

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 I

1 March 2018

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CHAPTER 1

INTRODUCTION

1.1 On 22 June 2017, the United Nations General Assembly, by a vote of 94 to 15, adopted Resolution 71/292, which requested the Court to render the present Advisory Opinion pursuant to Article 65 of its Statute. On 14 July 2017, the Court fixed 30 January 2018 as the time-limit within which written statements may be submitted to the Court by the United Nations and its Member States, in accordance with Article 66, paragraph 2 of its Statute. On 17 January 2018, the Court adopted an Order by which it extended the time-limit for the filing of written statements to 1 March 2018. This Written Statement is submitted by Mauritius pursuant to the Order of the Court.

1.2 The request from the General Assembly asks the Court to render an Advisory Opinion on the completion of the decolonisation of Mauritius, which attained its independence on 12 March 1968. The Chagos Archipelago was purportedly detached from the colonial territory of Mauritius three years earlier, by an Order in Council dated 8 November 1965. By that time, the United Nations had played a central role in the process of decolonisation for the two decades since its inception.

1.3 On 14 December 1960, the General Assembly adopted, by a vote of 89 votes to none, the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514 (XV)), which proclaimed that “[a]ll peoples have the right to self-determination” and provided 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.”¹ The Resolution “provided the basis for the process of decolonisation which has resulted since 1960 in the creation of many States which are today Members of the United Nations.”² By the time the Chagos Archipelago was detached from Mauritius by the administering power, clear principles of international law had emerged to govern the process of decolonisation, chief among them the principles of self-determination and territorial integrity.

1.4 These principles were not merely general guidelines or vague aspirations. They were binding rules under international law, with corollary rights, the breach of which not only inflicted a wrong on the people concerned, but also amounted to a violation of norms of paramount importance to the international community as a whole.

1.5 These rules required, at their heart, that the people of a non-self-governing territory had a right to determine their own future. After decades – and in the case of Mauritius more than two centuries – of colonial rule, colonised peoples were, as a matter of international law, finally able to take control of their own destiny, determining whether they wished to be independent and, if so, in what form. Self-determination required that the will of the people as a whole be freely expressed and, once expressed, respected. Territorial integrity required that a colonial territory could not be divided or dismembered other than as a result of the freely-expressed will of the people.

¹ U.N. General Assembly, 15th Session, *Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/RES/1514(XV) (14 Dec. 1960) (hereinafter “*Colonial Declaration* (14 Dec. 1960)”) (**Dossier No. 55**). There were only 9 abstentions.

² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975* (hereinafter “*Western Sahara (Advisory Opinion)*”), p. 32, para. 57. Crawford notes, in that regard, that the Colonial Declaration “has achieved in practice a quasi-constitutional status”. James Crawford, *The Creation of States in International Law* (2006) (hereinafter “Crawford, *Creation of States* (2006)”), p. 604 (**Annex 150**).

1.6 Yet despite the clarity of these principles, on 8 November 1965, the administering power purported to dismember the territory of Mauritius. A portion of that dependent territory, the Chagos Archipelago, was detached and turned into a new colony, to be known as the “British Indian Ocean Territory” (or “BIOT”).³ The Archipelago remains colonised in that form to the present day. Accordingly, although Mauritius gained independence in 1968, the process of decolonisation was, and remains, incomplete. That situation is inconsistent with international law, and gives rise to continuing consequences.

1.7 The detachment (or excision) of the Chagos Archipelago was carried out without any regard to the will of the people of Mauritius, including those who lived in the Chagos Archipelago. The administering power had already decided that the territory would be excised and turned into a new colony, in order to allow one of its allies to build a military base on the island of Diego Garcia. This decision was taken in secret, without any consultation with either the people of Mauritius or their representatives.

1.8 The excision also involved the forcible expulsion of the entire population of the Chagos Archipelago, many of whose families had lived on the islands for generations. The administering power attempted to cover up the expulsion with the false claim that the islands were uninhabited other than by a few “contract labourers”. Almost fifty years later, the administering power expressed “regret” for the circumstances in which the inhabitants were removed from the islands and recognised that “what was done then should not have happened.”⁴ The shameful

³ Mauritius does not recognise the so-called “British Indian Ocean Territory” (sometimes referred to as “BIOT”).

⁴ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 1) (22 Apr. 2014), p. 43:21-23 (**Annex 169**).

expulsion caused, and continues to cause, immense suffering to this part of the Mauritian population, who are commonly referred to as Chagossians. They have fought for decades for the right to return to their place of birth. Mauritius supports the Chagossians' right of return to the Chagos Archipelago.

1.9 Fully aware that the excision would lead to international condemnation, the administering power sought, for presentational purposes, to extract the “consent” of Mauritian Ministers at a 1965 Constitutional Conference at Lancaster House in London.

1.10 As the contemporary records demonstrate, the choice that was given to the Mauritian Ministers was, in fact, no choice at all. A meeting took place between the British Prime Minister, Harold Wilson, and Sir Seewoosagur Ramgoolam, the Premier of Mauritius, on 23 September 1965. A minute prepared for the Prime Minister described the purpose of the meeting with brutal clarity:

Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is **to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.**⁵

1.11 These words admit of no ambiguity. The Mauritian Ministers at Lancaster House were told in no uncertain terms that the Chagos Archipelago was going to be detached and remain a British territory. The only question for discussion was whether the rest of Mauritius would *also* remain a colony, or would attain

⁵ U.K. Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965) (hereinafter “*Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius* (22 Sept. 1965)”) (emphasis added) (**Annex 59**).

independence. Faced with this non-choice, in a situation of duress, the Mauritian Ministers took independence for the rest of Mauritius.

1.12 The administering power then moved swiftly to present the United Nations with what it described as a *fait accompli*, noting that:

From the United Nations point of view the timing is particularly awkward. We are already under attack over Aden and Rhodesia, and whilst it is possible that the arrangements for detachment will be ignored when they become public, it seems more likely that they will be added to the list of 'imperialist' measures for which we are attacked. We shall be accused of creating a new colony in a period of decolonisation and of establishing new military bases when we should be getting out of the old ones. If there were any chance of avoiding publicity until this session of the General Assembly adjourns at Christmas there would be advantage in delaying the Order in Council until then. But to do so would jeopardise the whole plan.

The Fourth Committee of the United Nations has now reached the item on Miscellaneous Territories and may well discuss Mauritius and Seychelles next week. If they raise the question of defence arrangements on the Indian Ocean Islands before we have detached them, the Mauritius Government will be under considerable pressure to withdraw their agreement to our proposals. Moreover we should lay ourselves open to an additional charge of dishonesty if we evaded the defence issue in the Fourth Committee and then made the Order in Council immediately afterwards. It is therefore important that we should be able to present the U.N. with a fait accompli.⁶

1.13 Condemnation at the U.N. was swift and strong, but the administering power, then and subsequently, ignored the international community's calls to restore Mauritius' territorial integrity. These included General Assembly

⁶ U.K. Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister*, FO 371/184529 (5 Nov. 1965) (hereinafter "*Minute from Secretary of State for the Colonies to the Prime Minister* (5 Nov. 1965)"), paras. 6-7 (emphasis in the original) (**Annex 70**).

Resolution 2066 (XX), passed shortly after the excision, which required the administering power “to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV)” and “to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”.⁷ This resolution of the General Assembly was adopted decades before the full facts about what had happened in 1965 would come to be known.

1.14 Two international judges have carefully considered these matters, in proceedings brought under Annex VII of the 1982 U.N. Convention on the Law of the Sea. They concluded that, in detaching the Chagos Archipelago, the administering power showed “a complete disregard for the territorial integrity of Mauritius”.⁸ They expressed the view that “[t]he detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not” and that the Prime Minister’s “threat that Ramgoolam could return home without independence amounts to duress”, while “[t]he Colonial Secretary equally resorted to the language of intimidation.”⁹ The threats and intimidation were, in their view, all the more serious since Mauritius was a colony at the time, and thus “there was a clear situation of inequality between the two sides.”¹⁰ No international judge has expressed a contrary view.

⁷ U.N. General Assembly, 20th Session, *Question of Mauritius*, U.N. Doc. A/RES/2066(XX) (16 Dec. 1965) (hereinafter “*Question of Mauritius* (16 Dec. 1965)”), paras. 3-4 (**Dossier No. 146**).

⁸ *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Dissenting and Concurring Opinion of Judge James Kateka and Judge Rüdiger Wolfrum, UNCLOS Annex VII Tribunal (18 Mar. 2015) (hereinafter “*The Chagos Marine Protected Area Arbitration, Dissenting and Concurring Opinion* (18 Mar. 2015)”), para. 91 (**Dossier No. 409**).

⁹ *Ibid.*, paras. 76-77.

¹⁰ *Ibid.*, para. 77.

I. The involvement of the U.N. General Assembly

1.15 The U.N., and in particular the General Assembly, has played a central role in the decolonisation process, under its Charter mandate. Its practice on decolonisation, and its central role in relation to Mauritius in particular, are reviewed in the chapters which follow. Thus it was entirely appropriate for the General Assembly to continue to take up the issue of the decolonisation of Mauritius by way of this request for an Advisory Opinion. The process by which this came about is as follows.

1.16 On 16 September 2016, the General Assembly adopted its Agenda for the 71st session, which included at item 87: “Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.”¹¹ This item was included on the understanding that there would be no consideration of the matter before June 2017, in order to allow for Mauritius and the administering power to consult on the completion of the decolonisation of Mauritius.¹² In March 2017 the administering power expressed the view that the decolonisation process of Mauritius was completed at the time it granted independence to Mauritius and that it had lawfully detached the Chagos Archipelago.

1.17 Consequently, on 1 June 2017, the Permanent Representative of Mauritius to the U.N. in New York wrote to the President of the General Assembly, requesting that a date be set for the consideration of Agenda item 87 by the General

¹¹ U.N. General Assembly, 71st Session, *Agenda of the seventy-first session of the General Assembly*, U.N. Doc. A/71/251 (16 Sept. 2016) (**Annex 184**).

¹² Talks were held on 9 November 2016, 2 February 2017 and 7 March 2017.

Assembly.¹³ The President of the General Assembly decided to convene a meeting on 22 June 2017.¹⁴

1.18 On 15 June 2017, the Republic of Congo, acting on behalf of the Group of African States, submitted a draft resolution to the U.N. Secretariat.

1.19 On 22 June 2017, the U.N. General Assembly, by a vote of 94 to 15, adopted Resolution 71/292, by which the Court was requested to render the present Advisory Opinion pursuant to Article 65 of its Statute.¹⁵ The resolution was opposed by only two of the five Permanent Members of the Security Council, one of which was the administering power.

