct a 'popular consultation' to ascertain whether the East Timorese people would accept or reject a constitutional framework for autonomy¹³² within the Republic of Indonesia. To assist in this task, the Secretary-General was requested to establish an 'appropriate' United Nations Assistance Mission for East Timor (UNAMET).¹³³ UNAMET was duly established by the Security Council on 11 June 1999.¹³⁴

The two supplementary agreements were tripartite — between Portugal, Indonesia and the United Nations — and dealt with the modalities for the popular consultation

¹²³ Suharto was forced to resign on 21 May 1998. On the economic and political background to the resignation, see Taylor, 'Indonesia and the Transition in East Timor', in Hedman, *supra* note 3, at 13.

¹²⁴ In June 1998, President Habibie offered a 'special status' to East Timor within the Republic of Indonesia. This was rejected by Bishop Belo and Xanana Gusmao. See Taylor, *supra* note 123, at 15.

¹²⁵ For background, see 'Question of East Timor, Progress Report', *supra* note 119, at para. 3.

¹²⁶ *Ibid.*, at para. 2.

¹²⁷ 'Sudden Impact', *Far Eastern Economic Review*, 11 February 1999, at 19; Taylor, *supra* note 123; 'Question of East Timor, Progress Report', *supra* note 119, at para. 4.

¹²⁸ On the background to Habibie's decision, see Taylor, *supra* note 123, at 16.

¹²⁹ For further details on the steps leading to the signing ceremony in New York, see 'Question of East Timor, Progress Report', *supra* note 119, at paras 5–9.

¹³⁰ Report of the Secretary-General, 'The Question of East Timor', S/1995/513, 5 May 1999, para. 1.

¹³¹ General Agreement, *supra* note 11.

¹³² *Ibid.*, Article 1. The Constitutional Framework was appended to the General Agreement.

¹³³ *Ibid.*, Article 2.

¹³⁴ Security Council Resolution 1246 (1999), 11 June 1999, para. 1.

(the 'Modalities Agreement'¹³⁵) and the security arrangements (the 'Security Agreement'¹³⁶). The Modalities Agreement regulated such operational issues as the date of the ballot, the question to be put to the voters, voter entitlement, the timetable for the consultation process and so forth.¹³⁷ The Security Agreement crucially laid down a second lynchpin principle: that a 'secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a fair and free ballot'.¹³⁸ Curiously, however, given their penchant for human rights abuses against the East Timorese, responsibility for ensuring the security environment was assigned, not to the United Nations, but to the 'appropriate' Indonesian security authorities.¹³⁹

3 *The New York Accords: Legal Rights or Pragmatic Compromise?*

It is my contention that with the shift from the ICJ to the UN — from self-determination as substance, to self-determination as process — the East Timor Story took, what David Kennedy might call, an 'anti-formalist turn'¹⁴⁰ — from legal formalism to institutional pragmatism. This becomes clear if we contest two standard assumptions that underpin discussion/analysis of the popular consultation and the violence that erupted in the wake of the announcement of the pro-independence results on 3 September 1999: first, that the popular consultation amounted to an exercise of the right of self-determination in accordance with the rules of international law; secondly, that the violence of September/October was aberrational and arose only in violation — rather than as a predictable consequence — of the New York Accords.

4 *The New York Accords and the Right to Free Choice*

We have seen that the 'essential feature' of self-determination as process is the right of a people to exercise a free choice. Thus, in order to be certified 'self-determination-compliant' it must be shown that the New York Accords met the test of providing the

¹³⁵ Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot (Modalities Agreement), A/53/951, Annex II of the Report of the Secretary-General, S/1999/513, *supra* note 11.

¹³⁶ East Timor Popular Consultation Agreement Regarding Security (Security Agreement) A/53/951, Annex III of the Report of the Secretary-General, S/1999/513, *supra* note 11.

¹³⁷ For discussion, see Secretary-General Report, S/1999/531, para. 4.

¹³⁸ Security Agreement, Article 1.

¹³⁹ Article 1 of the Security Agreement provided, *inter alia*, that responsibility for the security environment 'as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI [the Indonesian armed forces] and the Indonesian Police is essential in this regard.' Article 3 of the General Agreement, *supra* note 11, provided that: 'The Government of Indonesia will be responsible for maintaining peace and security in East Timor in order to ensure that the popular consultation is carried out in a fair and peaceful way in an atmosphere free of intimidation, violence or interference from any side' (emphasis added). Part G of the Modalities Agreement provided that 'the Indonesian authorities will ensure a secure environment for a free and fair popular consultation and will be responsible for the security of the United Nations personnel'.

¹⁴⁰ Kennedy, *supra* note 21.

people of East Timor with a true free choice as required by international law. And, while the precise meaning of ‘free choice’ is not expressly defined, it seems obvious that in order to be meaningful the designation ‘free’ must relate to both the *range* of choices offered and the *conditions* under which the choice was to be exercised.

(a) *The range of choices: the ballot question*

The question of the range of choices has been touched on earlier. We have seen that General Assembly Resolution 1541¹⁴¹ provides for three weighted options: independent statehood, free association, or integration with an independent state. The 1970 Declaration Concerning Friendly Relations¹⁴² reiterates these three options and adds a fourth: ‘or the emergence into any other political status freely determined by a people’.¹⁴³ By contrast, on any reasonable interpretation, the question put to the East Timorese people seems unduly circumscribed and weighted in favour of one particular option: autonomy. As provided by the Modalities Agreement,¹⁴⁴ the question put to the East Timorese voters on 30 August 1999 was:

Do you accept the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia? ACCEPT

OR

Do you reject the proposed special autonomy for East Timor, leading to East Timor’s separation from Indonesia? REJECT

Thus, rather than present the East Timorese with a range of positive choices in neutral terms — say, integration with Indonesia, autonomy within Indonesia or independent statehood — the ballot question effectively offered a single choice — autonomy — on a take-it-or-leave-it basis. Independent statehood was not offered as a positive option in its own right, but rather put in a cameo appearance as ‘East Timor’s separation from Indonesia’, and as a negative consequence of rejecting ‘special autonomy’.

But perhaps it will be objected that this line of argument is excessively formalistic. It cannot seriously be suggested that the East Timorese were unaware of the true self-determination options on offer: *the Republic of Indonesia (integration) v. the Republic of East Timor (independence)*. UNAMET ran a faultless electoral educational programme¹⁴⁵ and the East Timorese themselves clearly grasped the point and voted in their droves. Yet, as international lawyers, how do we view the United Nations Secretary-General’s decision to sign up to an agreement where a ‘popular consultation’ on ‘special autonomy’ displaced the traditional ‘referendum’ on ‘self-

¹⁴¹ United Nations General Assembly Resolution 1541 (XV) 1960. Resolution 1541 is expressly recalled in the preamble of Security Council Resolution 1236 (1999), 7 May 1999.

¹⁴² United Nations General Assembly Resolution 2625 (XXV) 1970.

¹⁴³ *Ibid.*

¹⁴⁴ Modalities Agreement, Part B.

¹⁴⁵ On UNAMET public information activities in advance of the ballot, see e.g. UN Secretary-General Report, Question of East Timor, S/1999/803, 20 July 1999, para. 8. On 12 October 2000, UNAMET was (deservedly) awarded the Elie Wiesel Ethics Award for its role in facilitating the popular consultation.

determination',¹⁴⁶ and where the positive desire for independent statehood of the vast majority of East Timorese was expressed in the negative language of rejection? Are we pragmatic in the face of *realpolitik*? Do we point out that the actual wording of the ballot question isn't what is important, that for Indonesia a 'popular consultation' was the only politically palatable option, and that in any event it all came right in the end? Or do we at least acknowledge that self-determination is about *process*, not outcomes, and that in signing up to the New York Accords the United Nations departed from its own decolonization practice, which, as we have seen, favours independent statehood as a self-determination option?

(b) *The conditions for the choice: the security environment*

But even if we accept that, while the language may have been disappointing, the ballot question put to the East Timorese on 30 August 1999 nonetheless offered a range of political options sufficient to constitute a 'free choice' under international law (though we would have to agree that those East Timorese who favoured the *status quo* — full integration without autonomy — were effectively disenfranchised) the New York Accords manifestly failed at the second free choice hurdle: the conditions under which that choice was to be exercised.

It is axiomatic that the exercise of a free choice through a referendum or a plebiscite requires conditions conducive to a fair and free vote.¹⁴⁷ And, *prima facie*, this is recognized by the New York Accords. As we have seen, Article 1 of the Security Agreement provided that the prerequisite for holding a 'fair and free ballot' was a 'secure environment devoid of violence or other forms of intimidation'.¹⁴⁸ The task of vouchsafing that secure environment fell to the United Nations Secretary-General. Thus Article 3 of the Security Agreement provided that, prior to the start of the registration of voters, the Secretary-General shall 'ascertain, based on the objective evaluation of the United Nations mission, that the necessary security situation exists for the peaceful implementation of the consultation process'.¹⁴⁹ Guidance as to what exactly would constitute 'the necessary security situation' was provided in the accompanying Secretary-General's report:

the bringing of armed civilian groups under strict control and the prompt arrest and prosecution of those who incite or threaten to use violence, a ban on rallies by armed groups while ensuring the freedom of association and expression of all political forces and tendencies, the redeployment of Indonesian military forces and the immediate institution of a process of laying down of arms by all armed groups to be completed well in advance of the holding of the ballot.¹⁵⁰

¹⁴⁶ In her study of the inter-war plebiscites, Sarah Wambaugh draws a distinction between 'popular consultations' and the 'regular plebiscite'. See S. Wambaugh, *Plebiscites Since the World War* (1933) Preface and Appendix.

¹⁴⁷ See e.g. Security Council Resolution 628 (1989), 16 January 1989, in relation to Namibia.

¹⁴⁸ Security Agreement, Article 1.

¹⁴⁹ *Ibid.*, Article 3.

¹⁵⁰ Report of the Secretary-General, The Question of East Timor, S/1999/513, *supra* note 11, para. 6. UNAMET was also mandated to monitor 'the fairness of the political environment' and to ensure 'the freedom of all political and other non-governmental organizations to carry out their activities'. Security Council Resolution 1246 (1999) 11 June 1999, para. 4.

The ballot was originally scheduled for Sunday 8 August 1999.¹⁵¹ However, on 22 June, following reports of widespread intimidation and violence against pro-independence supporters by pro-integration militias, the Secretary-General rightly determined that the ‘necessary security situation’ did not exist and postponed the start of the registration process for three weeks.¹⁵² Indonesia and Portugal agreed to a two-week postponement of the ballot.¹⁵³ On 14 July 1999, following reports of further militia violence and intimidation, including a series of attacks against UNAMET convoys and personnel, the Secretary-General again determined that he was unable to attest to the necessary security situation.¹⁵⁴ But this time, ‘undeterred by the intimidation’, he decided that the registration process should nevertheless begin.¹⁵⁵ Finally, on 28 July 1999, the Secretary-General informed the Security Council that the date of the consultation had been postponed to 30 August 1999.¹⁵⁶ No subsequent determination that the ‘necessary security situation’ existed was ever made.

But if, for the Secretary-General, the thorny political question¹⁵⁷ in the lead-up to the ballot was whether the security situation on the ground measured up to Article 1 of the Security Agreement (and, if not, whether to go ahead anyway), for the self-determination formalist the question is whether the security arrangements in the Accords measured up to what is required by international law. In other words, did the terms of the New York Accords provide for conditions conducive to an exercise of a *free* choice? And it is my contention, as argued in advance of the ballot,¹⁵⁸ that the

¹⁵¹ Modalities Agreement, Part A. This was later moved to Saturday, 7 August 1999 at the behest of the Indonesians.

¹⁵² Report of the Secretary-General Question of East Timor, S/1999/705, 22 June 1999, paras 12 and 19; ‘Question of East Timor, Progress Report’, *supra* note 119, at para. 21.

¹⁵³ *Ibid.* at para. 20.

¹⁵⁴ See Letter to Security Council, 14 July 1999, S/1999/788. For details of the various attacks against UNAMET, see ‘Question of East Timor, Progress Report’, *supra* note 119, at para. 21.

¹⁵⁵ Letter to Security Council, 14 July 1999, S/1999/788. Registration began on 16 July 1999. See UN Secretary-General Report, Question of East Timor, S/1999/803, 20 July 1999, para. 1. The Secretary-General states that the decision to commence registration was based on ‘positive assurances’ by the Indonesians that the security situation would improve. *Ibid.* at para. 25. On 26 July 1999, the Secretary-General again wrote to the Security Council: ‘The security conditions remained inadequate with ongoing intimidation by armed militia groups . . . and the inability of tens of thousands of internally displaced persons to return to their homes in safety. Further action to bring armed groups under control is essential.’ But he nonetheless took the decision to continue with the registration of voters. See Letter Dated 26 July 1999 from the Secretary-General Addressed to the President of the Security Council, S/1999/822, 26 July 1999.

¹⁵⁶ See Letter Dated 28 July 1999 from Secretary-General Addressed to the President of the Security Council, S/1999/830, 28 July 1999. As a consequence, the Security Council authorized a one-month extension of UNAMET’s mandate until 30 September 1999. Security Council Resolution 1257 (1999), 3 August 1999.

¹⁵⁷ The Secretary-General made explicit the dilemma: ‘The prospect of achieving greater security through delaying the process or indeed halting it had to be weighed carefully against the risk of depriving the people of East Timor of the historic opportunity afforded by the Agreements. It was by no means certain that should the timetable shift by too great a margin the consultation would be held at all.’ ‘Question of East Timor, Progress Report’, *supra* note 119, at para. 24.

¹⁵⁸ Drew, *supra* note 70.

Accords' injunction that there be an environment 'devoid of intimidation'¹⁵⁹ was always going to be thwarted, not only by the *external* situation on the ground — the marauding militias, the Indonesian military — but also by two failings integral to the Agreements.

First, there was no obligation on Indonesia to withdraw¹⁶⁰ — or even to redeploy — its military forces in the lead-up to the ballot. Although Indonesian troop redeployment was listed by the Secretary-General as one of the main elements of the 'necessary security situation'¹⁶¹ any corresponding treaty provision in the New York Accords is conspicuous only by its absence. That the 'neutralization' of a territory — including the removal of the armed forces of the former power — is an essential condition for a free vote has long been established in international practice — from the League of Nations supervised plebiscites of the inter-war period¹⁶² to the more recent decolonization practice of the United Nations. As regards the latter, for example, the UN settlement plan for Namibia¹⁶³ provided for a reduction in South African Defence Forces (SADF) to 1,500 troops (who were to be confined to base), and the withdrawal of SADF troops began seven months ahead of the elections.¹⁶⁴ Similarly, MINURSO's mandate in Western Sahara includes verifying Moroccan troop reduction and monitoring the confinement of Moroccan and POLISARIO troops to designated areas ahead of the self-determination referendum.¹⁶⁵ By contrast, in East Timor, Indonesia retained a military presence of an estimated 18,000 troops throughout the period of the popular consultation.¹⁶⁶

The second failing of the New York Accords was that there was no provision for the deployment of a United Nations peacekeeping force to ensure security and monitor the vote. Rather, as we have seen, Article 1 of the Security Agreement, paradoxically, assigned responsibility for the security situation to the 'appropriate Indonesian

¹⁵⁹ Security Agreement, Article 1.

¹⁶⁰ A recommendation for withdrawal of 'some' Indonesian forces from East Timor in the period leading up to the consultation was rejected by Indonesia. See 'Question of East Timor, Progress Report', *supra* note 119, at para. 11.

¹⁶¹ Report of the Secretary-General, The Question of East Timor, S/1999/513, *supra* note 11, para. 6.