1.20 Introducing the draft resolution at the plenary meeting, the representative of the Republic of Congo explained that:

As everyone is aware, the right to self-determination and the completion of the decolonization process continue to be a central concern of the United Nations as a whole. That is why we firmly believe that the United Nations would benefit from the guidance of a principal judicial organ of the United Nations on the decolonization process with respect to the two questions posed in the draft resolution. An advisory opinion of the International Court of Justice would assist the General Assembly in its work and would contribute to the promotion of the international rule of law.¹⁶

¹³ Letter from H.E. Mr Jagdish Koonjul, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations, to H.E. Mr Peter Thomson, President of the 71st session of the United Nations General Assembly (1 June 2017) (**Annex 191**).

¹⁴ Letter from H.E. Mr Peter Thomson, President of the 71st session of the United Nations General Assembly, to all Permanent Representatives and Permanent Observers of the United Nations in New York (1 June 2017) (**Annex 192**).

¹⁵ There were 65 abstentions.

¹⁶ U.N. General Assembly, 71st Session, 88th Plenary Meeting, *Agenda item 87: Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation*

1.21 The representative of Mauritius, Sir Anerood Jugnauth, the only surviving member of the Mauritian delegation to the Constitutional Conference in London in 1965, stated that:

The position that the administering Power brought about in 1965 remains unchanged today. Consequently, as there is no prospect of any end to the colonization of Mauritius, the General Assembly has a continuing responsibility to act. More than five decades have passed and now is the time to act.

It is fitting for the General Assembly to fulfil that function on the basis of guidance from the International Court of Justice as to the legality of the excision of the Chagos Archipelago in 1965. The draft resolution before the General Assembly contains two legal questions which are linked to the issue of decolonization – a matter of direct interest to the General Assembly. An advisory opinion would no doubt contribute significantly to the work of the General Assembly in fulfilling its functions under Chapters XI to XIII of the Charter of the United Nations.

...

The vote on the draft resolution before the General Assembly would be a vote in support of completing the process of decolonization, respect for international law and the rule of law, and respect for the international institutions that we States Members of the United Nations have created. It is also a vote of confidence in the International Court of Justice, the principal judicial organ of the United Nations.¹⁷

1.22 The representative of Venezuela, speaking on behalf of the Non-Aligned Movement (“NAM”), expressed the “unshakable” support of NAM for all

of the Chagos archipelago from Mauritius in 1965, U.N. Doc. A/71/PV.88 (22 June 2017), p. 6 (**Dossier No. 6**).

¹⁷ *Ibid.*, pp. 7-8.

decolonisation initiatives, including in the case of Mauritius “any action that might be taken in this regard by the General Assembly.”¹⁸

1.23 The representative of India noted that, when the United Nations was established in 1945, “almost a third of the world’s population lived in territories that were non-self-governing and dependent on colonial Powers.”¹⁹ However,

As a result of the sustained collective efforts of the United Nations membership, today fewer than 2 million people live in non-self-governing territories, according to United Nations documentation. Since the creation of the United Nations, more than 80 former colonies have gained their independence and taken their rightful place in the General Assembly. However, the process of decolonization that began with our own independence is still unfinished, seven decades later. In fact, in 2011 the Assembly proclaimed the decade 2011-2020 to be the third International Decade for the Eradication of Colonialism. We would like to see that long-drawn-out process concluded.²⁰

1.24 The representative of Egypt stated that “this is one of the pending issues that are preventing us from putting an end to colonization, and we therefore hope that we can find an appropriate solution to it that accords with the Charter of the United Nations and the principles of international law.”²¹

1.25 The representative of Kenya stated that:

The historical injustice and deep scars of the human rights abuses that have accompanied the occupation and exploitation of the archipelago demand that all nations that believe in the principles of the Charter of the United Nations should stand up to be counted in

¹⁸ *Ibid.*, p. 9.

¹⁹ *Ibid.*, p. 14.

²⁰ *Ibid.*

²¹ *Ibid.*

support of today's draft resolution. After all, all that is being asked for here is an advisory opinion from the International Court of Justice – a mere advisory opinion of an international court that we all respect. What could possibly be so unpalatable about that? There can be no difference, indeed no moral or ethical space, between a commitment to human rights today and the correction of grave historical injustices perpetrated in the past, no matter how embarrassing or how high the cost. We believe that our civilization and our membership in the United Nations demand this of us.²²

1.26 The representative of Brazil stated that:

Decolonization constitutes one of the unfinished tasks of the United Nations and is therefore an issue of interest to the international community as a whole. The General Assembly has a crucial role to play in advancing the progress of decolonization. One of the tools at its disposal, as set out in the Charter of the United Nations, is to request that the International Court of Justice provide clarification on legal issues through its advisory jurisdiction.

A vote in favour of this resolution does not mean a commitment to any particular interpretation of the underlying issue. It means a request for the principal legal body of the United Nations to provide, through a non-binding opinion, legal elements that may guide all parties to definitively settle this question.²³

II. The questions posed by the U.N. General Assembly

1.27 As Resolution 71/292 makes clear, the Advisory Opinion requested by the General Assembly is intended to provide it with legal guidance which is necessary to enable it to address matters that have long been among its highest priorities. These include the granting of independence to colonial countries and peoples; the protection of colonial peoples' inalienable rights to sovereignty, national unity and territorial integrity; and the full and immediate implementation of Resolution 1514

²² *Ibid.*, p. 15.

²³ *Ibid.*, p. 21.

(XV), as well as compliance with Resolution 2066 (XX). As the voting record shows, the request for an Advisory Opinion comes before the Court with the overwhelming support of U.N. Member States, 94 of whom voted for the resolution while only 15 opposed it.²⁴

1.28 As Mauritius explains in Chapter 5 below, the Court plainly has jurisdiction to answer the questions posed by the General Assembly, and there are powerful reasons why it should exercise its discretion to do so, rather than denying the General Assembly the benefit of the legal opinion which it has sought. Further, the two questions are inextricably linked and, in Mauritius' submission, the Court must answer both of them.

1.29 In setting out its observations on the two questions before the Court, Mauritius proceeds on the basis that the request, and in particular the second question, is forward-looking. Accordingly, while Mauritius fully reserves all its rights in relation to the administering power's prior wrongful conduct, as well as the consequences thereof, it does not itself ask the Court to address issues of compensation or reparation for that conduct, although the Court is of course free to do so if it considers this necessary in answering the second question. For its part, Mauritius' focus in approaching the second question is first and foremost on the need for the wrongful situation to be brought to an immediate end, in conformity with well-established principles of international law.

1.30 It is important to underscore that, since it attained independence almost exactly 50 years ago, Mauritius has been a peaceful, stable democracy, with excellent relations with all States interested in the questions referred to the Court.

²⁴ *Ibid.*, p. 18.

It is committed to the rule of law, to the maintenance of international peace and security, and to the protection of the environment. Its firm commitment to these objectives underlines that this request for an Advisory Opinion is *not* intended to bring into question the existence of the military base on Diego Garcia, or to undermine the protection of the environment of the Chagos Archipelago. In particular:

- i. Defence and security: Mauritius recognises the existence of the military base on Diego Garcia and has repeatedly made clear to the United States and the United Kingdom that it accepts the future operation of the base in accordance with international law.²⁵
- ii. The protection of the environment: Mauritius has been a responsible guardian of the other areas of great environmental importance within its territory, and has clearly stated its commitment to protecting the environment of the Chagos Archipelago to the highest possible standard.²⁶

²⁵ See Chapter 7, Part III. B. 2. See also *Letter* from the Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000) (**Annex 141**); *Letter* from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (**Annex 147**); *Letter* from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (**Annex 148**); *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (**Annex 168**); *Letter* from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (**Annex 193**).

²⁶ Mauritius is a party to numerous international instruments concerning environmental protection and conservation, including: the Convention on Fishing and Conservation of the Living Resources of the High Seas 1958; the Convention on Wetlands of International Importance 1971; the Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973; the Convention on the Conservation of Migratory Species of Wild Animals 1979; the Convention on the Conservation of Antarctic Marine Living Resources 1980; the United Nations Convention on the Law of the Sea 1982; the Convention on Biological Diversity 1992; the United Nations Framework Convention on Climate Change 1992; the Agreement on the Establishment of the Indian Ocean Tuna Commission 1993; the Straddling Stocks Agreement 1995; the Agreement on the

III. Summary of Mauritius' Written Statement

1.31 Mauritius' Written Statement is in seven chapters. Following this introductory chapter, **Chapters 2-4** set out a summary of the relevant facts, and **Chapters 5-7** address the legal issues.

1.32 **Chapter 2** examines Mauritius' geography and colonial history. Mauritius was first occupied by the Dutch between 1638 and 1710, then colonised by France from 1715 to 1810, followed by 157 years of British colonial rule, from 3 December 1810 until Mauritius' independence on 12 March 1968. During the period of French colonial rule, the Chagos Archipelago was administered as part of the colony of Mauritius.²⁷ This continued without interruption throughout the entirety of the period of British colonial rule. In law and in practice, therefore, the Chagos Archipelago has always been – and has been treated as – an integral part of Mauritius.²⁸

1.33 **Chapter 3** addresses factual matters which are central to the present request. It considers the decolonisation of Mauritius, from the limited measures of self-government in the early 1940s to the 1965 Constitutional Conference in London, when the British Government announced that it had reached the

Conservation of African-Eurasian Migratory Waterbirds 1995; the Kyoto Protocol 1998; the Memorandum of Understanding on the Conservation and Management of Marine Turtles and Their Habitats of the Indian Ocean and South-East Asia 2001; the Paris Agreement 2015; and the Minamata Convention on Mercury 2017. *See also* Republic of Mauritius, *National Report of the Republic of Mauritius in view of the Third International Conference on Small Island Developing States* (July 2013) (**Annex 166**); Republic of Mauritius, *National Biodiversity Strategy and Action Plan 2017-2025* (May 2017) available at <https://www.cbd.int/doc/world/mu/mu-nbsap-v2-en.pdf> (last accessed 13 Feb. 2018).

²⁷ *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, UNCLOS Annex VII Tribunal (18 Mar. 2015) (hereinafter "*The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015)"), para. 58 (**Dossier No. 409**).

²⁸ *See* Chapter 2, Part IV.

conclusion “that it was right that Mauritius should be independent and take her place among the sovereign nations of the world.”²⁹ In setting out the historical and factual background, the chapter addresses:

- i. Mauritius’ struggle for independence, and the concurrent development of a secret plan to detach the Chagos Archipelago;
- ii. The talks with Mauritian Ministers at the 1965 Constitutional Conference in London at which the colonial authorities were to decide on Mauritius’ final status;
- iii. The U.K.’s undertakings to the Mauritian Government, and the subsequent detachment of the Chagos Archipelago by Order in Council;
- iv. The 1966 agreement by which the administering power made the island of Diego Garcia available to a military ally for an indefinite period, for the establishment of a military base; and
- v. The forcible expulsion of the Chagossians.

1.34 **Chapter 4** proceeds to describe the reactions and responses to the purported detachment of the Chagos Archipelago from Mauritius, over the half century that has since passed. It includes the statements and actions of Mauritius itself, of the United Nations, and of important groups of States, including: the Organisation of African Unity and the African Union; the Non-Aligned Movement; the Group of 77 and China; the African, Caribbean and Pacific Group of States; and the Africa-South America Summit. It also describes the reactions of Mauritius and the

²⁹ United Kingdom, *Mauritius Constitutional Conference Report* (24 Sept. 1965) (hereinafter “*Mauritius Constitutional Conference Report* (24 Sept. 1965)”), p. 5, para. 20 (**Annex 64**).

international community to the forcible removal of all the inhabitants of the Chagos Archipelago, and the prevention of their return by the United Kingdom ever since.

1.35 Moving on to the legal issues, **Chapter 5** addresses the jurisdiction of the Court to render the advisory opinion that has been requested, and the propriety of its doing so.

1.36 The first part of the Chapter shows that the Court has jurisdiction to render the Advisory Opinion, because the General Assembly is an organ duly authorised to seek an Advisory Opinion from the Court, and because the request raises questions of a legal character.

1.37 The Chapter then demonstrates that there are no reasons for the Court to decline to render an opinion on the matters which the General Assembly has placed before it. There is no “compelling reason” for the Court to decline to exercise the advisory jurisdiction which the Charter and the Statute have conferred upon it, and, on this basis and in keeping with all relevant precedents, it should exercise that jurisdiction and render the opinion which the General Assembly has sought.

1.38 As Mauritius sets out in greater detail below, it has for decades sought to bring the colonisation of the Chagos Archipelago to an end, raising the matter in a range of international fora as well as directly with the administering power. That does not make the dispute a “bilateral” one: although plainly any ongoing unlawful colonisation will give rise to a sovereignty dispute between the State whose territory is colonised and the administering power, this does not remove the matter from the advisory jurisdiction of the Court. Otherwise the perverse result would be that some of the most important legal issues in the international legal order could

not be the subject of advice from the Court in accordance with its advisory function: this is not a result which would assist either the U.N. or its Member States.

1.39 The Court's response to the first question would assist the General Assembly in establishing whether under international law the process of decolonisation of Mauritius was lawfully completed when Mauritius was granted independence in 1968, or whether the excision of the Chagos Archipelago from Mauritius by the administering power, and the continued exercise of colonial authority over the "British Indian Ocean Territory", prevents the lawful decolonisation of Mauritius from being completed.

1.40 The Court's response to the second question – which is inextricably connected to the first question – is necessary for the General Assembly to determine what legal consequences under international law follow from the continued administration of the Chagos Archipelago by the administering power. This includes, but is not limited to, the ongoing inability of Mauritius to implement a programme for the resettlement of its nationals, in particular those of Chagossian origin in the Chagos Archipelago.

1.41 In **Chapter 6**, Mauritius addresses the first question before the Court. The Chapter reviews and analyses the law of decolonisation, from its origins through its development over the course of the last century, and then applies the law to the specific situation of Mauritius' own incomplete decolonisation. In summary:

- i. The main legal obligation in respect of decolonisation is that it must accord fully with the right of self-determination under international law.
- ii. The right of self-determination had already been firmly established by the time of Mauritius' independence in 1968 (and indeed by the time of

the excision of the Chagos Archipelago in 1965), including in the work of the United Nations in supervising the process of decolonisation.

- iii. Self-determination required the free and genuine consent of the population concerned – for example as expressed through referenda/plebiscites – so as to determine the future of the territory. This was particularly so in cases in which straightforward independence of the non-self-governing territory as a single unit was not envisaged.
- iv. A corollary to this was that self-determination should not be impeded by the arbitrary division (or dismemberment, or excision) of territory before independence. The division of territory was legitimate only in cases in which it ensued as a consequence of the freely expressed consent of the people concerned.
- v. The right of self-determination applied to the entire territory of Mauritius, including the Chagos Archipelago. However, the Chagos Archipelago was excised from the territory of Mauritius by the administering power in service of its own interests rather than those of the Mauritian people, who were never given an opportunity to express their wishes as to the proposed division and dismemberment of the territory.
- vi. The pressure placed upon Mauritian Ministers at the Constitutional Conference in 1965, in which it was made clear by the administering power that independence was only available with the excision of the Chagos Archipelago, vitiated any purported consent on the part of the Mauritian people or their representatives.
- vii. As a consequence, Mauritius came to independence in 1968 with its territory having been dismembered less than three years earlier.

Dismembering Mauritius' territory shortly prior to independence, without the freely-expressed consent of the people, prevented Mauritius from the effective exercise of its right of self-determination and violated its associated right of territorial integrity, with effect from 1968 and at all times thereafter.

- viii. The inescapable conclusion is that the decolonisation of Mauritius was not lawfully completed in 1968. At the point when Mauritius came to independence with its territory having been dismembered, an internationally wrongful situation crystallised. That wrongful situation has continued to this day.

1.42 **Chapter 7** then examines the consequences of this situation, in response to the second question before the Court, which is inextricably connected to the first. The question requests the Court's legal opinion on the legal consequences that arise, including, but not limited to, those that pertain to the resettlement of Mauritian nationals, in particular those of Chagossian origin, in the Chagos Archipelago. As Chapter 7 explains, Mauritius considers that the main legal consequences may be summarised as follows:

- i. The failure to complete the decolonisation of Mauritius is a continuing wrongful act that persists to this day. This situation must be brought to an end and full legality restored, a result that can only be achieved by the completion of the process of decolonisation as required by international law. Decolonisation will be complete when the colonial administration has been fully withdrawn from the Chagos Archipelago, Mauritius is able to exercise full rights of sovereignty, and the administering power recognises Mauritius' sovereignty over the Archipelago.

- ii. In regard to the timeframe for completing the process of decolonisation, Mauritius notes that the Court stated in its *Namibia* Advisory Opinion that the colonial administration must be withdrawn “immediately”.³⁰ This temporal obligation is reinforced by the principle that all colonial arrangements must be brought to a speedy end.
- iii. Decolonisation elsewhere demonstrates that this can be achieved quickly, often in less than a year. That is so even when the process is much more complex than is the case with the Chagos Archipelago, where the existing colonial administration is minimal.
- iv. The existence of a military base on Diego Garcia provides no basis for delaying the immediate completion of decolonisation. Mauritius recognises the existence of the base and accepts its future operation in accordance with international law.
- v. In addition, and in particular, the administering power must cooperate with Mauritius to facilitate its efforts to resettle, as a matter of urgency, Mauritian nationals of Chagossian origin in the Archipelago and to ensure the access of other Mauritian citizens to the Archipelago.
- vi. Pending the immediate completion of decolonisation, the administering power is under a legal obligation to act in the best interests of the people of Mauritius. In order to effectuate the transfer of administrative responsibilities to Mauritius in an orderly and timely manner, the administering power must consult and cooperate with Mauritius to ensure that: (a) the Chagos Archipelago is administered in a manner

³⁰ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971* (hereinafter “*South West Africa (Advisory Opinion)*”), p. 58, para. 133.

which promotes the economic well-being of the Mauritian people; (b) Mauritius is afforded access to its natural resources; (c) the environment of the Chagos Archipelago is fully protected; (d) Mauritius participates in the authorisation, oversight and regulation of scientific research in and around the Archipelago; (e) Mauritius is allowed to make submissions to the U.N. Commission on the Limits of the Continental Shelf in regard to the Archipelago; and (f) Mauritius is able to proceed to a delimitation of the Archipelago's maritime boundaries with the Maldives.

- vii. Third States and international organisations, including the United Nations, are under an obligation to assist in the completion of the process of decolonisation, and may not render any aid or assistance that would help maintain the illegal situation presented by the continued colonial administration of the Chagos Archipelago. The duty to assist in completing Mauritius' decolonisation is a positive one.

1.43 Mauritius is respectful of the fact that in addition to the matters it has raised and is principally concerned with, the Court may itself identify additional matters which it considers should be addressed, in responding to the second question. This Written Statement is accompanied by four volumes of Annexes, comprising documents which may be of assistance to the Court and that are not included in the Dossier which the Secretariat of the United Nations has compiled for the purposes of the present Request.

CHAPTER 2

GEOGRAPHY AND COLONIAL HISTORY

I. Introduction

2.1 This Chapter addresses matters of geography, as well as early and colonial history. Mauritius was first occupied by the Dutch between 1638 and 1710, then colonised by France from 1715 to 1810, followed by 157 years of British colonial rule, from 3 December 1810 until Mauritius' independence on 12 March 1968. During the period of French colonial rule, the Chagos Archipelago was administered as part of the colony of Mauritius.³¹ This continued without interruption throughout the entire period of British colonial rule. In law and in practice, the Chagos Archipelago has always been an integral part of Mauritius.³²

II. Geography

2.2 The Republic of Mauritius comprises a group of islands in the Indian Ocean, which collectively amount to approximately 1,950 square kilometres. The main Island of Mauritius is located approximately 900 kilometres east of Madagascar. The capital, Port Louis, is located on that island.

2.3 In addition to the main Island, the Republic of Mauritius includes the islands of Cargados Carajos (the St. Brandon Group of 16 islands and islets), which lie 402 kilometres north; Rodrigues Island, situated 560 kilometres to the north-east; Agalega, located 933 kilometres to the north; Tromelin, 580 kilometres to the north-

³¹ *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), para. 58 (**Dossier No. 409**).

³² See Part IV below.

west; and the Chagos Archipelago, located approximately 2,200 kilometres to the north-east.³³ The Chagos Archipelago is approximately 517 kilometres from Maldives, with which it shares a maritime boundary, and 9,114 kilometres to the south-east of the United Kingdom.

2.4 The Chagos Archipelago is composed of numerous atolls and islands. In the north are Peros Banhos, Salomon Islands and Nelsons Island; in the south-west are Three Brothers, Eagle, Egmont and Danger Islands. Diego Garcia lies in the south-east part of the Archipelago. The largest individual islands are Diego Garcia (27.20 square kilometres), Eagle (Great Chagos Bank, 2.45 square kilometres), *île Pierre* (Peros Banhos, 1.50 square kilometres), Eastern Egmont (Egmont Islands, 1.50 square kilometres), *île du Coin* (Peros Banhos, 1.28 square kilometres) and *île Boddam* (Salomon Islands, 1.08 square kilometres).