¹⁶² Thus Wambaugh wrote of the inter-war plebiscites that: 'It is . . . a great advance that in all European plebiscites . . . the principle of neutralization was so far recognized that in every case the troops of the former owner were evacuated and an international commission was established to administer the plebiscite, with complete power over the administration of the area.' Wambaugh, *supra* note 146, at 443. Even before the Second World War, Wambaugh reports that troop evacuation — though not the neutral commission — had become established practice in conducting plebiscites. *Ibid.* at 444. See also for discussion, Berman, 'Modernism, Nationalism and the Rhetoric of Reconstruction', *supra* note 110.

¹⁶³ Approved in Security Council Resolution 435 (1978), 29 September 1978.

¹⁶⁴ 26 *UN Chronicle* (June 1989) 12.

¹⁶⁵ Similarly, MINURSO's mandate in the Western Sahara includes verifying Moroccan troop reduction and monitoring the confinement of Moroccan and POLISARIO troops to designated areas ahead of the referendum. MINURSO's mandate was most recently extended in Security Council Resolution 1349 (2001), 27 April 2001.

¹⁶⁶ According to Xanana Gusmao, 12 battalions of Indonesian troops entered East Timor from West Timor in the aftermath of the announcement of the vote in favour of independence. Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, S/1999/976, para. 3. Phased Indonesian troop withdrawal began only after the deployment of INTERFET on 20 September 1999.

authorities'. This is simply unfathomable.¹⁶⁷ As a matter of historical record, the Indonesian military's penchant for human rights abuse against the East Timorese had been matched only by its flagrantly pro-integrationist agenda. Although official confirmation¹⁶⁸ was lacking at the time of concluding the New York Accords, there was nonetheless a wealth of evidence¹⁶⁹ to support the claims of East Timorese and other observers¹⁷⁰ that the Indonesian military was responsible for the pro-integration militias, which, from January 1999, had been wreaking such havoc in the territory. In short — as borne out by the direct involvement of the Indonesian military and police in the September 1999 violence¹⁷¹ — to assert the need for a security environment devoid of intimidation and violence, and then to assign responsibility for securing that environment to Indonesia, was positively oxymoronic.¹⁷²

Moreover, again it is out of step with United Nations practice in self-determination situations involving military occupation and armed conflict, which favours the deployment of a United Nations peacekeeping force to monitor the ballot.¹⁷³ In Namibia, for example, UNTAG included a 4,900-strong military contingent with a mandate *inter alia* to monitor the reduction of SADF, disarm militias and monitor the confinement of arms and ammunition.¹⁷⁴ It is simply unimaginable that the United Nations would have agreed to hold elections in Namibia in the absence of a

¹⁶⁷ The explanation given by the Secretary-General was that Indonesia made it clear that 'it could not accept any dilution of its overall responsibility for security'. See 'Question of East Timor, Progress Report', *supra* note 119, at para. 11.

¹⁶⁸ The Security Council Mission that was deployed in the immediate aftermath of the September 1999 violence reported that it was in no doubt that 'large elements' of Indonesian military and police authorities 'had been complicit in organizing and supporting the action of the militias'. Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, S/1999/976, para. 3. See also KPP-HAM's report which reveals the existence of a cable sent on 5 May 1999 (the day of the signing of the New York Accords) by the Deputy Chief of Staff of ABRI, Brigadier-General Jhoni Lumintang, instructing the commander of the regional military command in Bali to be prepared to take repressive measures if the decision went in favour of independence, and to prepare for the evacuation of the population. For discussion of this and other documentary evidence collected by Komnas HAM, see Tapol, the Indonesian Human Rights Campaign, 'Ending the Cycle of Impunity: Can the East Timor Investigations Pave the Way?', 24 January 2000.

¹⁶⁹ See generally Hedman, 'The Rise of the Paramilitaries: Violence and the Vote in East Timor', in Hedman, *supra* note 3, at 26. See also Report of the Secretary-General, S/1999/595, 22 May 1999, para. 23.

¹⁷⁰ See e.g. Amnesty International, 'Paramilitary Attacks Jeopardize East Timor's Future', ASA 21/26/99, 16 April 1999; Amnesty International, 'East Timor: ABRI Must Stop the Paramilitary Units', ASA 21/30/99, 17 April 1999. In June 1999, the *Far Eastern Economic Review* revealed the contents of a letter classified as 'very secret' in which the head of a militia requested the local military commander to 'release' 530 million rupiah (US\$71,000) for the purchase of 100 automatic rifles. *Far Eastern Economic Review*, 24 June 1999.

¹⁷¹ Report of the Security Council Mission to Jakarta and Dili 8–12 September 1999, para. 3.

¹⁷² Drew, *supra* note 70.

¹⁷³ See e.g. Security Council Resolution 435 (1978), 29 September 1978, establishing UNTAG to oversee the Namibian independence process and Security Council Resolution 690 (1991), 29 April 1991 establishing MINURSO to administer the — much postponed — Western Sahara referendum. Even outside the decolonization context, there is a growing practice of United Nations deployment of peacekeeping missions to monitor elections.

¹⁷⁴ For details, see 43 *Yearbook of the United Nations* (1989) 789.

peacekeeping force — far less to assign the principal security role to the ‘appropriate’ South African security authorities. Was there a principled basis for distinguishing the situation in East Timor?

As international lawyers, how then do we respond to the news that the United Nations signed up to an agreement that was per se inimical to a free vote ‘devoid of intimidation and violence’? Perhaps we focus on what actually happened: 98.6 per cent of registered East Timorese¹⁷⁵ turned out to vote and the day itself was relatively violence-free.¹⁷⁶ Are we *post facto* pragmatists who applaud¹⁷⁷ the bravery of the East Timorese who — like the United Nations Secretary-General — were clearly ‘undeterred by the intimidation’?¹⁷⁸ Or do we reflect that given the consequences of a vote in favour of special autonomy within Indonesia — the removal of East Timor from the list of non-self-governing territories, its deletion from the international agenda¹⁷⁹ — it was simply unacceptable that a United Nations-sponsored ballot should be conducted under less than optimal conditions? The outcome of the vote was 78.5 per cent in favour of rejecting autonomy.¹⁸⁰ Do we celebrate the pro-independence result, relieved that in the end there was no doubt that it reflected the ‘genuine free expression of the will’¹⁸¹ of the East Timorese people? Or, do we remind ourselves once again that self-determination is about process not outcomes, and that, in any event, to focus exclusively on the ballot result as the one ‘happy ending’ to the East Timor Story is distorting as it diverts attention away from the other — less happy — outcomes¹⁸² on the ground. The violence that erupted on 3 September 1999 had been predicted by human rights groups and by the East Timorese as the inevitable consequence of the United Nations failure to secure Indonesian troop withdrawal or

¹⁷⁵ 446,953.

¹⁷⁶ While there was no widespread violence, two East Timorese UNAMET staff members were killed by pro-integration militias.

¹⁷⁷ ‘I congratulate the people of East Timor ... for the perseverance and courage they have shown, particularly in the face of large-scale intimidation and violence that characterized the decisive final stages of the process.’ Secretary-General, ‘Question of East Timor, Progress Report’, *supra* note 119, at para. 47.

¹⁷⁸ Letter to Security Council of 14 July 1999, S/1999/788.

¹⁷⁹ According to Article 5 of the General Agreement, *supra* note 11, in the event that the Secretary-General had determined that the East Timorese had voted for special autonomy: ‘the Government of Portugal shall initiate within the United Nations the procedures necessary for the removal of East Timor from the List of Non-Self-Governing Territories of the General Assembly and the deletion of the question of East Timor from the agendas of the Security Council and the General Assembly.’

¹⁸⁰ 344,580; 21.5 per cent voted for autonomy.

¹⁸¹ This is the test laid down for self-determination by the ICJ in the *Western Sahara Advisory Opinion*, ICJ Reports (1975) 12. For the East Timor popular consultation, an Independent Electoral Commission (consisting of ‘three eminent jurists with extensive experience in the field of electoral processes’) was established to observe the entire consultation process. After a judicial review following complaints of irregularities, it concluded that ‘the popular consultation had been procedurally fair and in accordance with the New York Agreements and consequently provided an accurate reflection of the will of the people of East Timor’. See ‘Question of East Timor, Progress Report’, *supra* note 119, at paras 17 and 31.

¹⁸² It is estimated that 250,000 refugees fled to West Timor. For further details of the ‘humanitarian catastrophe’ that resulted from the September 1999 violence, see ‘Report of the Secretary-General on the United Nations Transitional Administration in East Timor’, 2/2000/53, 26 January 2000, paras 29–39.

deploy peacekeepers.¹⁸³ The death of East Timorese and UNAMET personnel, the wholesale destruction of villages and towns, and the ‘humanitarian catastrophe’ of 250,000 East Timorese refugees are directly attributable to these failings of the New York Accords.

5 *From Formalism to Pragmatism: Dispensing with Two Possible Defences*

It can thus be seen that the New York Accords failed to provide for a free choice sufficient to comply with the international legal rules on self-determination as process.¹⁸⁴ As such, contrary to the standard account, it is my contention that they are more accurately viewed as a product of pragmatic compromise rather than any principled application of the rules on self-determination of peoples.¹⁸⁵ Yet perhaps as international lawyers we will only be comforted to learn that the East Timor Accords represented an abdication rather than an application of the international legal rules. Once it is established that the institutional move from the International Court of Justice to the United Nations was characterized by a shift from (legal) formalism to (more political?) pragmatism, could it not be argued that the burden of responsibility for ‘what-went-wrong’ also shifts — from law onto, say, politics? On this analysis, the New York Accords could be seen, not so much as a failure *of* law, but rather a failure to implement law.

One can imagine the following line of argument could be marshalled by international lawyers in defence of our discipline: the failure of the UN and Portugal to ensure Indonesian troop withdrawal or the deployment of United Nations peacekeeping troops under the terms of the New York Accords as required by law, was due to a lack of political will on the part of Indonesia and/or powerful/influential states¹⁸⁶ who were in a position to bring pressure to bear upon Indonesia. Similarly, the Security Council’s eventual decision to deploy a multilateral force in accordance with international law (with Indonesian consent) was due to a change in the political will of Indonesia and/or those same key states (in turn, of course, brought about by the September violence and its extensive media coverage¹⁸⁷). *Ergo*, international law was no more than an innocent bystander at the Timorese slaughter.¹⁸⁸

In short, does not establishing that in the United Nations chapter of the East Timor Story there was a failure to comply with the rules on self-determination as process,

¹⁸³ The United Nations Secretary-General has stated that the United Nations anticipated ‘some difficulties, some violence’ but not the ‘total and wanton destruction of everything in sight’. See the interview with Kofi Annan in *Far Eastern Economic Review*, 24 February 2000, at 25.

¹⁸⁴ Notwithstanding the references in the New York Accords which ‘recall’ General Assembly Resolutions 1514 (XV) 1960, 1541 (XV) 1960, 2625 (XXV) 1970 and other resolutions affirming East Timor’s right of self-determination.

¹⁸⁵ Compare Note Verbale, 2 June 1999 from Charge d’Affaires of the Permanent Mission of Portugal to the United Nations addressed to the Secretary-General, A/54/121, 3 June 1999.

¹⁸⁶ For example, the United States, the United Kingdom and Australia. On the historical failure of these states in relation to East Timor see Budiardjo, *supra* note 3.

¹⁸⁷ What Kennedy terms ‘the CNN effect’: Kennedy, *supra* note 21.

¹⁸⁸ For the view that East Timor had been a failure of politics rather than law, see Bowring, ‘Self-Determination and the Jurisprudence of the International Court of Justice’, in CIIR/IPJET, *supra* note 11, at 151.

merely serve to absolve international law of any responsibility for the catastrophic consequences of non-compliance?

Yet, even if we accept the existence of a discernible law/politics distinction,¹⁸⁹ it is unclear why the acts (or omissions) of the United Nations Secretary-General or Portugal acting in its capacity as Administering Power under Chapter XI of the United Nations Charter should be characterized as 'political' rather than 'legal' if the purpose is to remove the responsibility of the international legal order. To paraphrase Berman, politics cannot always give international law its alibi.¹⁹⁰ Rather, it is my contention that the failure to adhere to the strict letter of the law in the New York Accords should be viewed, not so much as some aberrational departure *from* international law, but as part of an unacknowledged trend *within* contemporary practice, which (selectively) favours pragmatic negotiation over formal legal entitlement — the all-important *peace process* over self-determination as process.

From the Middle East to the Western Sahara, peace processes are much in vogue. As the New York Accords demonstrate, however, for a people struggling for the right of self-determination the onset of a peace process may be paradoxical. On the one hand, the peace process may work hand in hand with the international legal principles, leading to the implementation of the legal rules on self-determination. On the other hand, the peace process may be invoked to *trump* rather than *translate* the legal framework.¹⁹¹ Thus, once a peace process is in train, reliance by a people on formal legal entitlements may seem contrary to its pragmatic spirit, which tends to disavow predetermined outcomes in favour of negotiated settlement. Similarly, the peace process may serve to treat the parties as legal — and moral — equivalents, ignoring prior illegalities as much as prior entitlements. For example, since the signing of the Israel/Palestinian Declaration of Principles in 1993,¹⁹² the Security Council has repeatedly failed to adopt resolutions on issues such as Israeli settlement activity, on the basis that this would be to prejudice issues reserved for the final status negotiations.¹⁹³ Similarly, Security Council resolutions endorsing the East Timor peace process in advance of the August 1999 popular consultation significantly omitted earlier injunctions in favour of East Timorese self-determination and

¹⁸⁹ For the contrary view, see e.g. Koskeniemi, 'The Politics of International Law', 1 *European Journal of International Law* (1990) 1.

¹⁹⁰ Berman, 'In the Wake of Empire', 14 *American University International Law Review* (1999) 1515, at 1537 and 1545.

¹⁹¹ After signing the Declaration of Principles on Interim Self-Government, (1993) 32 ILM 1525–1546, in 1993, Israel has consistently argued that the settlements are permitted — not as a matter of international law — but under the terms of the Declaration of Principles. See e.g. General Assembly Plenary Tenth Emergency Special Session, G/A 9399, 17 March 1998.

¹⁹² Declaration of Principles, *supra* note 191.

¹⁹³ The final status issues are defined in Article V of the Declaration of Principles, *supra* note 191. The failure of the Security Council to act in the face of ongoing Israeli settlement activity prompted the General Assembly in 1997 to exercise its powers under the Uniting for Peace Resolution 377 (V), 3 November 1950, and convene an emergency session to examine and adopt a resolution calling for a Conference of the High Contracting Parties to the Fourth Geneva Convention of 1949 to be held on 15 July 1999. A/RES/ES-10/6, 9 February 1999, para. 6. This contrasts sharply with the General Assembly's post-1982 neglect of the question of East Timor.

Indonesian troop withdrawal.¹⁹⁴ The failure of the United Nations to comply with the international legal rules in the New York Accords thus flags up an issue of more general concern to the self-determination formalist: the potential for conflict between the commitment to a 'peace process' and the formal rules of international law.¹⁹⁵

Alternatively, however, perhaps among international lawyers, there are others who would view the departure from formal legal rules in the New York Accords as cause for celebration rather than consolation. Have we not already seen from the *Case Concerning East Timor* that the formal legal rules and structures are inhospitable to the claims of peoples struggling for the implementation of the legal right of self-determination? On this analysis, the adoption of a flexible, more pragmatic approach to nationalist conflict could be seen, not so much as a violation of peoples' rights, but rather as a welcome or necessary corrective to the statist strictures of the formal international legal order.¹⁹⁶

But, whatever the limitations of the existing legal structures, the moral of the East Timor Story is that the 'pragmatic' may be every bit as statist and procedurally exclusive of peoples as the 'formal'. Notably, there was no direct participation of the East Timorese leadership in the UN-sponsored peace process.¹⁹⁷ The signature of Xanana Gusmao or any other representative of the East Timorese people on the New York Accords is conspicuous only by its absence.¹⁹⁸ By contrast, Indonesia — the

¹⁹⁴ Compare e.g. Security Council Resolution 384 (1975), 22 December 1975; and Security Council Resolution 1236 (1999), 7 May 1999.

¹⁹⁵ This tension was also evident in the breakdown of the Israel/Palestinian negotiations at the Camp David summit in July 2000.

¹⁹⁶ Brilmayer, 'The Institutional and Instrumental Value of Nationalism', in Wippman, *supra* note 110, at 58.

¹⁹⁷ For details of the negotiations leading to the New York Accords, see 'Question of East Timor, Progress Report', *supra* note 119, at paras 2–13. Prior to January 1999, 'consultations' with the East Timorese leadership took place *outside* the framework of the tripartite 'negotiations' between the UN, Indonesia and Portugal. According to the Secretary-General's own account of events, the UN intensified its consultations with East Timorese leaders, including Xanana Gusmao in October 1998. But the historical record is silent as to consultations with the East Timorese in the lead-up to the May Accords following the Indonesian change in policy in January 1999. Rather, talks were between Foreign Minister Gama of Portugal, Foreign Minister Alatas of Indonesia and the UN Secretary-General. See generally 'Question of East Timor, Progress Report', *supra* note 119, at paras 3 and 6–9. The East Timorese leadership was not present at the signing ceremony in New York on 5 May 1999. The feeling of exclusion on the part of the East Timorese leadership was reflected in a number of public statements in the lead-up to the signing of the New York Accords. For example, in March 1999, in a radio interview, Ramos Horta, the exiled Nobel Laureate, openly questioned 'how it was possible to carry out an open and democratic direct consultation where the Indonesian Army is still on the ground'. He went further in a press conference in Hong Kong: 'I will publicly oppose it, denounce it, if the UN, the international community, wants to impose a vote on the future of the country with Indonesian troops on the ground.' These and statements to similar effect by Bishop Belo are quoted in Merson, 'Reversing the Tide' (student research paper, School of Law, University of Glasgow, 1999, on file with the author). Allegations of exclusion of the East Timorese leadership have persisted during the United Nations Transitional phase. See Xanana Gusmao, Letter of Resignation as President of East Timor's National Council, 28 March 2001.

¹⁹⁸ Compare e.g. Agreement Between the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Rio de Oro; Settlement Plan for the Western Sahara approved by Security Council Resolutions 658 (1990) of 27 June 1990 and 690 (1991) 21 April 1991. See also the Israel/Palestinian Declaration of Principles, *supra* note 191.

UN-designated aggressor state with its illegitimate interests in the fate of East Timor — was directly represented.¹⁹⁹ With the institutional shift from the International Court of Justice to the United Nations, — from self-determination as substance to self-determination as process, from formalism to pragmatism — how ironic that the 'presence of the absent third'²⁰⁰ (the East Timorese people) should continue to cast its shadow.

5 Conclusion

What then does East Timor have to tell us about the 'moral hygiene'²⁰¹ of international law? Its story is not a happy one. Since the beginning of the Indonesian occupation in 1975, an estimated 200,000 of its people have died. At time of writing, approximately 100,000 refugees remain stranded in Indonesian refugee camps in West Timor,²⁰² and Indonesian-backed militias continue to operate in the camps.²⁰³ Such was the level of destruction in the aftermath of the popular consultation²⁰⁴ that it

¹⁹⁹ Thus preambular paragraph 6 of the General Agreement, *supra* note 11, notes the Portuguese position that an 'autonomy regime should be transitional not requiring recognition of Indonesian sovereignty over East Timor or the removal of East Timor from the list of Non-Self-Governing Territories of the General Assembly pending a final decision on the status of East Timor by the East Timorese people through an act of self-determination under United Nations auspices'. But, clearly, Article 5 of the General Agreement, *supra* note 11, endorsed the Indonesian position that autonomy was to be implemented as an 'end solution'.

²⁰⁰ Scobbie, 'The Presence of the Absent Third: Procedural Aspects of the East Timor Case', in CIIR/IPJET, *International Law and the Question of East Timor*, *supra* note 11, at 223.

²⁰¹ Kennedy, *supra* note 21.

²⁰² On 6–7 June 2001, Indonesia held a two-day registration exercise in which all refugees in the camps in West Timor were offered the choice between repatriation to East Timor and permanent resettlement in Indonesia. According to the Indonesians, 98.02 per cent of the refugees voted for permanent resettlement in Indonesia. Given the presence of the Indonesian military and pro-Indonesian militias in the camps in West Timor, however, this result cannot safely be regarded as reflecting the free will of the East Timorese refugees. For an expression of concern regarding the effect of militia activity on East Timorese refugees, see Security Council Resolution 1338 (2001), 31 January 2001.

²⁰³ In September 2000, following the murder of three UN personnel by militias operating in the camps in West Timor, the Security Council adopted a resolution 'insisting' that Indonesia take immediate steps to disarm and disband the militias, and calling on Indonesia to take immediate measures to allow the repatriation of refugees to East Timor. Security Council Resolution 1319 (2000), 8 September 2000. For an update on the humanitarian and political situation in both East Timor and West Timor, see Report of the Security Council Mission to East Timor and Indonesia, 9–17 November 2000, S/2000/1105. See also e.g. Report of the Secretary-General on the United Nations Transitional Administration in East Timor, S/2000/738; Statement of the President of the Security Council, 3 August 2000, S/PRST/2000/26; Security Council Resolution 1272 (1999), 25 October 1999. In January 2001, the Security Council again underlined the need for UNTAET 'to respond robustly to the militia threat in East Timor'. Security Council Resolution 1338 (2001), 31 January 2001.

²⁰⁴ For a bleak picture of life in East Timor six months after the popular consultation, see e.g. Mayman, 'Fighting for Survival', *Far Eastern Economic Review*, 24 February 2000, at 34.

was always anticipated it would take at least two years before East Timor would at last be able to assert full independence.²⁰⁵

I have dealt with only two institutional moments in the struggle to protect and implement the East Timorese right of self-determination under international law. In the International Court of Justice it failed because of law — too much procedural law for states and not enough procedural law for peoples. With the institutional shift to the United Nations, East Timorese rights were not implemented due to a failure to comply with law — the international legal rules on self-determination as process — and a willingness to subsume legal entitlements to the vagaries of institutional pragmatism and the much vaunted peace process.

If decolonization is the normative high point of the law on self-determination, what future for an international law of peoples?

²⁰⁵ August 2001 was the original target date for independence but at time of writing the timetable is under review and there is currently no agreed date (though elections for a Constituent Assembly are scheduled for 30 August 2001). In January 2001, UNTAET's initial mandate (to January 2001) was extended to 31 January 2002. See Security Council Resolution 1338 (2001), 31 January 2001, at para. 2. Indeed, the Secretary-General has been consistent in warning against arbitrary timetables for independence. In February 2000, he instructed his Special Representative to draw up criteria in consultation with the Timorese leadership to determine when 'The East Timorese are ready to assume full control of their destiny'. He added, however, that 'they and we must be patient, for that moment is still some way off'. See 'Briefing to the Security Council', 29 February 2000. The very existence of such criteria signals an implicit return to the ideology of the trusteeship in the UN Charter. See e.g. 'Report of the Secretary-General on the United Nations Transitional Administration in East Timor', S/2000/53, 26 January 2000, at para. 41, which states: 'A key objective is to ensure that the East Timorese themselves become the major stakeholders in their own system of governance and public administration, first by intensive consultation through NCC and district advisory councils, and then through *early and progressive development* of their capacity to carry out all necessary functions' (emphasis added). Similarly, in May 2001, the Secretary-General comments: 'East Timor has continued to make progress on the path to independence. Nevertheless, a great deal remains to be done until that objective is reached and more will need to be accomplished thereafter to ensure that the new State can exist on its own . . . I would favour a prudent approach, which seeks to safeguard the international community's considerable investment in East Timor's future.' See 'Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor', S/2001/436, 2 May 2001. Such statements are at odds with the more radical injunctions of the 'Colonial Declaration', which, for example, states that: 'Inadequacy of political preparedness shall not be used as a pretext for delaying independence.' General Assembly Resolution 1514 (1960) (the 'Colonial Declaration'), at para. 5.

Annex 144

Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26(LXXIV) (5-8 July 2001)

COUNCIL OF MINISTERS
Seventy-fourth Ordinary Session/
Ninth Ordinary Session of the AEC
5 – 8 July, 2001
Lusaka, ZAMBIA

CM/ Dec.1-46 (LXXIV)

DECISIONS ADOPTED BY THE
SEVENTY-FOURTH ORDINARY SESSION
OF THE COUNCIL OF MINISTERS

CM/ Dec.26 (LXXIV)

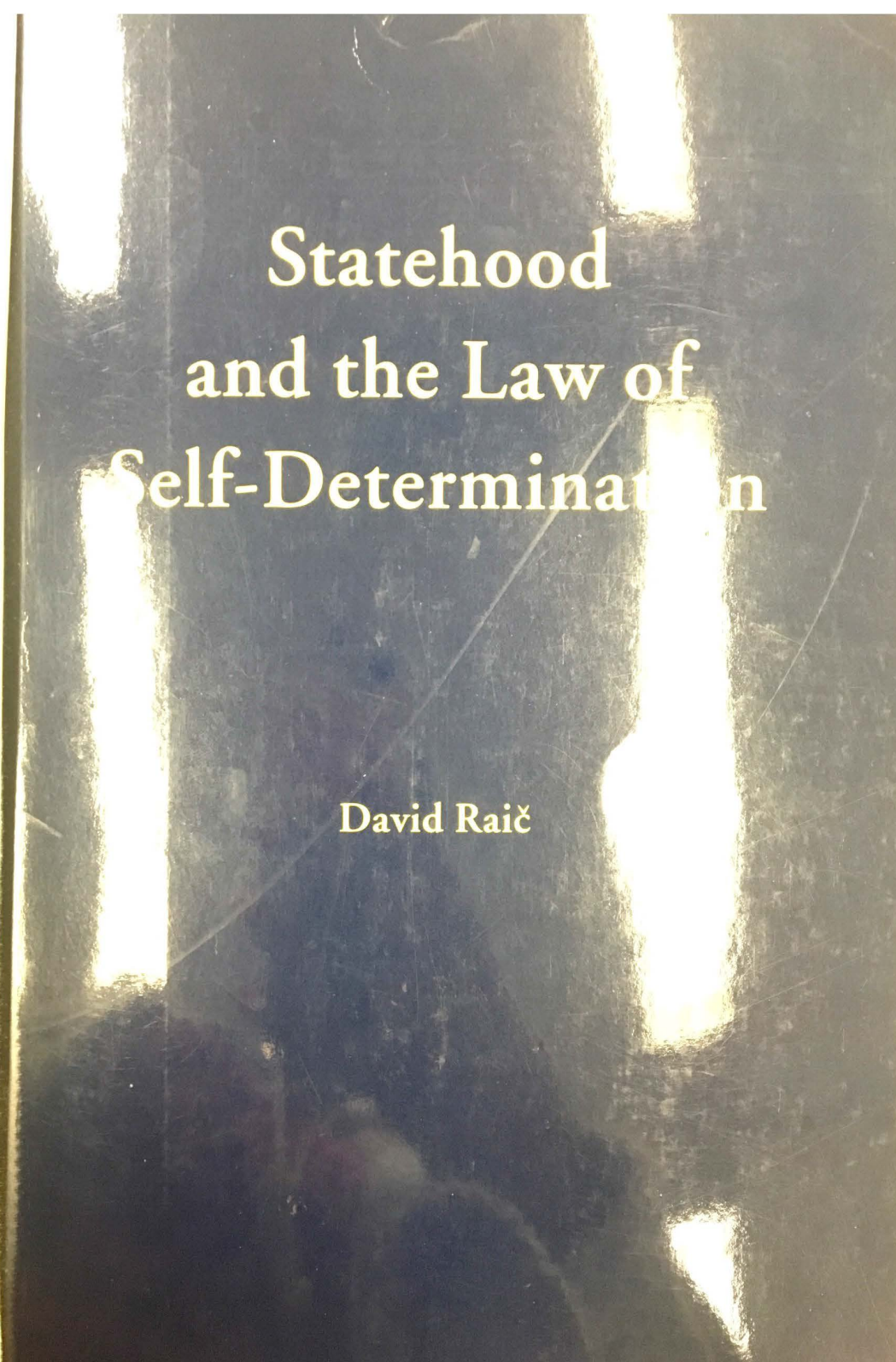
DECISION ON THE CHAGOS ARCHIPELAGO
INCLUDING DIEGO GARCIA

Council:

1. REITERATES its unflinching support to the Government of Mauritius in its endeavours and efforts to restore its sovereignty over the Chagos Archipelago, which forms an integral part of the territory of Mauritius and CALLS UPON the United Kingdom to put an end to its continued unlawful occupation of the Chagos Archipelago and to return it to Mauritius thereby completing the process of decolonization;
2. FURTHER EXHORTS the United Kingdom authorities not to take any steps or measures likely to adversely impact on the sovereignty of Mauritius;
3. ENJOINS the international community to support the legitimate claim of Mauritius and extend all assistance possible to it to secure the return of the Chagos Archipelago to its jurisdiction thereby enabling it to exercise its rightful sovereign responsibilities on the totality of its territory.

Annex 145

David Raic, *Statehood and the Law of Self-Determination* (2002)



Statehood and the Law of Self-Determination

David Raič

Statehood and the Law of Self-Determination

Statehood and the Law of Self-Determination

PROEFSCHRIFT

ter verkrijging
van de graad van Doctor aan de Universiteit Leiden,
op gezag van de Rector Magificus Dr. D.D. Breimer,
hoogleraar in de faculteit der Wiskunde en Natuurwetenschappen,
en die der Geneeskunde,
volgens besluit van het College voor Promoties
te verdedigen op woensdag 19 juni 2002
klokke 15.15 uur

door



David Raič
"

geboren te 's-Gravenhage
in 1967

Commission, the Commission of Rapporteurs, held that

[t]his principle [of self-determination] is not, properly speaking a rule of international law and the League of Nations has not entered it in its Covenant [...]. It is a principle of justice and of liberty, expressed by a vague and general formula which has given rise to most varied interpretations and differences of opinion [...]. Is it possible to admit as an absolute rule that a minority of the population of a State, which is definitely constituted and perfectly capable of fulfilling its duties as such, has the right of separating itself from her in order to be incorporated in another State or to declare its independence? The answer can only be in the negative. To concede to minorities, either of language or religion, or to any fractions of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity [...]. The separation of a minority from the State of which it forms part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.¹¹⁹

The Commission of Rapporteurs eventually considered that the culture of the inhabitants of the Aaland Islands, who were qualified as a 'minority' rather than a 'people', could be effectively preserved and protected through autonomy arrangements under Finnish sovereignty. Only if the State would clearly fail to meet these safeguards, separation (of the Islands) would be an option pursuant to a plebiscite in the Aaland Islands.

It is thus beyond a doubt that in the aftermath of World War I self-determination did not develop into a rule of international customary law. It was only after the establishment of the United Nations that this development took shape, initially in the context of decolonization. This development will now be addressed.