³³ See *The Constitution of the Republic of Mauritius* (12 Mar. 1968) (as amended, including by the Constitution of Mauritius (Amendment No. 3) Act of 17 Dec. 1991), Section 111(1) (**Annex 96**).

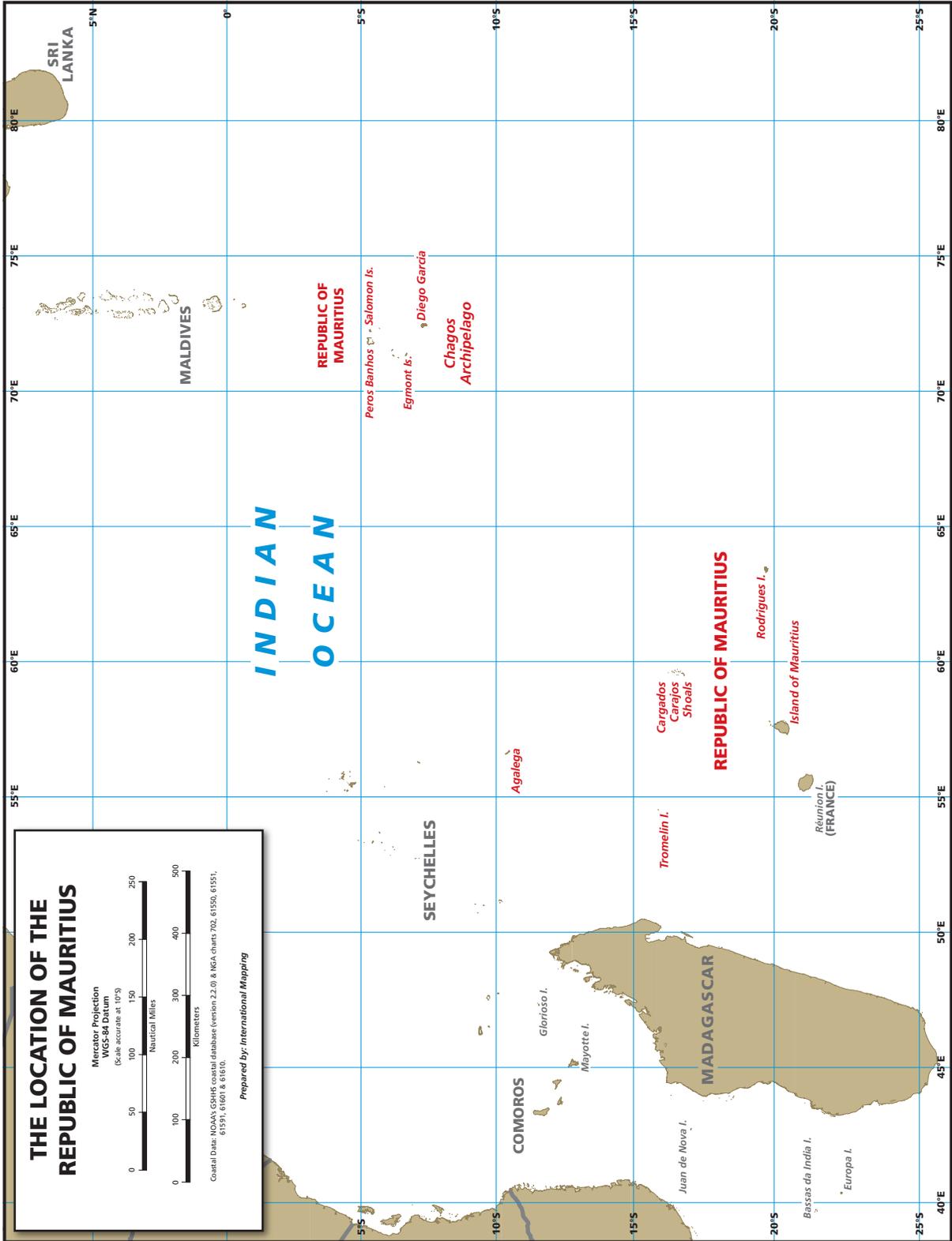


Figure 1

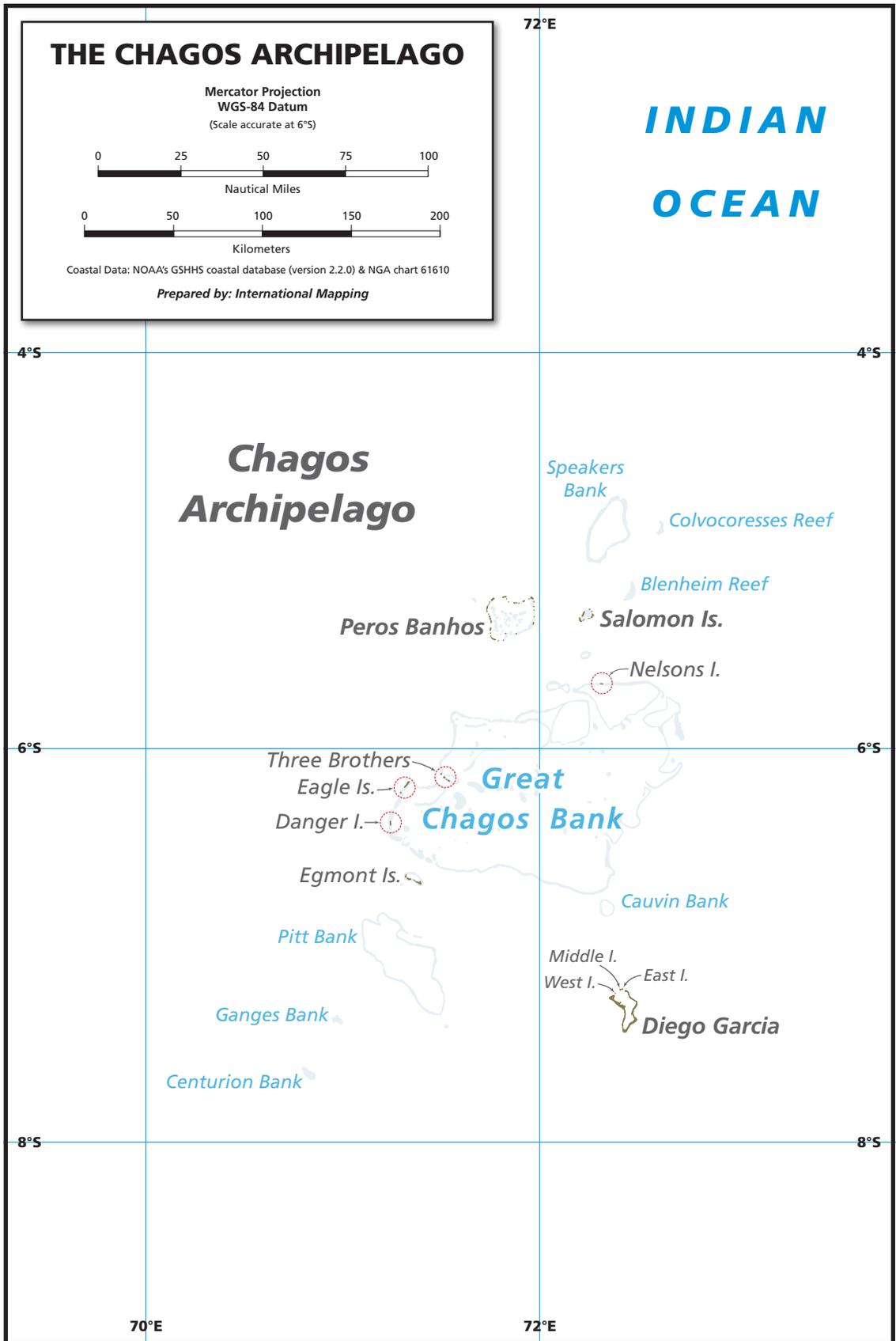


Figure 2

2.5 Mauritius has a population of 1.26 million, of which about 119,600 reside in the capital city of Port Louis.³⁴ Sugar cane has traditionally been of vital importance to the Mauritian economy; it is grown on 90% of all cultivated land and was first introduced by Dutch settlers in the 17th century. Since attaining independence, Mauritius' economy has become increasingly diversified and now encompasses *inter alia* tourism, financial services, textiles, and seafood processing and exports.

III. Early and colonial history

2.6 The available evidence indicates that Mauritius was known to Arab sailors as early as the 10th century,³⁵ and that Phoenician sailors, as well as Malays and Indonesians, may have visited the island even earlier.³⁶ In the late 15th and 16th centuries Portuguese expeditions came to the Indian Ocean,³⁷ including that of Vasco da Gama, who in 1498 rounded the Cape of Good Hope to enter the Indian Ocean.³⁸ Diogo Dias, a Portuguese captain, is said to have discovered Mauritius in July 1500.³⁹ The Island and its neighbours were collectively known as the

³⁴ See Republic of Mauritius, Ministry of Finance & Economic Development, *Mauritius in Figures* (2016), p. 8 (**Annex 177**). As of 1 July 2017, the resident population of Mauritius was estimated at 1,264,887, of which 1,221,975 live in the main Island of Mauritius, 42,638 in the Island of Rodrigues and 274 in Agalega and St. Brandon. There are presently no Mauritian residents living in the Island of Tromelin or in the Chagos Archipelago. (There may be some Mauritians working in Diego Garcia on a contractual basis). See Republic of Mauritius, *Population and Vital Statistics (Jan.-June 2017)* (2017) (**Annex 188**).

³⁵ J. Addison & K. Hazareesingh, *A New History of Mauritius* (1993) (hereinafter "Addison & Hazareesingh, *History of Mauritius* (1993)"), p. 1 (**Annex 137**).

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 2.

³⁸ *Ibid.*

³⁹ Alfred North-Coombes, *La découverte des Mascareignes par les Arabes et les Portugais: rétrospective et mise au point: contribution à l'histoire de l'océan Indien au XVI^e siècle* (1979), p. 141.

Mascarenes after another Portuguese captain, Pedro Mascarenhas. The Chagos Archipelago (known to the Portuguese as *Chagas*) was discovered by Diego García de Moguer, although it did not appear on Portuguese maps until 1538.⁴⁰

2.7 Despite numerous expeditions, the Portuguese showed no interest in colonising any of the islands discovered in the Indian Ocean, and Mauritius, including the Chagos Archipelago, remained uninhabited. At the end of the 16th century, the Dutch and English arrived in the Indian Ocean and respectively established the Dutch and English East India companies to challenge the Portuguese commercial hegemony.