§ 3.4. The United Nations and decolonization

§ 3.4.1. *The liberation of colonial peoples and territories: towards a right of self-determination*

Although self-determination was proclaimed by the United States and the United Kingdom during World War II in the Atlantic Charter,¹²⁰ it was mainly

119. Report of the Commission of Rapporteurs, LN Doc. B7.21/68/106, 1921, pp. 22-23.

120. President Roosevelt and Prime Minister Churchill stated that "they desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned" and that "they respect the right of all peoples to choose the form of government under which they will live; and wish to see sovereign rights and self-government restored to those who have been

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because of Soviet pressure that self-determination was included in the Charter of the United Nations.¹²¹ The principle of self-determination is referred to twice in the Charter. Article 1(2) mentions as one of the purposes and principles of the United Nations

[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

The second reference to self-determination is in Article 55(c), which is included in Chapter IX on “International economic and social cooperation”.¹²² Despite the fact that self-determination in the Charter is referred to ‘only’ as a “principle” and not as a legal right,¹²³ its appearance in a conventional instrument establishing an international organization which would be open to universal membership was a very important step in the evolution of self-determination into a positive right under international law.

Although self-determination was not explicitly mentioned, the principle underlies Chapter XI (“Declaration Regarding Non-Self-Governing Territories”) and Chapter XII (“International Trusteeship System”) of the Charter,¹²⁴ of which Chapter XII may be seen as the substitute of the League’s Mandate System and having essentially similar purposes.¹²⁵ Chapter XI, on the other

forcibly deprived of them”. L.M. Goodrich and E. Hambro, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS, 1946, pp. 305-306. The Atlantic Charter was subscribed to in the Declaration by United Nations of 1 January 1942 which was signed by 26 States. See Goodrich and Hambro, *id.*, at pp. 306-307. See also M.M. Whiteman, DIGEST OF INTERNATIONAL LAW, Vol. 5, 1965, p. 44.

121. Cassese, SELF-DETERMINATION, pp. 37-43. I. Brownlie, *An Essay in the History of the Principle of Self-Determination*, Grotius Society Papers, 1968, p. 90; R.B. Russel, A HISTORY OF THE UNITED NATIONS CHARTER, 1958.

122. Article 55 reads: “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: [...] (c) universal respect for, and observance of, human rights and fundamental freedoms [...]”.

123. It is remarkable that the English and French versions of the Charter do not coincide in this respect. The French text speaks of “le principe de l’égalité de droits des peuples et leur droit à disposer d’eux mêmes”, see Chartre des Nations Unies, Paris Imprimerie nationale, Ministère des Affaires Étrangères, 26 May 1945 (emphasis added).

124. Pomerance, *supra* note 46, at p. 9; A. Cristescu, The Historical and Current Development of the Right to Self-Determination, Study Prepared by the Special Rapporteur, UN Doc. E/CN.4/Sub.2/404 (Vol. 1), 3 July 1978, p. 8; D. Bowett, *Problems of Self-Determination and Political Rights in Developing Countries*, PASIL, 1966, p. 134. See also Art. 1(3) ICCPR.

125. Under Article 73, United Nations members administering “territories whose peoples have not yet attained a full measure of self-government” undertook “to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement”. Article 76 states that “the basic objectives of the trusteeship system [...] shall be [...] to promote [...] progressive

hand, laid down a rather new regime on Non-Self-Governing Territories which were referred to as “territories whose peoples have not yet attained a full measure of self-government”. In this way, the scope of application of the notion of self-determination was substantially expanded in comparison to the League era.

Opinions differ as to what the drafters had in mind when the concept of self-determination was included in the Charter. As was stated above, before the drafting of the Charter the notion of self-determination could be identified in the Atlantic Charter in the context of the free choice of rulers and territorial changes. However, the language used in the Atlantic Charter is not found in the Charter of the United Nations. With regard to Articles 1 and 55, it has been suggested that “in each the context was clearly the rights of the peoples of one state to be protected from interference by other states or governments. It is revisionism to ignore the coupling of ‘self-determination’ with ‘equal rights’ – and it was the equal rights of *states* that was being provided for, not of individuals”.¹²⁶

However true this may be, it is clear that the Charter did not define the content of the principle of self-determination and the same applies with respect to the term ‘peoples’. It was therefore only through the adoption of numerous resolutions in the following years, in particular by the General Assembly, that some insights were given into the content and the subject of the ‘right’, although this practice was primarily confined to the context of decolonization.

After the establishment of the United Nations, the Soviet Union and its communist allies continued to demand decolonization by the Western imperialist States in accordance with communist theory.¹²⁷ In that effort they were, of course, supported by the Afro-Asian States. Because, although not expressly mentioned, the principle of self-determination was most prominently present in the context of Chapters XI and XII of the Charter, these Chapters formed the background for the evolution of self-determination from a principle into a positive legal right in the field of decolonization in the first two decades

development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned [...]”.

126. R. Higgins, *Postmodern Tribalism and the Right to Secession, Comments*, in: Brölmann *et al.* (Eds.), *supra* note 5, p. 29, at p. 29 (emphasis in original). The phrase “equal rights” may indeed be regarded as a normative substitute for ‘equality of states’. See also Goodrich and Hambro, *supra* note 120, at p. 61. But it may also be argued from the perspective that World War II had been fought against an ideology of conquest and racial superiority, that it has a broader meaning in that it also refers to the inherent equality of peoples (whether or not organized as States) and the respective rights recognized to them. See, e.g., Dissenting Opinion Judge Kreca, Genocide case, ICJ Rep. 1996, p. 595, at p. 737.

127. Musgrave, *supra* note 30, at p. 93. And see p. 184 ff. *supra*.

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after the establishment of the United Nations. There is a considerable amount of literature on this topic.¹²⁸ The discussion will therefore be limited to those issues and developments which, for this study at least, cast light on the status, content and scope of self-determination under international law.

Until 1960, the General Assembly adopted a series of resolutions in which much effort was devoted to asserting its authority with regard to Non-Self-Governing Territories listed by the colonial powers as Territories on which information had to be transmitted to the Secretary-General in accordance with Article 73(e) of the Charter.¹²⁹ The common characteristic of these territories was that they corresponded to the somewhat classical notion of a colonial territory.¹³⁰

Both Chapter XI and XII provided for a *gradual* development of Non-Self-Governing Territories towards self-government, or, in the case of Trust Territories, towards independence “as may be appropriate”. But in the early 1950s, this policy of progressive and gradual development towards increased self-government was put under pressure more and more by the General Assembly.¹³¹ Eventually the Assembly set aside the policy of gradual develop-

128. See, e.g., M.A. Ajomo, *International Law, the United Nations, and Decolonization*, in: ESSAYS IN HONOUR OF JUDGE TASLIM OLAWALE ELIAS, Vol. 1, 1992, p. 77; F. Abdulah, *The Right to Decolonization*, in: M. Bedjaoui (Ed.), *INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS*, 1991, pp. 1205-1218; J.D. Hargreaves, *DECOLONIZATION IN AFRICA*, 1988; F. Ansprengrer, *THE DISSOLUTION OF THE COLONIAL EMPIRES*, 1989; See also Cassese, *SELF-DETERMINATION*, p. 74, n. 15, and the references mentioned there.

129. See, e.g., UN Doc. A/Res/334 (IV), 2 Dec. 1949. Seventy-four Territories constituting territories under Article 73 of the Charter were listed in UN Doc. A/Res/66 (I), 14 Dec. 1946, which was the result of a reply by the member States to an invitation by the Secretary-General to give their opinion with regard to the factors that should be taken into account in determining whether or not a territory constituted a NSGT. See UN Docs. A/47, 29 June 1946, and A/47, Ann. I to VIII and Add. 1 and Add. 2. In 1946, the following countries were recognized as colonial powers: Australia, Belgium, Denmark, France, New Zealand, the Netherlands, the United Kingdom, and the United States. Abdulah, *supra* note 128, at p. 1206, n. 3. In 1960, four Spanish and nine Portuguese territories were added to the list by the Assembly and in 1962 Southern Rhodesia was added by the Assembly despite efforts by both the government of Portugal and the United Kingdom to prevent these territories from being listed. See UN Docs. A/Res/1542 (XV), 15 Dec. 1960 (Portuguese territories), and A/Res/1747 (XVI), 28 June 1962 (Southern Rhodesia).

130. The classical, that is the nineteenth century notion of a colony, which was still very much the same in 1945, was narrowly understood as a territory not geographically located in the metropolitan area of the parent State, lawfully incorporated into the parent State's territory, inhabited by a native population that is ethnically distinct from the population in the metropolitan area and the relationship of which is one of domination by the parent State. See R. Ranjeva, *Peoples and Liberation Movements*, in: Bedjaoui (Ed.), *supra* note 128, p. 101, at p. 103; A. Blackmann, *Decolonization*, EPIL, Vol. 10, 1987, p. 75; OPPENHEIM'S INT'L LAW, p. 281.

131. Cf. UN Doc. A/Res/637 (VII) of 16 Dec. 1952, entitled “The right of peoples and nations to self-determination”. The Resolution states in its final operative paragraph: “States Members of the United Nations responsible for the administration of Non-Self-Governing and Trust Territories shall take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legislative and executive organs of government of those Territories, and to prepare them for

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ment and replaced it with a policy which asserted that subject and dependent or colonial territories should *immediately* be granted *independence*.¹³² As has been observed, this dramatic change of policy was actually a break with

the prewar framework of international law which drew a sharp distinction between Europeans or people of European descent and non-Europeans: only the former were unquestionably entitled to sovereign statehood. The latter were assumed not to be qualified at least *prima facie*, and the burden of proof was on them to justify it in terms of standards defined by Western civilization.¹³³

What caused this radical shift of opinion? A number of influential factors can be mentioned. A first important factor was the emergence of an anti-discrimination doctrine taking place at both the international and national level. Whereas the Mandate System marked the “beginning of systematic international intrusion into the workings of colonialism”,¹³⁴ widespread attack upon the very existence of the colonial system had gathered momentum by the end of World War II.¹³⁵ To some extent this development paralleled national developments. In that respect one may think of the revolution in the United States during which formal racial discrimination was abolished in the course of the 1950s, which culminated in the 1964 Civil Rights Act.¹³⁶ Secondly, the slow progress of Non-Self-Governing Territories towards self-government was undoubtedly an important reason for the change.¹³⁷ As early as 1949, France, the United Kingdom and the United States ceased the transmission of information under Article 73 with regard to a substantial amount of territories listed in General Assembly Resolution 66 (I).¹³⁸ In addition, when Spain and

complete self-government or independence” (emphasis added).

132. See UN Doc. A/Res/1514, *supra* note 2, Para. 5. In this respect compare the following statement by the representative of Saudi Arabia during the debates preceding the adoption of Resolution 1514. With reference to a number of African colonies he stated: “the argument has often been adduced that these peoples are now under tutelage and that their economic and social advancement requires that such tutelage should continue for some time. Well this is an antiquated argument not worthy of the spirit of the day [...]. These peoples have been under the tutelage for decades and some of them for ages. How long should we wait for this weary ordeal – for this painful trial – for this bitter experiment [...]? If the past tutelage has not been able, thus far, to raise these people from dependence to independence, then the tutelage is a failure, and the United Nations should put an end to this failure”. See UN GAOR 15th Sess., (Part I), Plenary mtgs., Vol. 2, 27 Oct. - 20 Dec. 1960, p. 1017 (paras. 118-119).

133. R.H. Jackson, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD*, 1990, p. 16.

134. I.L. Claude, Jr., *SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION*, 1964, p. 3.

135. *Id.*, at p. 329.

136. Jackson, *supra* note 133, at p. 74.

137. By 1959, ten of the seventy-two Territories listed in Resolution 66 (I) (*supra* note 129) had become independent.

138. *Id.*

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Portugal were admitted to the United Nations in 1955, these States denied that they administered territories in the sense of Article 73 of the Charter.¹³⁹ A third factor, closely linked with the former, is that no territories were voluntarily placed under the Trusteeship System pursuant to Article 77(1)(c) of the United Nations Charter.¹⁴⁰ Finally, the continued insistence on decolonization by the Soviet Union, East-European States and Afro-Asian countries in particular, was of essential importance.¹⁴¹ The latter, while increasing their numerical strength in the United Nations, launched a major diplomatic offensive in the Bandung Conference which was held in 1955 and which declared that “colonialism in all its manifestations is an evil which should speedily be brought to an end”.¹⁴²

The much celebrated Resolution 1514 (the ‘Declaration on Decolonization’) adopted by the General Assembly on 14 December 1960,¹⁴³ one of the main objectives of which is “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations”, is without a doubt the clearest expression of the revolutionary change of policy with respect to Non-Self-Governing Territories and Trust Territories. The title of the resolution is revealing: “Declaration on the Granting of *Independence* to Colonial Countries and Peoples”.¹⁴⁴ The categorical character of the resolution features throughout its text:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the *right* to self-determination; by virtue of that right they freely determine their political status [...].
3. Inadequacy of political, economic, social or educational preparedness should *never* serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely *their right to complete independence* [...].
5. *Immediate* steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, *without any conditions or reservations*, in accordance with their freely expressed will and desire, without any

139. Abdulah, *supra* note 128, at pp. 1206-1207.

140. J.L. Kunz, *Chapter XI of the United Nations Charter in Action*, AJIL, Vol. 48, 1954, p. 103, at pp. 106-107; Falkowski, *supra* note 8, at p. 226.

141. See D.A. Kay, *The Politics of Decolonization, The New Nations and the United Nations Political Process*, International Organization, Vol. 21, 1967, p. 786; Cassese, SELF-DETERMINATION, p. 71.

142. S.M. Finger and G. Singh, *Self-Determination: A United Nations Perspective*, in: Alexander and Friedlander (Eds.), *supra* note 89, p. 333, at p. 335.

143. Resolution 1514, *supra* note 2, (vote: 89 to 0, with 9 abstentions).

144. *Id.* (emphasis added).

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distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.¹⁴⁵

One day later, the General Assembly adopted Resolution 1541.¹⁴⁶ Principle VI mentions three results on the basis of which it could be said that a Non-Self-Governing Territory had reached a full measure of self-government:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

Although the concepts are discussed in more detail in the following chapters, at this point it must be noted that this mode of implementation¹⁴⁷ of self-determination through the realization of any of the three options mentioned, is often referred to as *external* self-determination, because it generally denotes the determination of the *international* status of a territory and a people, as opposed to *internal* self-determination, which generally refers to the relationship between the government of a State and the people of that State.¹⁴⁸

Principles VII and IX of Resolution 1541 emphasize that ‘free association’ should be the result of a “free and voluntary choice by the peoples of the territory concerned” and ‘integration’ should be based on “the freely expressed wishes of the territory’s peoples”. Both provisions refer to impartial democratic processes as the technique for determining the will of the people.¹⁴⁹

In view of the vast amount of dependent territories which became independent after 1960, the 1960 resolutions and in particular Resolution 1514 must be considered as catalytic agents for the dismantling of the dependency system and the liberation of colonial peoples.

145. *Id.* (emphasis added).

146. UN Doc. A/Res/1541 (XV), 15 Dec. 1960.

147. Pomerance, *supra* note 46, at p. 37; O. Kimmenich, *A Federal Right of Self-Determination?*, in: C. Tomuschat (Ed.), *MODERN LAW OF SELF-DETERMINATION*, 1993, p. 83, at p. 88. *See also* UN Doc. A/Res/2625, *supra* note 3, Principle V, Para. 4.

148. This distinction is often made in the context of self-determination, but not always in a consistent manner. Cassese claims that Wengler was probably one of the first to use the distinction. *See* Cassese, *SELF-DETERMINATION*, p. 70, n. 6, referring to W. Wengler, *Le Droit à la Libre Disposition des Peuples Comme Principe de Droit International*, *Revue Hellenique de Droit International*, Vol. 10, 1957, p. 27. However, the distinction already appears in the Report on the First Part of the Seventh Session of the General Assembly (Dutch Ministry of Foreign Affairs Publication No. 32, The Hague, 1953), which was written (in Dutch) by the Dutch representative in the Third Committee, Beaufort. *See also* P.J. Kuyper and P.J.G. Kapteyn, *A Colonial Power as Champion of Self-Determination: Netherlands State Practice in the Period 1945-1975*, in: H.F. van Panhuys *et al.* (Eds.), *INTERNATIONAL LAW IN THE NETHERLANDS*, Vol. 3, 1980, p. 149, at p. 184. *See further* Chapter 6, *infra*.

149. It should be noted, however, that the formula of “freely expressed will” as the basis for a legitimate exercise of self-determination is also referred to in operative Paragraph 5 of Resolution 1514 with respect to “complete independence”. *See further* p. 212 *ff.*

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§ 3.4.2. *The subject of the right of self-determination and the principle of territorial integrity*

Although the Charter refers to self-determination of “peoples”, and Resolution 1514 proclaims that “all peoples” have the right to self-determination, an analysis of United Nations practice until the mid-1960s reveals that it was mainly the decolonization aspect of self-determination which was developed during that period.¹⁵⁰ That is to say, the actual application of the right to self-determination by the United Nations was mainly confined to colonial peoples and territories.¹⁵¹

As was affirmed by the International Court of Justice in the *Namibia* case, self-determination developed into a right for Trust Territories.¹⁵² But the development was not limited to these territories. The Court continued by stating that

the subsequent development of international law in regard to non-self-governing territories [...] made the principle of self-determination applicable to all of them.¹⁵³

An indication of what constitutes a Non-Self-Governing Territory as the subject of the right to self-determination was given in Resolution 1541 which defines a Non-Self-Governing Territory in Principle IV as a “territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it”. Reference is often made to this phrasing as the ‘salt

150. As has been argued in Chapter 4, the South African *Apartheid* system cannot, strictly speaking, be regarded as a colonial situation in the sense of Resolution 1541, but as a ‘colonial type’ situation. The case is therefore more properly treated as a situation concerning the denial of internal self-determination.

151. In the 1950s Belgium challenged the restrictive interpretation of the subject of self-determination. The delegation pointed out that the Charter did not prohibit ‘colonialism’ but Non-Self-Governing Territories. It was maintained that “a number of States were administering within their own frontiers territories which were not governed by the ordinary law; territories with well-defined limits, inhabited by homogeneous peoples differing from the rest of the population in race, language and culture. These populations were disfranchised; they took no part in national life; they did not enjoy self-government in any sense of the word”. The Belgian delegation stressed therefore that it was not clear why these territories should not be qualified as NSGT in the sense of Chapter XI of the Charter. Thus, the Belgian thesis expanded the scope of applicability of self-determination beyond the classical definition of colonies. The thesis was not accepted, however. It was pointed out that at San Francisco, Article 73 was not considered to apply to groups within established States. See UN GAOR, 8th Sess., Fourth Comm., 326th mtg., paras. 60-69 (esp. para. 62); UNCIO, Summary Report of the 11th mtg. of Comm. II/4, Doc. 712, II/4/30, 31 May 1945, pp. 2-3. See also Rigo Sureda, *supra* note 15, at pp. 103-104; Thornberry, *supra* note 16, at pp. 873-875.

152. *Namibia* case, *supra* note 106, at p. 31.

153. *Id.*

water barrier' or 'salt water' theory.¹⁵⁴ Principle IV is supplemented by Principle V which lays down possible additional criteria for the determination of a Non-Self-Governing Territory which may be placed under the more general heading of 'political subordination'. Thus with the requirement that territories must be 'geographically separate', the application of the provision on Non-Self-Governing Territories was effectively limited to "overseas colonial countries and peoples ruled by alien whites".¹⁵⁵ Indeed, it should be noted that the rather strict definition set down in Resolution 1541 proceeded from the basic principle that "[t]he authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were *then* known to be of a colonial type",¹⁵⁶ although Chapter XI leaves room for Non-Self-Governing Territories created after 1945.¹⁵⁷

United Nations decolonization practice was almost entirely along the lines of the 'salt water barrier'. Thus, the identified subject or holder of the right of self-determination during this period of history was – in addition to Trust Territories – a territory, as the International Court noted, "under a colonial régime".¹⁵⁸ It should be noted that this development meant a rejection of the position that only States could be subjects of international law. Indeed, it was explicitly recognized, or, in other words 'positivized', that in addition to States, a certain group of people could be, and actually was, the direct holder of a right under international law.¹⁵⁹

Resolution 1514 of the General Assembly stipulates in Paragraph 6 that

[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.¹⁶⁰

The practice of the United Nations suggests that this provision regarding the principle of territorial integrity in the context of decolonization is a reflection of international customary law, or at least of United Nations law. Four remarks should be made in this respect. Firstly, neither the General Assembly Resolution

154. See, e.g., Rigo Sureda, *supra* note 15, at p. 105.

155. R. Emerson, *Self-Determination*, PASIL, Vol. 60, 1966, p. 135, at p. 138; Falkowski, *supra* note 8, at p. 226.

156. Resolution 1541, Principle I (emphasis added).

157. Cf. Art. 73 of the Charter: "Members of the United Nations which have *or assume* responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government [...]" (emphasis added). See also Crawford, *CREATION OF STATES*, pp. 94, 358–560.

158. Namibia case, *supra* note 106, at p. 31.

159. See pp. 14–16, *supra*. See also H. Bokor-Szegö, *NEW STATES AND INTERNATIONAL LAW*, 1970, pp. 39–43.

160. UN Doc A/Res/1514, *supra* note 2, Para 6.

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nor subsequent state practice in the field of decolonization should be interpreted in a way that the title of the metropolitan State to the colonial territory became illegal or void *ab initio*.¹⁶¹ What it did mean was that a positive legal rule was developed which held that colonial powers were under an obligation to decolonize in accordance with the wishes of the inhabitants of the colonial territory. In those cases where, in violation of this obligation, metropolitan States did not transfer sovereignty to the authorities of the colonial territory, the right of self-determination of the colonial territory *prevailed* over any claim by the metropolitan State to the maintenance of its sovereignty over the colonial territory.¹⁶² Therefore, no violation of the principle of territorial integrity occurred when a colonial territory chose to dissolve the bonds with the metropolitan State without the latter's consent. Secondly, the principle of territorial integrity meant that third States (including Trustees) were under an obligation to respect the territorial integrity of the colonial territory.¹⁶³ Thirdly, in practice the right of self-determination was interpreted *in the light of* the principle of territorial integrity, which meant that the fragmentation of the colonial territory before the realization of independence (or integration or association) as a result of secession by a segment of the colonial population was not accepted by the United Nations and the international community at large.¹⁶⁴ Finally, after the accession to independence, the governments of the new States did invoke the principle of territorial integrity against secessionist demands by minority groups within that State. This, however, concerns the question of the existence or non-existence of a right of unilateral secession in the post-colonial era and will therefore be discussed in Chapter 7.

It will be noted that in the context of decolonization, the result of the interpretation of the right of self-determination in the light of the principle of territorial integrity was that a 'people' as the holder of the right of self-

161. The Charter of the United Nations does not regard the existence of colonies or colonial regimes as being in violation of international law. *See also* OPPENHEIM'S INT'L LAW, p. 282.

162. *Cf., e.g.*, the cases of Algeria and Guinea-Bissau which were discussed in Chapter 4, Sections 2.2.1.(a) and 2.2.1.(b), respectively, *supra*. *See also* K.N. Blay, *Self-Determination Versus Territorial Integrity in Decolonization Revisited*, Indian JIL, Vol. 25, 1985, p. 386; H. Hannum, *Rethinking Self-Determination*, Va. JIL, Vol. 34, 1993, p. 1, at p. 32.

163. Hence the rejection by the United Nations of the South African's attempt to fragment Namibia by creating a number of 'bantustans' in the territory. *See* UN Doc. S/Res/ 264, 20 March 1969; UN Doc. S/Res/301, 20 Oct. 1971; UN Doc. S/Res/366, 17 Dec. 1974; UN Doc. S/Res/385, 30 Jan. 1976. And *see* UN Doc. A/Res/2372 (XXII), 12 June 1968; UN Doc. A/Res/2403 (XXIII), 16 Dec. 1968; UN Doc. A/Res/31/146, 20 Dec. 1976. *See also* Dugard, RECOGNITION, p. 122.

164. *See also* R. Higgins, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS, 1963, p. 104; Blay, *supra* note 162, at pp. 389-391; Pomerance, *supra* note 46, at pp. 18-19; Cassese, SELF-DETERMINATION, p. 72. Sometimes, the principle of territorial integrity has been equated erroneously with the principle of *uti possidetis*. The point is discussed in Chapter 6, Section 6, *infra*.

determination was primarily *territorially* defined.¹⁶⁵

In sum, the right of self-determination, which in this context has been referred to as “a right to decolonization”,¹⁶⁶ was applied to *all inhabitants* of a *colonial territory* and not to minority groups or segments of the population within that territory. Obviously, this (United Nations) policy was predicated on the fear of territorial fragmentation and international destabilisation in view of the often complex ethnic structure of the territories in question. Therefore, as a general rule, self-determination had to be granted to Trust Territories and Non-Self-Governing Territories as a whole. But exceptions were accepted. The United Nations’ insistence on the preservation of the territorial integrity of a dependent or colonial territory did not form a bar to partition, but only if that was the clear wish of the majority of all inhabitants of the territory in question. For instance, in the case of the Non-Self-Governing Territory of the Gilbert and Ellice Islands, the Assembly first agreed to an administrative division of the colonial territory and subsequently approved the partition of the colony as a result of the express wishes of the inhabitants of the Ellice Islands, which became the State of Tuvalu.¹⁶⁷ Furthermore, mention should be made of the separation of Ruanda-Urundi in two separate States, Rwanda and Burundi,¹⁶⁸ and the division by Britain of the British Cameroons into a southern and northern region, of which the former acceded to Cameroon and the latter to

165. Pomerance, *supra* note 46, at p. 18; Hannum, *supra* note 82, at p. 36; Thornberry, *supra* note 16, at p. 872; Falkowski, *supra* note 8, at p. 226 (“[i]n the overwhelming majority of cases the United Nations has not applied the international trust provisions to ‘peoples’ but has applied it to ‘colonial units’”). *Cf also* J.P. Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, in: M. Bos (Ed.), *THE PRESENT STATE OF INTERNATIONAL LAW*, 1973, p. 75, at p. 103 (according to Humphrey the United Nations had adopted the questionable position that although “all peoples have the right of self-determination, only colonial *countries* are peoples” (emphasis added)).

166. *See* Abdulah, *supra* note 128.

167. *See* UN Doc. A/Res/32/407, 28 Nov. 1977. Arguably, another example is found in the partition of the Federation of Rhodesia and Nyasaland, also called the Central African Federation, which was formed at the initiative of the British in 1953. It was composed of the self-governing British colony of Southern Rhodesia, and the territories of Northern Rhodesia and Nyasaland. The Africans, fearing continued domination by the white minority, demonstrated (1960-1961) against the Federation, and in 1962 there was a strong movement for its dissolution, particularly from the new African-dominated regime in Northern Rhodesia. The British at first tried to keep the Federation intact, but finally realized that this was impossible. Britain approved a gradual process towards secession and independence of Nyasaland beginning on 1 February 1963. The Federation was dissolved on 31 December 1963. Nyasaland became independent as Malawi on 6 July 1964 and Northern Rhodesia as Zambia on 24 October 1964. *See, generally*, L.J. Butler, *Britain, the United States and the Demise of the Central African Federation, 1959-63*, in: K. Fedorowich and M. Thomas (Eds.), *INTERNATIONAL DIPLOMACY AND COLONIAL RETREAT*, 2001, p. 131.

168. *See* UN Doc. A/Res/1746 (XVI), 27 June 1962. The General Assembly initially aimed at preventing the separation of the Trust Territory. *See, e.g.*, UN Doc. A/Res/1743 (XVI), 23 Feb. 1962.

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Nigeria.¹⁶⁹ Another example is formed by the division of the 'strategic' Trust Territory of the Pacific Islands in 1978 with the agreement of the inhabitants and the Trusteeship Council.¹⁷⁰ Four separate entities were created, three of which became independent States, namely the Federated States of Micronesia, Palau and the Marshall Islands, and one – the Northern Mariana Islands – came to be associated with the United States.¹⁷¹

§ 3.4.3. Implementation and legal status of self-determination

The first point that needs to be examined is what specific territorial status chosen by the inhabitants of a dependent territory (or their representatives) in their exercise of self-determination was considered to be an actual realization of the right of self-determination. As was stated by Pomerance

[i]n innumerable [...] resolutions of the General Assembly, self-determination has been bracketed together with independence – so much that it is popularly

169. See UN Doc. A/Res/63 (I), 13 Dec. 1946. Another case worthy of mention is the approved partition of the Palestine Mandate into an Arab and a Jewish State by the General Assembly in 1947. See UN Doc. A/Res/181, 19 Nov. 1947. For a discussion of that partition, see T.G. Fraser, PARTITION IN IRELAND, INDIA AND PALESTINE, 1984.

170. In this respect, the United States Permanent Representative to the United Nations stated: "[t]he United States regrets that the exercise of full self-determination by the peoples of the Territory has led to the decision to divide the Territory into more than one entity. However, both the United States and the Trusteeship Council are in agreement that it is ultimately for the Micronesians themselves to decide upon their political relations with one another. To take any other position, for example, that unity should be imposed upon the people of the Trust Territory, would make a mockery of the concept of self-determination as democratically conceived". See Letter from the Permanent Representative of the United States of America to the United Nations, addressed to the President of the Trusteeship Council, 25 Apr. 1979, quoted in: R.S. Clark, *Self-Determination and Free Association; Should the United Nations Terminate the Pacific Islands Trust?*, Harv. ILJ, Vol. 21, 1980, p. 1, at p. 81.

171. Under Article 83 of the Charter, the Trust Territory was administered by the United States after 1947 as a 'security Trusteeship' the ultimate disposition of which was to be determined by the Security Council. In the period of 1979-1986, after the inhabitants had opted for the division of the Territory through plebiscites and referenda, the United States gradually transferred governmental functions. The Marshall Islands, the Federated States of Micronesia and Palau entered into a so-called Compact of Free Association with the United States, which entered into force on 21 October 1986, 3 November 1986 and 1 October 1994, respectively. On the same dates, these entities became independent States. See L.A. McKibben, *The Political Relationship Between the United States and Pacific Islands Entities: The Path to Self-Government in the Northern Mariana Islands, Palau, and Guam*, Harv. ILJ, Vol. 31, 1990, p. 257; Department of State United States of America, *Trust Territory of Pacific Islands*, 39th Annual Report, 1986; Clark, *supra* note 170. See also UN Doc. S/Res/956 (1994), 10 Nov. 1994; and see S.O. Roth, Assistant Secretary for East Asian and Pacific Affairs, US Department of State, *Compacts of Free Association with the Marshall Islands, Federated States of Micronesia and Palau*, Joint Oversight Hearing Before the Committee on Resources and Subcommittee on Asia and the Pacific of the Committee on International Relations, House of Representatives, 105th Congress, 2nd Sess., 1 Oct. 1998, Y 4.R 31/3:105-107, pp. 52-55.