2.8 In 1598 Dutch admiral Wybrandt van Warwyck landed at Grand Port in south-west Mauritius and took possession of the island, naming it in honour of Maurice of Nassau, Prince of Orange.⁴¹ The Dutch made no attempt to colonise Mauritius for a number of years, opting instead for Indonesia as their first permanent establishment in the region.⁴² In 1638 agents for the Dutch East India Company occupied Mauritius, together with a contingent of convicts and slaves from Indonesia and Madagascar. This first attempt to establish a permanent settlement and colonise Mauritius lasted only 20 years, primarily motivated by a desire to counter British and French plans to do so.⁴³ The Dutch abandoned Mauritius in 1710 and the French took control of the island in 1715, renaming it *Île*

⁴⁰ Auguste Toussaint, *History of Mauritius*, 8th Ed., Macmillan (1977), p. 16.

⁴¹ Addison & Hazareesingh, *History of Mauritius* (1993), p. 3 (**Annex 137**).

⁴² Auguste Toussaint, *History of Mauritius*, 8th Ed., Macmillan (1977), p. 19.

⁴³ *Ibid.*

de France. The Chagos Archipelago remained largely untouched during this period and was rarely visited by Europeans.⁴⁴

2.9 In 1744 a Dutch captain, van Keulen, reported the position of Diego Garcia, and slaves were sought from Mozambique and Madagascar to work on coconut plantations on the larger islands of the Chagos Archipelago. The first slave colony was likely situated on Peros Banhos. The French surveyed the Archipelago in the 1740s, and claimed Diego Garcia in 1769. Permanent settlement on Diego Garcia appears to have come about through a concession granted in 1783 by the French colonial government in *Île de France* to a prominent French planter, Pierre Marie Normande.⁴⁵ However, there is also a historical account of the grant of Diego Garcia by the French Governor in *Île de France* to Mr Dupuit de la Faye, in 1778.⁴⁶

2.10 A coconut plantation society was gradually established in the Chagos Archipelago by commercial enterprises under further concessions granted by the French authorities in *Île de France*. Lying only 4-8° from the Equator, the climate of the Chagos Archipelago was well suited to the cultivation of coconuts and, unlike the Island of Mauritius further to the south, the Archipelago was less threatened by tropical cyclones. The Chagos Archipelago became dependent on the coconut plantations for the production of copra (dried coconut flesh used to produce coconut oil).⁴⁷ Most of the copra was sent from the Chagos Archipelago to *Île de France*,

⁴⁴ Richard Edis, *Peak of Limuria: The Story of Diego Garcia* (1993) (hereinafter “Edis, *Peak of Limuria* (1993)”), p. 24 (**Annex 136**).

⁴⁵ David Vine, *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia* (2009) (hereinafter “Vine, *Island of Shame* (2009)”), p. 23 (**Annex 151**).

⁴⁶ Edis, *Peak of Limuria* (1993), p. 28 (**Annex 136**).

⁴⁷ Coconut oil was of such importance to the Chagos Archipelago that the Archipelago has been historically referred to as the “Oil Islands”.

but some coconut oil is known to have been extracted in Diego Garcia from 1793.⁴⁸ During this period France was at war with Britain, and a British blockade caused a significant rise in oil prices, spurring businessmen in *Île de France* to establish more coconut plantations on Diego Garcia and the outlying islands.⁴⁹

2.11 The French and British surveyed and mapped the islands of the Chagos Archipelago in the later stages of the 18th century, as they became prizes fought over by the two powers. A British party from the British East India Company set off from Bombay in March 1786 with the intention of colonising Diego Garcia to establish a provisions station. The British expedition landed on Diego Garcia in April of that year and were surprised to come across French planters. The French planters retreated to *Île de France* and the British expedition took possession of the island, claiming it for Britain.⁵⁰

2.12 On the news of the British expedition, the French Governor in Mauritius, Vicomte de Souillac, sent a letter of protest to the British authorities in Bombay and a French warship set off for the Chagos Archipelago.⁵¹ To avoid any conflict with the French, the British Governor in Bombay, Rawson Hart Boddam, instructed the British expedition to evacuate Diego Garcia immediately.⁵² Following the departure of the British expedition, the French erected a stone marker on Diego Garcia to proclaim France's sovereignty over the island.⁵³ Throughout the period

⁴⁸ Edis, *Peak of Limuria* (1993), p. 32 (**Annex 136**). During the 1790s, salted fish, sea slugs and rope made of coconut fibre were exported from the Chagos Archipelago.

⁴⁹ *Ibid.*, p. 32.

⁵⁰ *Ibid.*, pp. 29-30.

⁵¹ *Ibid.*, pp. 30-31.

⁵² *Ibid.*, p. 31.

⁵³ *Ibid.*

of French rule in *Île de France*, France governed the Chagos Archipelago, along with Seychelles, as dependencies of *Île de France*.⁵⁴

2.13 French power in the Indian Ocean waned towards the end of the 18th century when the British captured Seychelles in 1794, and eventually *Île de France* in 1810. France ceded *Île de France* and all its dependencies to the U.K. through the Treaty of Paris, signed on 30 May 1814. Article VIII refers collectively to the cession of Mauritius and its dependencies:

His Britannic Majesty, stipulating for himself and his Allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, Fisheries, Factories, and Establishments of every kind which were possessed by France on the 1st of January, 1792, in the Seas and on the Continents of America, Africa, and Asia; with the exception, however, of the Islands of Tobago and St. Lucie, and of the Isle of France and its Dependencies, especially Rodrigues and Les Séchelles, which several Colonies and Possessions His Most Christian Majesty cedes in full right and Sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and Sovereignty to His Catholic Majesty.⁵⁵

2.14 After the British conquest of 1810, *Île de France* was renamed *Mauritius*. Mauritius largely retained French laws, customs, culture, religion, language, and way of life. Britain remained the administering power from 1810 until Mauritius' independence in 1968.

⁵⁴ *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), para. 58 (**Dossier No. 409**).

⁵⁵ Treaty of Paris (30 May 1814) (**Dossier No. 445**).

IV. The Chagos Archipelago has always been an integral part of the territory of Mauritius

2.15 Like the French before them, the British administered the Chagos Archipelago as a dependency of Mauritius, with the Archipelago treated as an integral part of Mauritius without interruption throughout the entire period of colonial rule. The Chagos Archipelago was connected to and administered in law as a part of Mauritius until it was detached by Order in Council on 8 November 1965.⁵⁶ The close and inextricable connection between the Chagos Archipelago and the rest of the territory of Mauritius is evidenced by *inter alia* (i) constitutional, legislative and administrative arrangements; (ii) economic, cultural and social links; and (iii) conduct, practice and statements of the administering power, the United Nations, the international community, and domestic and international authorities.

A. CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE ARRANGEMENTS

2.16 By the 1814 Treaty of Paris, Mauritius and its dependencies – including the Chagos Archipelago – were formally ceded to the U.K. by France. The islands of the Chagos Archipelago were included by the British colonial authorities in a list of dependencies of Mauritius as early as 1826.⁵⁷ The Chagos Archipelago remained a dependency of Mauritius throughout British colonial rule, until the Archipelago

⁵⁶ See Chapter 3, Part VIII.

⁵⁷ See Sir Lowry Cole's Despatch from Mauritius, *List of Dependencies (British) of Mauritius (1826)*, FCO 31/3836 (19 Sept. 1826) (**Annex 1**). The islands listed include Diego Garcia, Six Isles, Trois Frères, Salomon and Peros Banhos. See also Records of the Chief Clerk's and General Departments, Records of the Colonial Office, U.K. National Archives, Selected maps from CO 700/Mauritius4, Minor Dependencies of Mauritius (circa 1829), available at <https://files.pca-cpa.org/mu-uk/Annexes%20to%20Memorial/MM%20Charts.pdf> (last accessed 14 Feb. 2018), Figures 12-17.

was detached from Mauritius on 8 November 1965.⁵⁸ Successive constitutions of the dependent territory of Mauritius defined Mauritius as including its dependencies:

- a) Section 52 of the 1885 Letters Patent defined the colony of Mauritius as “the Island of Mauritius and its Dependencies”;⁵⁹
- b) Section 1(1) of the Mauritius (Legislative Council) Order in Council 1947 and Section 2(1) of the Mauritius (Constitution) Order in Council 1958 defined the colony of Mauritius as “the Island of Mauritius (including the small islands adjacent thereto) and the Dependencies of Mauritius”;⁶⁰
- c) Section 90(1) of the Mauritius (Constitution) Order 1964, which was in force up to the detachment of the Chagos Archipelago in 1965, defines Mauritius as “the island of Mauritius and the Dependencies of Mauritius”.⁶¹

2.17 Under British colonial rule the Governor of Mauritius was granted legislative authority over the Chagos Archipelago. In 1815 the first British Governor of Mauritius, Sir Robert Farquhar, issued a proclamation by which British Acts of Parliament abolishing the slave trade “extend to every, even the most remote and minute portion, of the Possession, Dominions and Dependencies of Her Majesty’s Government”.⁶² By virtue of Ordinances of 1852 and 1853, the

⁵⁸ See, e.g., Governor of Mauritius and the Council of Government, *Courts Ordinance No. 5, 1945* (3 Mar. 1945), Section 2 (**Annex 12**).

⁵⁹ Letters Patent, Section 52 (16 Sept. 1885) (emphasis added) (**Annex 8**).

⁶⁰ *The Mauritius (Legislative Council) Order in Council, 1947* (19 Dec. 1947), Section 1(1) (emphasis added) (**Annex 13**); *Mauritius (Constitution) Order in Council, 1958* (30 July 1958), Section 2(1) (emphasis added) (**Annex 16**).

⁶¹ *Mauritius (Constitution) Order, 1964* (26 Feb. 1964), Section 90(1) (emphasis added) (**Annex 24**).

⁶² Edis, *Peak of Limuria* (1993), p. 35 (**Annex 136**).

Governor of Mauritius was further empowered to extend laws and regulations of Mauritius to its dependencies.⁶³

2.18 In the late 19th and early 20th centuries, Special Commissioners and Magistrates from Mauritius made visits to the Chagos Archipelago.⁶⁴ Ordinance No. 5 of 1872 provides that:

The Junior District Magistrate of the District of Port Louis, in the Island of Mauritius, for the time being, is hereby constituted to be the District Magistrate for the said Islands, and he, the said Junior District Magistrate of Port Louis, and all the Officers of his Court, shall have the same powers, authority and jurisdiction respectively, to all intents and purposes, as if the said Islands formed part of the District of Port Louis.⁶⁵

2.19 Ordinance No. 41 of 1875 provided for the appointment of a permanent Police and Stipendiary Magistrate for the Chagos Archipelago, headquartered in Port Louis and tasked with visiting the islands for the purposes of “administer[ing] Justice therein between private individuals and between Master and Servant”.⁶⁶ The Stipendiary Magistrate for the Chagos Archipelago was vested with the same powers and authority as the Magistrates in Mauritius, and had a duty to report directly to the Governor of Mauritius on the occasion of each visit.⁶⁷ In addition to

⁶³ Governor of Mauritius and the Council of Government, *Ordinance No. 20 of 1852* (2 June 1852) (**Annex 3**); Governor of Mauritius and the Council of Government, *Ordinance No. 14 of 1853* (23 Mar. 1853) (**Annex 4**).