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(and incorrectly) assumed that the terms are synonymous in theory or, at least, that they are so in UN practice.¹⁷²

Indeed, independence is mentioned in Resolution 1541 as one of three optional results of the implementation of self-determination,¹⁷³ that is, in addition to integration and association.¹⁷⁴

Another point is that Resolution 1514 states that the political status should be “freely” determined by a people.¹⁷⁵ This is clarified in Resolution 1541 which maintains that association

should be the result of the free and voluntary choice by the peoples of the territory concerned expressed through informed democratic processes,¹⁷⁶

and that integration

should be the result of the freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes [...].¹⁷⁷

This principle, which may be called the ‘free choice principle’, has been confirmed by the International Court of Justice in the *Western Sahara* case,¹⁷⁸ where, on the basis of Resolution 1514 and its own statements in the *Namibia* case, the Court stated that “the application of the right to self-determination requires a free and genuine expression of the will of the people concerned”.¹⁷⁹ In practice, “the will of the people” meant the will of the *majority* of the

172. Pomerance, *supra* note 46, at p. 25.

173. Cf. also UN Doc. A/Res/2625, *supra* note 3, which states that “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.

174. See also Separate Opinion Judge Dillard, *Western Sahara* case, Advisory Opinion, ICJ Rep. 1975, p. 13, at pp. 122-123 (“it may be suggested that self-determination is satisfied by a free choice, not by a particular consequence of that choice or a particular method of exercising it”); Pomerance, *supra* note 46, at pp. 25-28. And see UN Doc. A/Res/2625, *supra* note 3, which, under the heading of Principle V (“the principle of equal rights and self-determination of peoples”), repeats the wording of Resolution 1541 and adds “or the emergence into any other political status freely determined by a people”. For a detailed discussion of Resolution 2625, see Chapter 6, *infra*.

175. UN Doc. A/Res/1514, *supra* note 2, Para. 2.

176. UN Doc. A/Res/1541, *supra* note 146, Principle VII.

177. *Id.*, Principle IX (b).

178. *Western Sahara* case, *supra* note 174, at pp. 31-33.

179. *Id.*, at p. 32 (para. 56).

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inhabitants of a colonial territory.¹⁸⁰ And according to the Court in the *Western Sahara* case, only in those cases where a collectivity did not constitute a people for the purpose of decolonization or in cases where, for instance, the wishes of the people were so obvious as to render superfluous any act of consultation, this requirement could be dispensed with.¹⁸¹

It must therefore be concluded that in the context of decolonization the element of 'free choice' was regarded by the United Nations as being of essential importance for a genuine exercise of self-determination,¹⁸² that is, at least for those situations where self-determination would be implemented through association or integration.¹⁸³ This was especially so when the selected option was union or association with the "former colonial parent", which was, as Pomerance observes, "viewed with a jaundiced eye and deemed to be inherently reversible, rather than final".¹⁸⁴ In fact, it was more or less assumed that the exercise of self-determination by colonial populations would in most cases result in independence, as appears from the title of the Declaration on Decolonization itself. Hence the demand in Resolution 1541 for guarantees and specific procedures geared to establishing the wishes of the people in those cases where independence was apparently not preferred.

United Nations practice with respect to the principle of 'free choice' is practically uniform. Compliance with the principle was sought to be guaranteed through the organization and supervision of elections, referenda and/or

180. Higgins, *supra* note 164, at p. 104; H. Gros Espiell, Implementation of United Nations Resolutions Relating to the Right of Peoples Under Colonial and Alien Domination to Self-Determination, Study Prepared by the Special Rapporteur, UN Doc. E/CN.4/Sub.2/405 (Vol. 1), 20 June 1978, pp. 10-11.

181. *Western Sahara* case, *supra* note 174, at p. 33 (para. 59); Pomerance, *supra* note 46, at p. 27. See also Declaration Judge Nagendra Singh, *Western Sahara* case, *supra* note 174, at p. 73.

182. See also UN Doc. A/Res/54/90, 4 Feb. 2000 ("Resolution Adopted by the General Assembly on the Report of the Special Political and Decolonization Committee"). While recalling Resolution 1514, the General Assembly observes that "referendums, free and fair elections and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people" and it recognizes "that all available options for self-determination of the Territories are valid as long as they are in accordance with the freely expressed wishes of the peoples concerned [...]".

183. As was stated by Judge Nagendra Singh: "the consultation of the people of the territory awaiting decolonization is an inescapable imperative whether the method followed on decolonization is integration or association or independence [...]. Thus even if integration of territory was demanded by an interested State, as in this case, it could not be had without ascertaining the freely expressed will of the people – the very *sine qua non* of all decolonization". Declaration Judge Nagendra Singh, *Western Sahara* case, *supra* note 174, at p. 81.

184. Pomerance, *supra* note 46, at p. 25. She refers to the decision of the Cook Islands to maintain ties with New Zealand and the General Assembly's assurance that independence remained a future option. See UN Doc. A/Res/2064 (XX), 16 Dec. 1965. In that respect it will be noted that Resolution 1541 suggests that "free association" is open to subsequent revision.

plebiscites, especially in cases where association or integration¹⁸⁵ would presumably be the result of the exercise of self-determination.¹⁸⁶ Thus, as a matter of principle, strict democratic standards were required for association or integration, while the choice for independence had to be free,¹⁸⁷ but not necessarily based on *democratic* verification standards, that is, in accordance

185. When, apparently, the population would opt for independence, the wishes of the people were normally to be established by the usual political processes of the territory, save for those special cases where it was considered necessary to make special arrangements as, for example, with regard to the Ellice Islands in 1974 where a referendum – leading to independence – was held in the presence of United Nations observers. See UN Doc. A/Res/3288 (XXIX), 13 Dec. 1974; UN GAOR, 29th Sess., Supp. No. 23 (A/9623/Rev.1), Ch. XXI, Ann.

186. See Cassese, SELF-DETERMINATION, pp. 76-78, and the examples given there. See also OPPENHEIM'S INT'L LAW, pp. 713-714. The fact that in some circumstances the principle of 'free choice' was not applied, does not detract from the general and universal character of the principle. For instance, a referendum was not held in Gibraltar, but this was premised on the fact that the inhabitants were not considered to constitute a people for the purpose of external self-determination. See UN Doc. A/Res/2353 (XXII), 19 Dec. 1967. Another example of a situation where the principle of 'one man, one vote' through the instrument of a referendum or plebiscite was not used is West Irian (West New Guinea), but here the decision to deviate from the general rule is highly debatable and thus criticized (cf. Cassese, SELF-DETERMINATION, p. 84: "this 'act of free choice' [...] amounted to a substantial denial of self-determination"). In this case the Secretary-General's representative in West Irian observed that "geographical and human realities in the territory required the application of a realistic criterion", which would be different from "the orthodox and universally adopted method of 'one man one vote'". Report of Mr. Ortiz Sanz, UN Doc. A/7723, 6 Nov. 1969, Ann. 1, p. 9, para. 82. Accordingly, the will of the people was established on the basis of the Indonesian *musjawarah* system ("a process in which decisions are reached by collective discussion and consensus rather than by individual votes"). Despite the fact that the Dutch government eventually did not object against the validity of the exercise of self-determination in West Irian (judging from the adoption of General Assembly Resolution 2504 (XXIV) of 19 Nov. 1969, which was co-sponsored by the Netherlands and which took note of the outcome of the 'act of free choice', acknowledged "with appreciation the fulfilment by the Secretary-General and his representative of the tasks entrusted to them under the Agreement of 15 August 1962"), it made clear that according to the Netherlands the standard for *how* to establish the will of a people for the purpose of exercising self-determination remained that of 'free choice' based on informed democratic processes based on universal adult suffrage, because this standard was in conformity with international practice. See Kuyper and Kapteyn, *supra* note 148, at pp. 198-199. During the debates in the General Assembly leading up to the adoption of Resolution 2504, which extended over three plenary sessions, several delegations expressed reservations regarding the procedures used, and questioned whether the people of West New Guinea had been allowed to exercise the right of self-determination. Cf. the statement by the Indian government, UN GAOR, 24th Plenary Sess., 1813th mtg., 19 Nov. 1969, para. 24 (the method of *musjawarah* is "appropriate for the special circumstances of West Irian but cannot under any circumstances be considered a precedent for the process of the exercise of the right of self-determination under completely different conditions in territories still under colonial domination"). See also W. Henderson, WEST NEW GUINEA, THE DISPUTE AND ITS SETTLEMENT, 1973, esp. pp. 226-240; Pomerance, *supra* note 46, at p. 33. It has been suggested that the majority stand in the General Assembly with regard to Resolution 2504 (XXIV) (vote: 84 to 0, with 30 abstentions) should be explained in the sense that West Irian was regarded by that majority as an integral part of Indonesia and that there was therefore no need to meet the required standards for exercising self-determination. See Rigo-Sureda, *supra* note 15, at p. 151.

187. See Resolution 1514, *supra* note 2, Para. 5. See also the statement by Judge Nagendra Singh, *supra* note 184.

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with (the Western view of) the principle of 'one man one vote'.¹⁸⁸ However, in those cases where serious doubts existed as to the genuine expression of the wish for independence, additional safeguards were required. The situation of Southern Rhodesia under the Smith régime serves as a prime example.¹⁸⁹ But, as was observed earlier, although 'free choice' was required, it is not clear whether or not the States concerned were of the opinion that they were under a legal obligation to ascertain "the will of the people" specifically through either a referendum or a plebiscite.¹⁹⁰

It should be noted that although the technique by which the will of the

188. Pomerance, *supra* note 46, at p. 32. See also Crawford, CREATION, pp. 101-102. For instance, an acceptable procedure of consultation with leaders of opinion and organizations took place in Bahrain pursuant to an agreement between Iran and the United Kingdom in 1970. The latter had been a protecting power and the former had claimed sovereignty. Under their agreement, a representative of the United Nations Secretary-General consulted representative leaders in Bahrain in the course of March - April 1970 and concluded in his report that "the Bahrainis [...] were virtually unanimous in wanting a fully independent sovereign State". See UN Doc. S/9772, 30 Apr. 1970, p. 11. The report was unanimously endorsed by the Security Council in Resolution 278. See UN Doc. S/Res/278 (1970), 11 May 1970. And see O. Schachter, *The United Nations and Internal Conflict*, in: K.V. Raman (Ed.), DISPUTE SETTLEMENT THROUGH THE UNITED NATIONS, 1977, pp. 301-364, at pp. 333-334; E. Gordon, *Resolution of the Bahrain Dispute*, AJIL, Vol. 65, 1971, pp. 560-568. Another example is formed by the case of Malaysia where it was deemed acceptable by the United Nations that the wish for independence was expressed by traditional authorities which enjoyed general support among the population. See T.E. Smith, THE BACKGROUND TO MALAYSIA, 1963, pp. 25-32.

189. Reference can be made to the Security Council's determination of the invalidity of the proclamation of independence by the white minority régime in Southern Rhodesia in 1965 (UN Doc. S/Res/216, 12 Nov. 1965) and the Council's subsequent demand for "arrangements [...] for a peaceful and democratic transition to genuine majority rule and independence", which arrangements "include the holding of free and fair elections on the basis of universal adult suffrage under United Nations supervision" in order to "effect the genuine decolonization of the Territory [...]" (UN Doc. S/Res/423, 14 March 1978). See also, e.g., UN Doc. A/Res/2138 (XXI), 22 Oct. 1966, Para. 2 ("reaffirming the obligation of the administering Power to transfer power to the people of Zimbabwe on the basis of universal adult suffrage, in accordance with the principle of 'one man, one vote'"); UN Doc. A/Res/2877, 20 Dec. 1971, Para. 2 ("no settlement which does not conform strictly to the principle of 'no independence before majority rule' on the basis of one man, one vote, will be acceptable"). The Lancaster House Agreement of 12 Dec. 1979 called for elections and a transition period under British rule. The Agreement was endorsed by the Security Council (UN Doc. S/Res/463, 2 Feb. 1980), which no longer demanded United Nations supervision of the elections, but which did require the United Kingdom to create conditions in Southern Rhodesia to ensure free, democratic and fair elections resulting in genuine majority rule, calling upon "all Member States to respect only the free and fair choice of the people of Zimbabwe" (Para. 9). Pre-independence elections were held from 27-29 February 1980 under the supervision of the British government and monitored by hundreds of observers of the OAU. The report of the OAU Observer Team concluded that under the prevailing circumstances, the elections were free and fair and reflected the will of the people. See OAU Doc. ECM/Res. 25 (XIII), adopted at the 13th Extraordinary Sess. in Addis Ababa, Ethiopia, from 10-12 March 1980, Para. 1 (endorsing the outcome of the elections). Robert Mugabe's ZANU party (PF) won absolute majority and formed Zimbabwe's first representative government. The British government formally granted independence to Zimbabwe on 18 April 1980. On 26 August 1980, Zimbabwe was admitted to membership in the United Nations. As to the elaboration upon the Southern Rhodesian attempt to secede, see pp. 128-134, *supra*.

190. Cassese, SELF-DETERMINATION, p. 79.

people had to be ascertained in a way echoes the concept of the 'consent of the governed', the internal dimension of self-determination was completely disregarded in the process of decolonization. There is no case in which it was required that the subsequent political system or form of government of the former colony should be based on the continued 'consent of the governed'.¹⁹¹

The next point which needs to be addressed, is the legal status of self-determination in the context of decolonization. In Resolution 1514 the General Assembly refers without hesitation to self-determination as a *right* and not as a principle. Does that mean that the Assembly regarded self-determination as a right under international customary law at the time of the adoption of the Resolution? This may very well be the case. It must be recalled that, as early as 1952, the General Assembly adopted a number of resolutions under the title of "The right of peoples and nations to self-determination". In these resolutions it was stated that "the States Members of the United Nations shall recognize and promote the realization of the right of self-determination of peoples of Non-Self-Governing and Trust Territories who are under their administration".¹⁹² And in 1953 the Assembly adopted a resolution containing factors which should be used by the Assembly as a guide in determining whether a territory is still or no longer within the scope Chapter XI of the Charter. The resolution declared that "each concrete case should be considered and decided upon in the light of the particular circumstances of that case and taking into account the right of self-determination of peoples".¹⁹³ In addition, Resolution 1188 (XII), adopted by the General Assembly in 1957, reaffirms in its first operative paragraph that those member States bearing responsibility "for the administration of Non-Self-Governing Territories shall promote the realization and facilitate the exercise of the right [of self-determination] by the

191. That is not to say that the transfer of sovereignty by the colonial power would be approved by the United Nations with regard to any, that is, even an unrepresentative government of a previous dependent entity. Again, Southern Rhodesia could be mentioned as an example, in which case it was made clear by the Security Council that not only the *outcome* of the exercise of self-determination should be the result of a 'free choice', but also that only in the case of a 'majority' government genuine independence could be considered to be achieved. In general, the United Nations was concerned about whether the choice for independence, integration or association was a reflection of the will of the population of a dependent territory. Therefore, the demand for a genuine exercise of external self-determination should be distinguished from the issue of whether or not the United Nations required the future political and constitutional system of former colonies to be in conformity with the internal dimension of self-determination. Because immediate *external* self-determination of *all* dependent territories and peoples was considered to be of primary importance, no requirement of continued internal self-determination was formulated in this context. See also Crawford, CREATION OF STATES, pp. 219-220.