⁶⁴ Edis, *Peak of Limuria* (1993), p. 43 (**Annex 136**).

⁶⁵ Governor of Mauritius, its Dependencies, and the Council of Government *Ordinance No. 5 of 1872* (10 Feb. 1872), Section 3 (**Annex 5**). The Islands to which the Ordinance applies are listed in Section 5.

⁶⁶ Governor of Mauritius, its Dependencies, and the Council of Government, *Ordinance No. 41 of 1875* (28 Dec. 1875), Section 2 and Schedule A (**Annex 6**).

⁶⁷ *Ibid.*, Sections 2, 6 and 13. If any Servants or Labourers were found to have been detained in the Chagos Archipelago against their will, or refused passage back to Mauritius, the Stipendiary Magistrate was empowered to take necessary measures to return them to Mauritius. *Ibid.*, Section 8. Complaints regarding any breach of the law committed in the Chagos Archipelago could be

the appointment of a Stipendiary Magistrate, provision was made for the Manager of each of the islands in the Chagos Archipelago to be appointed Officer of the Civil Status with responsibility for the notification of births, deaths and marriages to the Registrar General of Mauritius.⁶⁸

2.20 In 1904 an Ordinance on the administration of justice in the Lesser Dependencies of Mauritius provided for the appointment of two District and Stipendiary Magistrates, as well as Additional Magistrates if necessity arose.⁶⁹ Like the 1875 Ordinance, the Magistrates were vested with the powers and authority of the District and Stipendiary Magistrates on the Island of Mauritius.⁷⁰ Any warrant for imprisonment could be executed in the Chagos Archipelago, or by the removal of the person to a prison in Mauritius.⁷¹ As well as exercising jurisdiction over the islands of the Chagos Archipelago, the Magistrates could in some circumstances exercise jurisdiction in the main Island of Mauritius.⁷²

brought before the Stipendiary Magistrate in Port Louis, who would “deal with the said offence according to the provision of the laws of Mauritius applicable to such offence, and in the same way as if the said offence had been committed in Port Louis, provided no judgment or order has been given in the matter by the Stipendiary Magistrate of the said Islands”. *Ibid.*, Section 10.

⁶⁸ *Ibid.*, Section 20.

⁶⁹ Officer Administering the Government of Mauritius and its Dependencies, and the Council of Government, *Ordinance No. 4 of 1904* (18 Apr. 1904), Section 3 (**Annex 9**). The 1904 Ordinance provides that each of the islands in the Chagos Archipelago should, as far as possible, be visited at least once in every 12 months. *Ibid.*, Section 4.

⁷⁰ *Ibid.*, Section 8.

⁷¹ *Ibid.*, Section 20.

⁷² *Ibid.*, Section 21. The 1904 Ordinance also provided that powers given to the Governor of Mauritius under Article 284 of the Labour Law 1878 “shall apply *mutatis mutandis* to the Islands”. *Ibid.*, Section 37. While the day-to-day administration of the workforce was largely left to the plantation managers, the Magistrates reviewed all punishments and fines imposed on the workforce by the plantation managers. A former commissioner of the “BIOT” gave this account of visiting Special Commissioners and District Magistrates: “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

2.21 The administration of justice in the Chagos Archipelago and the rest of Mauritius was further consolidated by a 1945 Ordinance relating to “the Organisation and Jurisdiction of Courts of Law in Mauritius”.⁷³ Under Section 83, Magistrates could exercise jurisdiction throughout Mauritius, including the Chagos Archipelago:

It shall be lawful for the Governor to appoint as many fit and proper persons as may be needed to be Magistrates for Mauritius and the Dependencies, and every person so appointed shall by virtue of such appointment have and may exercise jurisdiction as a District Magistrate in each and every district of the Colony and as Magistrate of the Dependencies, subject to the provisions of section 87: Provided that he shall exercise such jurisdiction only in such district or districts or in such Dependencies as may be assigned to him by the Governor.⁷⁴

2.22 Mauritian Magistrates assigned to the Chagos Archipelago possessed and exercised “the same rights, duties, powers and jurisdiction as any other District Magistrate”.⁷⁵ From 1945 onwards, Magistrates in Mauritius were given the title “Magistrate for Mauritius and the Dependencies” or “District Magistrate for

manifestations”. See Edis, *Peak of Limuria* (1993), p. 43 (**Annex 136**). Edis also gives examples of the fines and instructions issued by the Magistrates: “Pakenham Brooks, who paid a visit as Special Magistrate in 1875, handed out sizeable fines both to an under-manager at Point Marianne for striking a labourer and to James Spurs, the Manager at East Point, for unjustifiably imprisoning three labourers without sufficient cause. The management at Point Marianne and Minni Minni were also instructed to provide sick-bays for their workforce. Prices and weights and measures in the Company’s shops were carefully checked and the labourers’ accommodation, the hospital and the jail measured to ensure that they fulfilled minimum specifications.” *Ibid.*, pp. 43-44.

⁷³ Governor of Mauritius and the Council of Government, *Courts Ordinance No. 5, 1945* (3 Mar. 1945) (**Annex 12**).

⁷⁴ *Ibid.*, Section 83. Section 87 provides that: “Whenever two or more Magistrates have been appointed to any District, it shall be lawful for the Governor by Proclamation to declare that the Court for the District shall sit in two or more Divisions, as the case may be, and the names by which such Divisional Courts shall be designated.” *Ibid.*, Section 87. See also Section 2, which sets out the list of “Lesser Dependencies” to which the Ordinance applies.

⁷⁵ *Ibid.*, Section 86.

Mauritius and its Dependencies”.⁷⁶ The Magistrates assigned to the Chagos Archipelago toured all its main settlements and provided detailed reports on the conditions of the infrastructure and the wellbeing of the workforce; they also gave accounts of births, marriages and deaths.⁷⁷

2.23 The colonial authorities in Mauritius also sent police forces to the Chagos Archipelago to quell disturbances. A police presence from Mauritius is first recorded in 1885 in Minni Minni (Diego Garcia), made up of an inspector, a sergeant, and six constables.⁷⁸ In 1931 a Magistrate from Mauritius and 12 police officers were sent to Peros Banhos in order to suppress a disturbance.⁷⁹

B. ECONOMIC, CULTURAL AND SOCIAL LINKS

2.24 By the time Britain became the administering power in Mauritius in 1810, a plantation system of agriculture was common to both the Chagos Archipelago and the main Island of Mauritius. In the early 1800s there were several hundred slaves in the Archipelago, working on the coconut plantations and operating fishing settlements. Following the arrival in 1783 of 22 enslaved Africans, hundreds more came, predominantly from Mozambique and Madagascar.⁸⁰ Some of the Mauritian nationals who were removed from the Chagos Archipelago (“Chagossians”) after

⁷⁶ See Extracts from the Mauritius Gazette, *General Notices* (1951-1965) (**Annex 15**).

⁷⁷ See Ivanoff Dupont, *Report of the Acting Magistrate for the Lesser Dependencies on the Islands of the Chagos Group for the Year 1882* (11 June 1883) (**Annex 7**); Maurice Rousset, Acting Magistrate for Mauritius and the Lesser Dependencies, *Report of Mr. Magistrate M. Rousset on the Chagos Group* (19 June 1939) (**Annex 10**).

⁷⁸ Edis, *Peak of Limuria* (1993), p. 50 (**Annex 136**). While the police presence was withdrawn three years later on grounds of cost, Special Constables were appointed as needed.

⁷⁹ Vine, *Island of Shame* (2009), p. 33 (**Annex 151**).

⁸⁰ *Ibid.*, pp. 21-24.

1967 can trace their roots back as much as 200 years to the first 22 slaves.⁸¹ Over time, there was a well-established community in the Chagos Archipelago. By 1826 the Chagos Archipelago supported a plantation society numbering more than 400,⁸² and in 1880 the population had risen to around 760.⁸³ The plantation society provided employment, housing, pensions and education.⁸⁴

2.25 Slavery was a defining feature of life in the Chagos Archipelago until its abolition in Mauritius in 1833, when 60,000 slaves were set free.⁸⁵ Some of the freed slaves emigrated to work on the plantations on Diego Garcia, where the native-born Mauritians (including those born in the Archipelago) very largely outnumbered the small minority of plantation managers of European descent. In 1835, the British Assistant Protector of Slaves was sent to the Chagos Archipelago to supervise the emancipation of former slaves.⁸⁶ Special Justice Charles Anderson visited the Archipelago three years later, and complete emancipation was achieved in the Chagos Archipelago by 1840.⁸⁷

2.26 Proprietors of plantations in the Chagos Archipelago resided in Mauritius, and the on-site managers and administrators were also from Mauritius.⁸⁸ During the late 19th century, the Chagos Archipelago briefly served as a coal refuelling station, following the opening of the Suez Canal in 1869. In 1882 the Orient and Pacific

⁸¹ *Ibid.*, p. 21.

⁸² *Ibid.*, p. 25.

⁸³ *Ibid.*, p. 29.

⁸⁴ *Ibid.*, p. 3.

⁸⁵ Moonindra Varma, *The Road to Independence* (1976), p. 1.

⁸⁶ Edis, *Peak of Limuria* (1993), pp. 36-38 (**Annex 136**).

⁸⁷ *Ibid.*, p. 38.

⁸⁸ *Ibid.*, pp. 37-39.

Steam Navigation Company established a coaling station on Diego Garcia.⁸⁹ By 1883, three plantations on Diego Garcia were merged, creating the Société Huilière de Diégo et Péros. This operated for almost eighty years until 1962, when a joint Mauritian and Seychellois company, Chagos Agalega Ltd, acquired most of the freeholds in the Archipelago.⁹⁰

2.27 The Mauritians living in the Chagos Archipelago fished, raised chickens and pigs, and maintained vegetable gardens. Shops sold items for everyday use, and basic healthcare was available. Land was passed down through the generations and the inhabitants built their own houses. A Catholic priest who visited Diego Garcia, Father Roger Dussercle, wrote that in 1933 about 60% of the population were “children of the islands”, having been born and raised there.⁹¹

2.28 The economy of the Chagos Archipelago was closely linked to the main Island of Mauritius. The coconut oil extracted from copra produced in the Chagos Archipelago, and the copra itself, were shipped to Mauritius.⁹² Some of the copra shipped to Mauritius was then sold for export.⁹³ The harvesting of coconuts represented the major economic activity in the Chagos Archipelago, but efforts were also made in the mid-19th century to diversify the economy by introducing new crops such as maize, Indian corn, cotton, tobacco and citrus trees.⁹⁴ By the end of the 19th century the Chagos Archipelago was producing copra, coconut oil, salted

⁸⁹ *Ibid.*, pp. 47-48.