192. UN Doc. A/Res/637 A-B-C, 16 Dec. 1952.

193. UN Doc. A/Res/742 (VIII), 27 Nov. 1953.

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peoples of such Territories”.¹⁹⁴ If the terminology used in these resolutions is compared with the terminology used in Resolution 1514, it is clear that the latter is formulated in a much more mandatory manner by which the impression at least is created that the Resolution aims at expressing the applicable law.¹⁹⁵ Moreover, the character of self-determination as a right under customary

194. UN Doc. A/Res/1188 (XII), 11 Dec. 1957 (vote: 54 to 0, with 13 abstentions). Operative Paragraph 1 was voted on separately before the vote on the draft resolution as a whole. This Paragraph was adopted by 51 votes to 9, with 7 abstentions. The thirteen States *abstaining* from voting with respect to the draft resolution as a whole, included those States which voted *against* Para. 1 of the draft: the Netherlands, New Zealand, Portugal, the United Kingdom, Australia, Belgium, Canada, France and Italy (the remaining States abstaining from voting on the entire resolution were Denmark, Norway, Spain and Sweden). It has been suggested that if the principal colonial powers voted against or abstained from voting with regard to resolutions proclaiming self-determination as a right of peoples, it seems impossible to state that a rule of customary law had emerged at the relevant time. See R. Emerson, *Self-Determination*, AJIL, Vol. 65, 1971, p. 459, at p. 462. However, this conclusion must be rejected upon further analysis. As comes to the fore from the debates, for many (colonial) States the principal reason for voting against or abstaining from voting in 1957 was not so much the use of the term ‘right’ but the fact that according to these States self-determination was *not confined* to the populations of NSGT. See UN GAOR, 12th Sess., Third Comm., 821st mtg., 26 Nov. - 3 Dec. 1957: United Kingdom (pp. 303, para. 4 and 325, para. 62: “[the United Kingdom] had voted against operative paragraph 1, since even in independent States the principle of self-determination could be disregarded [...]”), France (p. 308, para. 13), the Netherlands (p. 313, para. 4), Canada (p. 319, para. 2: “the discussion has shown that the question of self-determination was not confined to situations relating to traditional colonialism”), New Zealand (p. 321, para. 21: “it had been suggested that self-determination was a practical question only in cases of NSGT”’s. Article 1 of the draft Covenants [on Human Rights] had however not been adopted on such premises. It could hardly be explained to a large segment of the world public, including the subjects of police States, that the right of self-determination was in their cases a kind of constitutional fiction. Such an interpretation would deprive the [draft] Covenants [on Human Rights] and the United Nations of all moral authority”), Australia (p. 322, para. 26), Belgium (p. 324, para. 54). Only the United Kingdom publicly questioned the existence of a legal right, but did not put forward this position in explaining its vote. This position was not supported by the other colonial powers and rejected publicly and outright by the vast majority of the non-colonial States, many of which referred to the draft International Covenant on Human Rights where self-determination was explicitly recognized as a right in draft Paragraph 1(1). As to the latter, see UN GAOR, 10th Sess., Ann., agenda item 28 (part I), Doc. A/3077, para. 77.

195. Cf. Cristescu, *supra* note 124, p. 79 (“represents a legal and political formulation, by the international community, of the principle of equal rights and self-determination of peoples”). It is an entirely different thing, however, to state that the resolution is an authoritative interpretation of the Charter. For this view see H. Waldock, *General Course on Public International Law*, HR, 1962 II, p. 5, at pp. 31-34; Brownlie, *PRINCIPLES*, p. 600. This view cannot be maintained, at least not in the sense that the entire resolution would be an authoritative interpretation of the Charter in view of such formulations as “*immediate steps shall be taken to transfer all powers*” to NSGT and “*all other territories which have not yet attained independence*” (emphasis added), which go well beyond that what is stated in the Charter. See also B. Roth, *GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW*, 1999, pp. 208-209; Pomerance, *supra* note 46, at pp. 11-12; Crawford, *CREATION*, p. 90; Bokor-Szegö, *supra* note 159, at p. 29. In this respect it should be noted that the General Assembly does not have the power to adopt binding resolutions except for those resolutions adopted under the heading of a number of very specific provisions in the Charter. The resolutions normally have recommendatory force only. It is, however, generally accepted that the recommendatory resolutions may either reflect existing international customary law or influence the creation of a new international customary rule. In both cases the resolutions may be evidence of *opinio juris*. See, generally, B. Sloan, *General*

international law appears to be reflected in the fact that some thirty Non-Self-Governing and Trust Territories¹⁹⁶ achieved independence prior to the adoption of the Resolution on 14 December 1960.¹⁹⁷ It therefore seems tenable that Resolution 1514 reflected an existing rule of customary law as far as a right of self-determination for colonial countries and peoples is concerned.¹⁹⁸ In any event, it is beyond doubt that the right of self-determination in the sense of a right of Non-Self-Governing Territories and Trust Territories to choose either independence, association or integration developed into a rule of customary

Assembly Resolution Revisited (Forty Years Later), BYIL, Vol. 58, 1987, p. 39. *But see* B. Cheng, *United Nations Resolutions on Outer Space: 'Instant' International Customary Law*, Indian JIL, Vol. 5, 1965, p. 23.

196. Benin (1 Aug. 1960), Burkina Faso (5 Aug. 1960), Burma (4 Jan. 1948), Cambodia (9 Nov. 1953), Cameroon (1 Jan. 1960), Chad (11 Aug. 1960), Congo (15 Aug. 1960), Côte d'Ivoire (7 Aug. 1960), the Democratic Republic of Congo (15 Aug. 1960), Gabon (17 Aug. 1960), Ghana (6 March 1957), Guinea (28 Sept. 1958), India (15 Aug. 1947), Indonesia (17 Aug. 1945 proclaimed/27 Aug. 1949 devolution), Laos (19 July 1949), Libya (24 Dec. 1951), Madagascar (26 June 1960), Malaysia (21 Aug. 1957), Mali (20 June 1960), Mauritania (28 Nov. 1960), Morocco (2 March 1956), Niger (3 Aug. 1960), Nigeria (1 Oct. 1960), Philippines (4 July 1946), Senegal (20 June 1960), Somalia (1 July 1960), Sri Lanka (4 Feb. 1948), Sudan (1 Jan. 1956), Togo (27 Apr. 1960), and Tunisia (20 March 1956).

197. Between 1945 and 1957 some 700,000,000 people had seen their countries attain independence. Resolution 1514 refers explicitly to this development in its Preamble. This significant development was already observed and stressed by numerous delegations during the discussions leading to the adoption of Resolution 1188 (XII) in 1957, which was referred to above. *See* UN GAOR, 12th Sess., *supra* note 194, at pp. 299 (United States), 307 (Romania), 311 (Panama), 316 (Czechoslovakia). An interesting remark was made by the Netherlands with regard to the Indonesian quest for independence. Several years before the adoption of the 1960 resolutions, self-determination was at the core of the Dutch-Indonesian conflict in 1947-1949. In 1949, the Dutch government, after several efforts to crush the independence movement in Indonesia and in the context of the Round Table Conference which led to the formal transfer of sovereignty to the Republic of Indonesia, stated that "self-determination was an internationally recognized right which accrued to the people [of the Republic of Indonesia] irrespective of whether it had been laid down in an agreement or not". Kuyper and Kapteyn, *supra* note 148, at p. 166.

198. *Cf.* OPPENHEIM'S INT'L LAW, p. 286, n. 17, stating that "the observations of the ICJ [in the Namibia case and the Western Sahara case] come close to attribution to the resolution the status of customary international law". *See also* Hannum, *supra* note 82, at pp. 33-34; Cristescu, *supra* note 124, at p. 79; Sloan, *supra* note 195, at pp. 99-100. During the discussions leading to the adoption of Resolution 1514 none of the delegations questioned the character of self-determination as a right for colonial countries and peoples. If the matter was referred to at all, it was to affirm the legal character of the right. *See* UN GAOR, 15th Sess., (Part I), Plenary mtgs., Vol. 2, 27 Oct. - 20 Dec. 1960: *e.g.*, Ethiopia (928th mtg., p. 1022, para. 31); Poland (*id.*, p. 1023, para. 50); United States (937th mtg., p. 1158, para. 19); France (945th mtg., p. 1259, para. 141). As in the case of Resolution 1188 which was discussed above, some States which abstained from voting explained their abstention by raising objections with regard to the fact that the resolution appeared to confine self-determination to colonial peoples (*see, e.g.*, United States (947th mtg., p. 1283, paras. 143, 145)) or by objecting against the requirement of immediate transfer of sovereignty which would not be to the benefit of the peoples concerned (*see, e.g.*, Australia (933rd mtg., p. 1093, paras. 73, 83); United States (937th mtg., p. 1160, para. 29 and 947th mtg., p. 1283, para. 151); United Kingdom (925th mtg., pp. 983-986, paras. 32-62 and 947th mtg., p. 1275, para. 54)).

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law in the course of the 1960s.¹⁹⁹ This is reflected in the numerous resolutions adopted both by the Security Council²⁰⁰ and by the General Assembly²⁰¹ affirming the existence of a right of self-determination, as well as in the dismantling of almost the entire dependency system in terms of Non-Self-Governing Territories and Trust Territories in the course of the 1960s and 1970s.

Yet another point which must be examined is whether or not the prohibition of the denial of self-determination for the inhabitants of dependent territories is to be qualified as a norm of *jus cogens*. In this respect, the categorical and absolute formulation in numerous resolutions of the General Assembly of the obligation of States responsible for colonies to end this colonial relationship is significant. Moreover, as has been discussed elsewhere in this study,²⁰² States have repeatedly emphasized the obligation to respect the right of self-determination as a fundamental premise for the maintenance of the international legal order. Furthermore, the fundamental character of the right of self-determination has been stressed with regard to the process of decolonization, and in that respect it has been explicitly qualified by States as a norm of *jus cogens*.²⁰³ Although the International Court of Justice did not explicitly use the term *jus cogens*, it did stress the fundamental and special character of the norm in the *East Timor* case. The Court observed that the right of self-determination “is one of the essential principles of contemporary international

199. Cf. Namibia case, *supra* note 106, at p. 31 (para. 52) (“the last fifty years [...] have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the *corpus iuris gentium* has been considerably enriched [...]”). Cf. also the later remark by Judge Dillard, who concluded that “the pronouncements of the Court thus indicate that a norm of international law has emerged applicable to the decolonization of those non-self-governing territories which are under the aegis of the United Nations”. Separate Opinion Judge Dillard, Western Sahara case, *supra* note 174, at pp. 121-122.

200. See, e.g., UN Docs. S/Res/183, 11 Dec. 1963 and S/Res/218, 23 Nov. 1965 and the Security Council resolutions on Southern Rhodesia, (*see* p. 131, *supra*) and on the territories formerly under Portuguese administration (*see* UN Doc. S/Res/163, 9 June 1961; UN Doc. S/Res/180, 31 July 1963; UN Doc. S/Res/183, 11 Dec. 1963; UN Doc. S/Res/218, 23 Nov. 1965; UN Doc. S/Res/273, 9 Dec. 1969; UN Doc. S/Res/275, 22 Dec. 1969; UN Doc. S/Res/290, 8 Dec. 1970; UN Doc. S/Res/312, 4 Feb. 1972; UN Doc. S/Res/321, 23 Oct. 1972; UN Doc. S/Res/322, 22 Nov. 1972).

201. See, e.g., UN Doc. A/Res/2037 (XX), 7 Dec. 1965; UN Doc. UN Doc. A/Res/2105 (XX), 20 Dec. 1965; UN Doc. A/Res/2189 (XXI), 13 Dec. 1966; UN Doc. A/Res/2326 (XXII), 16 Dec. 1967; UN Doc. A/Res/2465 (XXIII), 20 Dec. 1968; UN Doc. A/Res/2548, (XXIV), 11 Dec. 1969; UN Doc. A/Res/2708 (XXV), 14 Dec. 1970; UN Doc. A/Res/2878 (XXVI), 20 Dec. 1971; UN Doc. A/Res/2908 (XXVII), 2 Nov. 1972.

202. See pp. 145-146, *supra*.

203. See, e.g., Spain, Western Sahara case, ICJ Pleadings, Vol. I, pp. 206-208; Algeria, Western Sahara case, ICJ Pleadings, Vol. IV, pp. 497-500; Morocco, Western Sahara case, ICJ Pleadings, Vol. V, 179-80; Guinea-Bissau, Case Concerning the Arbitral Award of 31 July 1989, (Guinea-Bissau v. Senegal), ILR, Vol. 83, p. 1 at p. 24; Romania, UN Doc. A/AC.125/SR.70, 4 Dec. 1967, p. 4. And *see* the references given by Cassese, SELF-DETERMINATION, pp. 136-137, nn. 67-72.

law” and, furthermore, that “the assertion [by Portugal] that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable”.²⁰⁴ In addition, the International Law Commission – with reference to, among others, the statements of the International Court of Justice in the *East Timor* case – has qualified the obligation of respect for the right of self-determination as *jus cogens*.²⁰⁵ Finally, there is considerable doctrinal support for the view that the prohibition of the denial of the right of (external) self-determination in the colonial context is *jus cogens*.²⁰⁶ For these reasons it is concluded that, at least, the prohibition of the denial of the right of (external) self-determination for colonial territories and peoples, or put differently, the prohibition of the maintenance or establishment of colonial domination, is a rule of customary international law having the character of *jus cogens*, and must consequently be respected *erga omnes*.²⁰⁷

In sum, after the establishment of the United Nations, self-determination was primarily applied as an anti-colonial concept. In most colonial situations it was clear that Wilson’s idea of ‘consent of the governed’ could not be realized unless the colonial people were given the opportunity to choose their external political status. With the Soviet Union and its allies as its principal supporters on the one hand – essentially repeating Lenin’s anti-colonial ideas – and the Afro-Asian States on the other, self-determination evolved into a positive legal right for the inhabitants of dependent territories, which entitled them to freely choose between independence, integration or association.

§ 3.4.4. *Decolonization and statehood*

What actually happened during the era of decolonization was a shift in the

204. *East Timor case*, ICJ Rep. 1995, p. 90, at p. 102 (para. 29).

205. Report of the ILC, 53rd sess., 23 Apr.-1 June and 2 July-10 Aug. 2001, UN GAOR, 56th sess., Supp. No. 10, A/56/10, ch. IV.E.2 (Commentaries to the Draft Articles on Responsibility of States for International Wrongful Acts Adopted by the Drafting Committee on Second Reading, UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001), pp. 208, 284.

206. See the literature mentioned at p. 147, note 258, *supra*. In addition, see M. Bedjaoui, *Article 74*, in: J.-P. Cot and A. Pellet (Eds.), *LA CHARTE DES NATIONS UNIES*, 1991, p. 1077, at pp. 1082-1083; Cassese, *SELF-DETERMINATION*, pp. 133-140; A. Gómez Robledo, *Le Jus Cogens International; Sa Nature, Ses Fonctions*, HR, 1981 III, p. 17, pp. 172-185; Sloan, *supra* note 195, at p. 81; H. Gros Espiell, *Self-Determination and Jus Cogens*, in: A. Cassese (Ed.), *UN LAW/FUNDAMENTAL RIGHTS, TWO TOPICS IN INTERNATIONAL LAW*, 1979, p. 167; H. Bokor-Szegö, *The International Legal Content of the Right of Self-Determination as Reflected by the Disintegration of the Colonial System*, in: *QUESTIONS OF INTERNATIONAL LAW*, 1966, p. 39. See also the references given by Judge Skubiszewski, *East Timor case*, *supra* note 204, at p. 266. But see Cristescu, *supra* note 124, at p. 80.

207. See also Separate Opinion Judge Ammoun, *Barcelona Traction case*, ICJ Rep. 1970, p. 4, at p. 304.

Annex 146

United Kingdom, “*British Indian Ocean Territory (Constitution) Order 2004*” (10 June 2004)



At the Court at Buckingham Palace

THE 10th DAY OF JUNE 2004

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of all the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and commencement

1. This Order may be cited as the British Indian Ocean Territory (Constitution) Order 2004 and shall come into force forthwith.

Interpretation

2. - (1) The Interpretation Act 1978(a) shall apply, with the necessary modifications, for the purpose of interpreting this Order, and otherwise in relation thereto, as it applies for the purpose of interpreting, and otherwise in relation to, Acts of Parliament.