⁹⁰ *Ibid.*, p. 39.

⁹¹ *Ibid.*, p. 57.

⁹² *Ibid.*, pp. 32, 46, 58, and 71; Vine, *Island of Shame* (2009), p. 26 (**Annex 151**).

⁹³ Vine, *Island of Shame* (2009), p. 31 (**Annex 151**).

⁹⁴ Edis, *Peak of Limuria* (1993), p. 44 (**Annex 136**).

fish, vegetables, timber, honey, pigs, maize, wooden toys, guano and model boats.⁹⁵ The inhabitants no longer solely worked on the plantations; some were blacksmiths, bakers, mechanics, carpenters or had carved out some other specialised role.⁹⁶

2.29 The colonial authorities in Mauritius subsidised a transport and cargo service between Mauritius and the Chagos Archipelago. Goods from the dependencies of Mauritius (including the Chagos Archipelago) were admitted on the main Island of Mauritius free of duty.⁹⁷ Throughout the 19th and 20th centuries, the only point of arrival and departure from the Chagos Archipelago was via Mauritius.

2.30 In addition to the economic ties, the Chagos Archipelago also shared close cultural and social links with the main Island of Mauritius. Mauritian entrepreneurs in the Chagos Archipelago adopted the same technology that was used in the sugar plantations in Mauritius.⁹⁸ Workers employed on the plantations had free passage to Mauritius.⁹⁹ The creole spoken by the inhabitants was similar to that spoken on the main Island of Mauritius.¹⁰⁰

2.31 Colonial authorities in Mauritius provided schoolteachers, midwives and dispensers, and established nurseries in the main islands of the Chagos

⁹⁵ Vine, *Island of Shame* (2009), p. 29 (**Annex 151**).

⁹⁶ *Ibid.*, p. 35.

⁹⁷ Anonymous, *An Account of the Island of Mauritius, and its Dependencies* (1842) (“All goods, the produce of the dependencies of Mauritius, or the Island of Madagascar, with the exception of ebony, if imported in British bottoms, are admitted free of duty”) (**Annex 2**).

⁹⁸ Vine, *Island of Shame* (2009), p. 25 (**Annex 151**).

⁹⁹ *Ibid.*, p. 35.

¹⁰⁰ *Ibid.*, p. 29.

Archipelago.¹⁰¹ They also provided a refuse removal service and maintained a meteorological station on Diego Garcia.¹⁰² There were regular missions to survey health conditions, visits by officials from the Mauritian Labour Office, and inspections by various technical officers.¹⁰³ Amateur radio enthusiasts were recruited to develop closer communications between the Island of Mauritius and the Chagos Archipelago.¹⁰⁴

C. RECOGNITION OF THE CHAGOS ARCHIPELAGO AS AN INTEGRAL PART OF THE TERRITORY OF MAURITIUS

2.32 Throughout the period of British colonial rule, the Chagos Archipelago was always treated by the administering power, in law and in practice, as an integral part of the territory of Mauritius. In the period prior to, during and after the detachment of the Chagos Archipelago, British authorities recognised the Chagos Archipelago as a full and constitutive part of Mauritius. As explained in Chapter 6 below, the unit of self-determination that enjoyed the right to decolonisation in international law and U.N. practice was the whole of the territorial unit of Mauritius. The U.N. and the international community have recognised the entire territory of Mauritius – including the Chagos Archipelago – as the unit of self-determination.¹⁰⁵

¹⁰¹ *Ibid.*, p. 35; Robert Newton, *Report on the Anglo-American Survey in the Indian Ocean*, C.O. 1036/1332 (1964) (hereinafter “Newton, *Survey in the Indian Ocean* (1964)”), para. 52 (**Annex 22**).

¹⁰² Vine, *Island of Shame* (2009), p. 35 (**Annex 151**); Newton, *Survey in the Indian Ocean* (1964), para. 52 (**Annex 22**).

¹⁰³ See Alfred J. E. Orian, Department of Agriculture, Mauritius, *Report on a Visit to Diego Garcia* (9-14 Oct. 1958) (**Annex 17**); Vine, *Island of Shame* (2009), p. 28 (**Annex 151**); Newton, *Survey in the Indian Ocean* (1964), para. 52 (**Annex 22**).

¹⁰⁴ Vine, *Island of Shame* (2009), p. 35 (**Annex 151**). The British developed communications and meteorological stations to connect the Chagos Archipelago with Mauritius and Seychelles.

¹⁰⁵ See Chapter 4, Part III.

1. *The administering power recognised the Chagos Archipelago as an integral part of Mauritius*

2.33 In the period immediately prior to the detachment of the Chagos Archipelago, British representatives at all levels expressed the unambiguous view that the Chagos Archipelago was part of the territory of Mauritius. By way of example:

- a) A note from the Colonial Office dated 10 May 1965 addressed proposals to detach the Chagos Archipelago, and stated that it would be necessary to compensate the Government of Mauritius “for their loss of territory.”¹⁰⁶ Likewise, in a telegram dated 19 July 1965, the Colonial Secretary expressed the view that it would be necessary to compensate the Government of Mauritius “in respect of loss of territory”.¹⁰⁷
- b) On 27 April 1965, the Colonial Secretary circulated a note in which he recognised that the Chagos Archipelago is “legally established” as being part of the colony of Mauritius, and that separation would require “the making of amendments to existing constitutional instruments.”¹⁰⁸
- c) A Foreign Office telegram addressed to the U.K. Embassy in Washington dated 30 April 1965 stated that “[i]t is now clear that in each case the islands are legally part of the territory of the colony concerned.”¹⁰⁹

¹⁰⁶ *Letter* from D. J. Kirkness, PAC.93/892/01 (10 May 1965), para. 1 (**Annex 35**).

¹⁰⁷ *Telegram* from the Secretary of the State for the Colonies to Mauritius and Seychelles, Nos. 198 and 219, FO 371/184526 (19 July 1965), para. 2(ii) (**Annex 37**).

¹⁰⁸ United Kingdom, Defence and Oversea Policy Committee, *Defence Interests in the Indian Ocean: Legal Status of Chagos, Aldabra, Desroches, and Farquhar - Note by the Secretary of State for the Colonies*, O.P.D. (65) 73 (27 Apr. 1965), para. 2 (**Annex 32**).

¹⁰⁹ *Telegram* from the U.K. Foreign Office to the U.K. Embassy in Washington, No. 3582, FO 371/184523 (30 April 1965), para. 3 (**Annex 33**).

- d) On 13 July 1965, an official at the Colonial Office acknowledged that “[w]e are all agreed that the Islands must be constitutionally separate from the Colonies of which at present they form part.”¹¹⁰
- e) A memorandum dated 26 August 1965 jointly prepared by the Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs recognises that the islands of the Chagos Archipelago “belong to Mauritius” and that the U.S. Government “should be asked to contribute to the cost of compensating Mauritius and Seychelles for the loss of their islands.”¹¹¹

2.34 Before granting independence to Mauritius, the administering power paid £3 million in compensation to the Mauritius Government and made undertakings to Mauritius, including that:

- a) the Chagos Archipelago would be returned to Mauritius if no longer needed for defence purposes;
- b) navigational and meteorological facilities, as well as fishing rights, would remain available to Mauritius; and
- c) the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to Mauritius.¹¹²

2.35 It is inconceivable that the administering power would have paid compensation to Mauritius, and entered into these undertakings for the benefit of Mauritius, if it did not regard the Chagos Archipelago as an integral part of the

¹¹⁰ Note from Trafford Smith of the U.K. Colonial Office to J. A. Patterson of the Treasury, FO 371/184524 (13 July 1965), para. 3 (**Annex 36**).

¹¹¹ Memorandum by the U.K. Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs on Defence Facilities in the Indian Ocean, OPD(65)124 (26 Aug. 1965) (hereinafter “*Memorandum on Defence Facilities in the Indian Ocean (26 Aug. 1965)*”), paras. 1 and 5(c) (**Annex 48**).

¹¹² *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), para. 77 (**Dossier No. 409**).

territory of Mauritius. The administering power's consistent conduct *vis-à-vis* the islands' inhabitants reflects a clear understanding that Mauritius and the Chagos Archipelago were part of the same territorial unit:

- a) The administering power made legal provision for the Chagossians to become Mauritian citizens automatically on the independence of Mauritius;¹¹³
- b) The Chagossians were taken to Mauritius when they were forcibly removed from the Chagos Archipelago, and most of them were resettled there; and
- c) In 1982 the administering power settled a claim brought by one of the former inhabitants of the Chagos Archipelago on the basis of a £4 million contribution to a Mauritian trust fund for the benefit of the Chagossians.¹¹⁴

2.36 In the years that followed the detachment, there continued to be recognition by senior British officials and politicians in various statements to Parliament that the Chagos Archipelago has been part of the territory of Mauritius:

- a) On 21 October 1975, in response to a parliamentary question, the then British Minister of State for Foreign and Commonwealth Affairs, David Ennals, explained that grants had been paid to Mauritius “as

¹¹³ This was by virtue of Section 20(4) of the Independence Constitution of Mauritius set out in the Schedule to the Mauritius Independence Order 1968, which provided in effect that with the exception of persons with fathers born in Seychelles, a person born in the Chagos Archipelago before the “BIOT” was created was to be regarded as having been born in Mauritius and therefore automatically entitled to Mauritian citizenship on independence. *See* United Kingdom, *The Mauritius Independence Order 1968 and Schedule to the Order: The Constitution of Mauritius* (4 Mar. 1968), Section 20(4) (**Annex 95**).

¹¹⁴ *See R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 13.

compensation for the loss of sovereignty over the Chagos Archipelago.”¹¹⁵

- b) On 11 July 1980, the then British Prime Minister, Margaret Thatcher, told Parliament that “in the event of the islands no longer being required for defence purposes, they should revert to Mauritius.”¹¹⁶
- c) The term “revert” was also used by a Parliamentary Under Secretary of State at the Foreign Office in a statement to Parliament on 23 June 1977,¹¹⁷ and it appears in notes prepared in response to a parliamentary question in the House of Lords on 23 July 1980.¹¹⁸

2.37 It follows from the term “revert” that Prime Minister Thatcher understood the Chagos Archipelago to have been part of the territory of Mauritius prior to detachment. The same may be said of Mr Ennals’ reference to “loss of sovereignty”.