- (2) In this Order, unless the contrary intention appears-

“the Commissioner” means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

“the *Gazette*” means the Official Gazette of the Territory;

“the Territory” means the British Indian Ocean Territory specified in the Schedule.

Revocation

3. - (1) The British Indian Ocean Territory Orders 1976 to 1994(b) (“the existing Orders”) are revoked.

(a) 1978 c.30.

(b) S.I. 1976/893; 1981 III, p.6524; see also the British Indian Ocean Territory (Amendment) Order 1994 made on 8th February 1994.

(2) Without prejudice to the generality of sections 15,16 and 17 of the Interpretation Act 1978 (as applied by section 2(1) of this Order)-

- (a) the revocation of the existing Orders does not affect the continuing operation of any law made, or having effect as if made, under the existing Orders and having effect as part of the law of the Territory immediately before the commencement of this Order; but any such law shall thereafter, without prejudice to its amendment or repeal by any authority competent in that behalf, have effect as if made under this Order and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Order;
- (b) the revocation of the existing Orders does not affect the continuing validity of any appointment made, or having effect as if made, or other thing done, or having effect as if done, under the existing Orders and having effect immediately before the commencement of this Order; but any such appointment made or thing done shall, without prejudice to its revocation or variation by any authority competent in that behalf, continue to have effect thereafter as if made or done under this Order.

Establishment of office of Commissioner

4. - (1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

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

Powers and duties of Commissioner

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

Official stamp

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

Constitution of offices

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

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

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

Concurrent appointments

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

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

No right of abode in the Territory

9. - (1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States of America, no person has the right of abode in the Territory.

(2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this Order or any other law for the time being in force in the Territory.

Commissioner's powers to make laws

10. - (1) Subject to the provisions of this Order, the Commissioner may make laws for the peace, order and good government of the Territory.

(2) It is hereby declared, without prejudice to the generality of subsection (1) but for the avoidance of doubt, that, in the exercise of his powers under subsection (1), the Commissioner may make any such provision as he considers expedient for or in connection with the administration of the Territory, and no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or with this Order or with any other Order of Her Majesty in Council extending to the Territory or otherwise as provided by the Colonial Laws Validity Act 1865(a).

(3) All laws made by the Commissioner in exercise of the powers conferred by subsection (1) shall be published in the *Gazette* in such manner as the Commissioner may direct.

(4) Every law made by the Commissioner under subsection (1) shall come into force on the date on which it is published in accordance with subsection (3) unless it is provided, either in that law or in some other such law, that it shall come into operation on some other date, in which case it shall come into force on that other date.

Disallowance of laws

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

(2) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of the disallowance to be published in the *Gazette* in such manner as he may direct, and the law shall be annulled with effect from the date of that publication.

(a) 1865 c.63.

(3) Section 16(1) of the Interpretation Act 1978 shall apply to the annulment of a law under this section as it applies to the repeal of an Act of Parliament, save that a law repealed or amended by or in pursuance of the annulled law shall have effect as from the date of the annulment as if the annulled law had not been made.

Commissioner's powers of pardon, etc

12. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf-

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

Courts and judicial proceedings

13. - (1) Without prejudice to the generality of section 3(2), all courts established for the Territory by or under a law made under the existing Orders and in existence immediately before the commencement of this Order shall continue in existence thereafter as if established by or under a law made under this Order.

(2) All proceedings that, immediately before the commencement of this Order, are pending before any such court may be continued and concluded before that court thereafter.

(3) Without prejudice to the generality of section 3(2), the provisions of any law in force in the Territory as from the commencement of this Order that relate to the enforcement of decisions of courts established for the Territory or to appeals from such decisions shall apply to such decisions given before the commencement of this Order in the same way as they apply to such decisions given thereafter.

(4) The Supreme Court may, as the Chief Justice may direct, sit in the United Kingdom and there exercise all or any of its powers or jurisdiction in any civil or criminal proceedings.

(5) Subject to subsection (6), the Chief Justice may make a direction under subsection (4) where it appears to him, having regard to all the circumstances of the case, that to do so would be in the interests of the proper and efficient administration of justice and would not impose an unfair burden on any party to the proceedings.

(6) A direction under subsection (4) may be made at any stage of the proceedings or when it is sought to institute the proceedings and may be made on the application of any party to the proceedings or of any person who seeks to be or whom it is sought to make such a party or of the Chief Justice's own motion.

(7) Subject to any law made under section 10 (and without prejudice to the operation of section 3(2)), the Chief Justice may make rules of court for the purpose of regulating the practice and procedure of the Supreme Court with respect to the exercise of the Court's powers and jurisdiction in the United Kingdom.

(8) Without prejudice to the operation of section 3(2), a sub-registry may be established in the United Kingdom for the filing, sealing and issue of such documents relating to proceedings in the Supreme Court (whether or not they are proceedings in which the Court exercises its powers and jurisdiction in the United Kingdom) as may be prescribed by rules of court made by the Chief Justice.

(9) Anything done in the United Kingdom by virtue of subsections (4) to (8) shall have, and have only, the same validity and effect as if done in the Territory.

(10) In this section, "the Supreme Court" means the Supreme Court of the Territory as established by or under a law made, or having effect as if made, under section 10 and "the Chief Justice" means the Judge (or, if there is more than one, the presiding Judge) of that Court.

Disposal of land

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

Powers reserved to Her Majesty

15. - (1) There is hereby reserved to Her Majesty full power to make laws for the peace, order and good government of the Territory, and it is hereby declared, without prejudice to the generality of that expression but for the avoidance of doubt, that-

- (a) any law made by Her Majesty in the exercise of that power may make any such provision as Her Majesty considers expedient for or in connection with the administration of the Territory; and
- (b) no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or otherwise as provided by the Colonial Laws Validity Act 1865.

(2) Without prejudice to the generality of the power to make laws reserved to Her Majesty by subsection (1), any such law may make such provision as Her Majesty considers expedient for the purposes for which the Territory was constituted and is set aside, and accordingly and in particular, to give effect to section 9(1) and to secure compliance with section 9(2), including provision for the prohibition and punishment of unauthorised entry into, or unauthorised presence in, the Territory, for the prevention of such unauthorised entry and the removal from the Territory of persons whose presence in the Territory is unauthorised, and for empowering public officers to effect such prevention or, as the case may be, such removal (including by the use of such force as is reasonable in the circumstances).

(3) In this section-

- (a) "public officer" means a person holding or acting in an office under the Government of the Territory; and
- (b) for the avoidance of doubt, references in this section to the prevention of unauthorised entry into the Territory include references to the prevention of entry into the territorial sea of the Territory with a view to effecting such unauthorised entry and references to the removal from the Territory of persons whose presence there is unauthorised include references to the removal from the territorial sea of the Territory of persons who either have effected an unauthorised entry into the Territory or have entered the territorial sea with a view to effecting such an unauthorised entry.

(4) There is hereby reserved to Her Majesty full power to amend or revoke this Order.

A K. Galloway

THE SCHEDULE

Section 2(2)

Diego Garcia

Three Brothers Islands

Egmont or Six Islands

Nelson or Legour Island

Peros Banhos

Eagle Islands

Salomon Islands

Danger Islands

EXPLANATORY NOTE*(This note is not part of the Order)*

This Order makes new provision for the Constitution and administration of the British Indian Ocean Territory.

Annex 147

Letter from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004)



*Prime Minister
Republic of Mauritius*

22 July 2004

Prime Minister,

I acknowledge receipt of your letter of 9 July by which you informed me that you were sorry your diary commitments have not allowed you so far to meet with me in London.

We have been following the debates in the House of Commons on the Diego Garcia base and the Chagos issue generally. We wish to remind you that whilst the existence of the base was challenged by many countries of the region during the Cold War, such is no longer the case now and we, in Mauritius, have made it clear on numerous occasions that we do not object to Diego Garcia's use as a military base in the larger interest of the security of the international community. I would wish to reiterate this to you.

I now take the liberty of raising a matter of crucial importance for Mauritius and the sixteen other ACP countries which are signatories to the ACP-EU Sugar Protocol.

We have noted with deep concern the Communication of the European Commission to the EU Council of Ministers of Agriculture & Fisheries on the proposed reform of the EU Sugar Regime. We have been given to understand that, whilst acknowledging the need for reform, a number of delegations on the Council have commented on the schedule of the reform envisaged, the level and the stages proposed for reducing the intervention price for sugar, considering them to be too drastic. The proposals, if implemented, would have a devastating effect on our vulnerable economies because they call for substantial price reductions implemented over a very short period. The severity of the proposals baffles us and we appeal for your support and intervention so that we can preserve a viable sugar industry in our countries.

Export earnings from sugar have underpinned our socio-economic development and have, through their stabilizing effect, enabled the upholding of the fundamental principles of democracy which your country and ours cherish.

... ..

Reform in our countries is a difficult process, yet we have over the years embarked on an ambitious reform programme to reduce costs of production and enhance competitiveness. We still have a long way to go. The suddenness of the change coupled with the unpredictability of the 2008 review proposed would be terribly damaging to our industry.

We therefore consider that the price reduction should be moderate and the time-frame for its application longer. Moreover, we believe that ACP countries should benefit from compensation through a dedicated budget line with sufficient funds enabling us to benefit from treatment similar to the one meted out to the outermost regions of the EU.

Our situation is very similar to that prevailing in these outermost regions of the EU, namely the Departments d'Outre Mer (DOM). And, it is no surprise that the Commission has all along recognized that the maintenance of a viable sugar sector in these regions is essential for socio-economic and environmental reasons. We understand that in view of the constraints of agriculture in the Departments d'Outre Mer, special treatment is envisaged which includes production-linked support.

We have ever since 1975 been a close ally of the EU and have been engaged in an exemplary North-South cooperation that has stood the test of time. We have always, through dialogue and understanding, been able to iron out our differences and moved ahead. Once again, we stand ready to embrace a meaningful dialogue with the Commission, the EU Member States and the European Parliament so as to safeguard this longstanding partnership. We are convinced that we can rely on your support and solidarity to ensure that our development programmes and our fight against poverty are not undermined.

Please accept, Prime Minister, the assurances of my highest consideration.



Paul Raymond Bérenger, GCSK, GONM
Prime Minister

HE Mr Tony Blair, MP
Prime Minister of the United Kingdom
Office of the Prime Minister
10, Downing Street
London
United Kingdom

Annex 148

Letter from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004)



*Minister of Foreign Affairs, International Trade and Regional Co-operation
Republic of Mauritius*

22 October 2004

Rt Hon Jack Straw MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign & Commonwealth Office
LONDON

Jack
Dear Foreign Secretary,

I meant to write to you immediately upon my return following our meeting in London on 4th October but my heavy schedule did not allow that.

I hasten to say that it was indeed a pleasure to meet with you and discuss issues of mutual interest. I have reported to Prime Minister Bérenger that our talks were held in a very cordial and frank manner.

As a follow-up to these discussions I await confirmation from you as to the projected meeting between our two Prime Ministers in the very near future.

I also look forward to hearing from you on the outcome of your discussions with the US with respect to the outer islands. I should like to reiterate that, from our perspective, we see no real or perceptible threat to security, having made it clear repeatedly that we have no problem whatsoever with the military and naval base on Diego Garcia.

As regards your proposal that we could envisage entering into a Treaty regarding the Chagos Archipelago, I should be pleased to receive your proposals so that we could have them studied here.

Finally, let me again say that this is a matter of utmost importance to us and we look forward to registering progress on this *dossier*.

J. Cuttaree
J. Cuttaree

Annex 149

Notes Verbales from the Mauritius Ministry of Foreign Affairs to the General Secretariat of the Council of the European Union, Nos. 1197/28/8 & 1197/28 (21 July 2005 & 19 Apr. 2010)

No. 1197/28/8

19 April 2010

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the General Secretariat of the Council of the European Union and has the honour to state as follows:

The Government of the Republic of Mauritius has noted with concern that the Chagos Archipelago (the so-called "British Indian Ocean Territory"), including Diego Garcia, has been included in the list of Overseas Countries and Territories to which the provisions of Part Four of the Treaty on the Functioning of the European Union (Lisbon Treaty) apply.

The Government of the Republic of Mauritius reiterates its position, as conveyed in the Ministry's Note (No. 1197/28) dated 21 July 2005 addressed to the General Secretariat, that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius as defined in the Constitution of the Republic of Mauritius. A copy of the Note is enclosed for ease of reference.

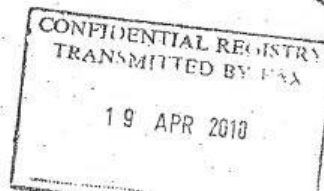
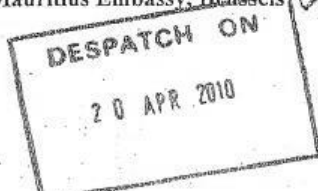
The Government of the Republic of Mauritius does not recognize the so-called "British Indian Ocean Territory". The Chagos Archipelago, including Diego Garcia, was illegally excised from Mauritius by the British Government before granting independence in violation of the United Nations Charter and United Nations General Assembly Resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

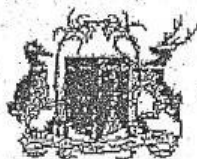
The Government of the Republic of Mauritius unreservedly rejects the inclusion of the Chagos Archipelago (the so-called "British Indian Ocean Territory"), including Diego Garcia, in the list of Overseas Countries and Territories contained in Annex II to Part Four of the Lisbon Treaty.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the General Secretariat of the Council of the European Union the assurances of its highest consideration.

The General Secretariat of the Council of the European Union
Rue de la Loi 175
B-1048 Brussels
Belgium

cc. Delegation of the European Union in Mauritius
Mauritius Embassy, Brussels





REPUBLIC OF MAURITIUS
MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE
AND COOPERATION

No. 1197/28

21 July, 2005

The Ministry of Foreign Affairs, International Trade and Co-operation of the Republic of Mauritius presents its compliments to the Secretariat of the Council of the European Union and has the honour to refer to the inclusion of the Chagos Archipelago, including Diego Garcia (the so-called "British Indian Ocean Territory") in Annex II related to Title IV, Part III of the European Union Constitutional Treaty.

The Government of the Republic of Mauritius reiterates its position stated in the Note MBX/ACP/5005 dated 5 March 2001 from the Embassy of the Republic of Mauritius addressed to the Council of the European Union wherein it rejected the inclusion of the so-called "British Indian Ocean Territory" in the list of Overseas Countries and Territories of the United Kingdom of Great Britain and Northern Ireland.

The Government of the Republic of Mauritius reaffirms in the most unequivocal terms that the Chagos Archipelago, including Diego Garcia, has always been and is an integral part of the State of Mauritius as defined in the Constitution of the Republic of Mauritius.

The Government of the Republic of Mauritius does not recognise the so-called "British Indian Ocean Territory" which was established by the unlawful excision in 1965 of the Chagos Archipelago from the territory of Mauritius, in breach of the Charter of the United Nations and of the United Nations General Assembly Declaration 1514 (XV) of 14 December 1960, Resolution 2066 (XX) of 16 December 1965, and Resolution 2357 (XXII) of 19 December 1967.

The Government of the Republic of Mauritius unreservedly rejects the inclusion of the Chagos Archipelago including Diego Garcia (the so-called "British Indian Ocean Territory") in Annex II related to Title IV, Part III of the European Union Constitutional Treaty.

The Ministry of Foreign Affairs, International Trade and Co-operation of the Republic of Mauritius avails itself of this opportunity to renew to the Secretariat of the Council of the European Union the assurances of its highest consideration.

The Secretariat of the Council of the European Union
Brussels
Belgium