2.38 By Article VIII of the 1814 Treaty of Paris, Mauritius was ceded to the U.K. including “its Dependencies, especially Rodrigues and Les Séchelles”.¹¹⁹ Upon Mauritius’ independence, Rodrigues automatically remained part of the territory of the newly independent State of Mauritius. Officials at the Foreign Office accepted that the Chagos Archipelago would have been subject to the same automatic consequence had it not been detached from Mauritius. Following the adoption of a resolution by the Organization of African Unity in July 1980, which recognised that

¹¹⁵ U.K. House of Commons, *Written Answers: Foreign and Commonwealth Affairs - Indian Ocean*, FCO 31/3836 (21 Oct. 1975), p. 130 (emphasis added) (**Annex 106**).

¹¹⁶ U.K. House of Commons, *Written Answers: Diego Garcia*, FCO 31/3836 (11 July 1980) (emphasis added) (**Annex 120**).

¹¹⁷ U.K. House of Commons, “*Written Answers: British Indian Ocean Territory*” (23 June 1977) (emphasis added) (**Annex 112**).

¹¹⁸ United Kingdom, House of Lords *Parliamentary Question for Oral Answer: Notes for Supplementaries*, FCO 31/2759 (23 July 1980), para. 3 (emphasis added) (**Annex 121**).

¹¹⁹ See para. 2.13. The Seychelles was established as a separate colony from Mauritius in 1903.

“Diego Garcia has always been an integral part of Mauritius”,¹²⁰ an official at the Foreign Office Research Department concluded that:

Diego Garcia and the other Chagos islands were among the dependencies of Mauritius ceded to Britain by France under the Treaty of Paris (1814). Britain continued to administer them from Port Louis (or at least – if not actively to administer – they were included by Britain in official catalogues of the dependencies of Mauritius ever since the first schedule was compiled in 1826). From 1921 onwards the Chagos Archipelago, Agalega, and St. Brandon were known as the Lesser Dependencies of Mauritius. In 1965 the Chagos islands were detached from Mauritius to form part of the British Indian Ocean Territory. Agalega and St. Brandon remained part of Mauritius and since independence in 1968 have formed part of the Mauritian state; had the Chagos islands not previously been detached they would presumably have done the same.¹²¹

2.39 Likewise, a “Commissioner” of the “British Indian Ocean Territory”, Nigel Wenban-Smith, expressed the view that, but for the detachment, the Chagos

¹²⁰ 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) (hereinafter “*Resolution on Diego Garcia* (1-4 July 1980)”) (**Annex 118**).

¹²¹ Note from M. Walawalkar of the African Section Research Department to Mr Hewitt, FCO 31/2759 (8 July 1980), para. 2 (emphasis added) (**Annex 119**). The text as quoted is the original printed version. There are handwritten annotations to the last sentence to the effect that: “Agalega and St. Brandon remained attached to Mauritius and since independence in 1968 have remained dependencies of the Mauritian state; had the Chagos islands not previously been detached they would presumably have done the same”. The Foreign Office official, Margaret Walawalkar, went on to explain that: “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 association under one colonial power to the OAU”. *Ibid.*, para. 3.

Archipelago would have become part of the independent State of Mauritius. Reflecting on Mr Ennals' statement to Parliament, Mr Wenban-Smith wrote that:

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.¹²²

2.40 Against the backdrop of growing international pressure for the return of the Chagos Archipelago to Mauritius in the early 1980s, a Foreign Office legal advisor – Michael Wood – warned against the use of the words “revert” or “reversion”, urging instead that the words “cede” or “transfer” be used.¹²³ However, the legal advisor acknowledged that the Chagos Archipelago “was for a long time part of the Colony of Mauritius” before it was “removed from Mauritius”.¹²⁴

¹²² *Letter* from W. N. Wenban-Smith of the Foreign and Commonwealth Office to M. J. Williams, with draft, FCO 31/3835 (25 Mar. 1983), para. 6 (emphasis added) (**Annex 128**). An earlier draft of this letter states “If reminded of the 1975 answer, we should be obliged to say that all that Mauritius was being compensated for was the delay in receiving the sovereignty they would have acquired on independence”. *Ibid.*, para. 5 (draft).

¹²³ *Letter* from M. C. Wood to Mr Hewitt, FCO 31/2759 (22 Sept. 1980) (**Annex 122**).

¹²⁴ *Ibid.* Another Foreign Office legal advisor, Arthur Watts, opposed the words “revert” and “return” on the basis that: “[b]oth suggest the Chagos were previously Mauritius, and that that state of affairs will be resumed: the first limb of that proposition is, of course, not one we would readily go along with, at least without a lot of supplementary explanation about ‘administrative conveniences’ and so on”. See *Note* from A. Watts to Mr Campbell, FCO 31/3836 (received 23 Aug. 1983) (**Annex 134**). It was proposed by a diplomat of the U.K. Mission to the U.N. that a “new *locus classicus*” be developed to “expunge the ambiguities and inconsistencies that have appeared in previous Ministerial pronouncements” which did “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).” See *Letter* from D. A. Gore-Booth to W. N. Wenban-Smith of the East African Department, FCO 58/3286 (15 July 1983), para. 3 (**Annex 133**). In a letter dated 25 March 1983, the then “Commissioner” of the “British Indian Ocean Territory” remarked of Mr Ennals’ statement that: “This was, and is, a potentially embarrassing statement.” See *Letter* from W. N. Wenban-Smith of the Foreign and Commonwealth Office to M. J. Williams, with draft, FCO 31/3835 (25 Mar. 1983), para. 3 (**Annex 128**).

2. *The U.N. and the international community*

2.41 Following the detachment of the Chagos Archipelago, the U.N. General Assembly adopted Resolution 2066 (XX), by which the administering power was invited “to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”.¹²⁵ The U.N. General Assembly repeated the requirement to maintain the territorial integrity of Mauritius in Resolutions 2232 (XXI) and 2357 (XXII).¹²⁶ It is clear from these resolutions that the U.N. has regarded the Chagos Archipelago as an integral part of the territory of Mauritius.

2.42 The great majority of States have consistently rejected the argument that the Chagos Archipelago is not part of Mauritius.¹²⁷ When a British representative in the U.N. Committee of 24 stated that “the British Indian Ocean Territory was not part of Mauritius and Seychelles”, the Tanzanian delegation:

rejected that argument, since the United Kingdom Government would not have agreed to pay compensation to the inhabitants of the islands concerned if those islands were not an integral part of Mauritius and the Seychelles.¹²⁸

¹²⁵ *Question of Mauritius* (16 Dec. 1965), para. 4 (**Dossier No. 146**).

¹²⁶ U.N. General Assembly, 21st Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2232(XXI) (20 Dec. 1966) (**Dossier No. 171**); U.N. General Assembly, 22nd Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2357(XXII) (19 Dec. 1967) (**Dossier No. 198**).

¹²⁷ See Chapter 4, Part III.

¹²⁸ U.N. General Assembly, 21st Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial*

2.43 The Organization of African Unity (and later the African Union), the Non-Aligned Movement, the Group of 77 and China, the African, Caribbean and Pacific Group of States, and the Africa-South America Summit have all adopted declarations and resolutions expressly recognising the Chagos Archipelago as part of the territory of Mauritius.¹²⁹

3. *Domestic and international judicial findings*

2.44 There is also judicial support, domestic and international, for the contention that the Chagos Archipelago has been an integral part of the territory of Mauritius. In a 2016 judgment of the U.K. Supreme Court, Lord Kerr (with whom Lady Hale agreed) held that:

The Chagos Islands are in the middle of the Indian Ocean. Since the early 19th century they had been part of the British colony of Mauritius but they were detached from that country before Mauritius gained its independence in 1968.¹³⁰

2.45 In an earlier 2008 judgment of the U.K. House of Lords (the predecessor to the Supreme Court), Lord Hoffmann held that: “It is true that the territory of BIOT was, until the creation of the colony in 1965, part of Mauritius”.¹³¹

Countries and Peoples, U.N. Doc. A/6300/Rev.1 (1966), Chapter XIV – Mauritius, Seychelles and St. Helena, para. 176 (emphasis added) (**Dossier No. 253**).

¹²⁹ See Chapter 4, Part III. B.

¹³⁰ *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2016] UKSC 35 (29 June 2016), para. 81 (emphasis added).

¹³¹ *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 64. See also *ibid.*, para. 4: “The islands were a dependency of Mauritius when it was ceded to the United Kingdom by France in 1814 and until 1965 were administered as part of that colony.”

2.46 International judges have come to the same conclusion as that reached by Lord Kerr, Lord Hoffmann and Lady Hale. In 2011, seven judges of the Fourth Section of the European Court of Human Rights considered an application alleging that the forced removal of the Chagossians, and the prohibition against their return, amounted to a breach of Articles 3, 6, 8, 13, and Article 1 of Protocol 1, of the European Convention of Human Rights. As to the territorial scope of the Convention, the Court noted that the U.K. had made a declaration in 1953 by which the application of the Convention was extended to Mauritius. Although the declaration only referred to “Mauritius”, the Court interpreted this to include the Chagos Archipelago. It held that:

until 8 November 1965, the Chagos Archipelago was part of the Colony of Mauritius in respect of which the United Kingdom had made a declaration under former Article 63 of the Convention (now Article 56) acknowledging the Colony as territory for whose international relations the United Kingdom was responsible and to which the Convention was to apply.¹³²

2.47 In the *Chagos Marine Protected Area Arbitration* proceedings, Judges Kateka and Wolfrum reached the same conclusion. In so doing they made clear their conclusion that “the Chagos Archipelago was more closely linked to Mauritius than is conceded by the United Kingdom”, and that it was “not appropriate to consider the Archipelago as an entity, somewhat on its own, which the United Kingdom could decide on without taking into account the views and interests of Mauritius.”¹³³

¹³² *Chagos Islanders v. United Kingdom*, Decision on Application No. 35622/04, European Court of Human Rights (11 Dec. 2012) (emphasis added), para. 61.

¹³³ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), paras. 68-69 (**Dossier No. 409**).

V. Conclusion

2.48 The historical and colonial record clearly demonstrates that the Chagos Archipelago has been an integral part of Mauritius. Under French colonial occupation and then throughout more than 150 years of British rule, Mauritius and the Chagos Archipelago were governed as part of the same, indivisible unit. The U.N. and the international community have recognised that the Chagos Archipelago has always been an integral part of Mauritius. Judges in the U.K.'s highest court, at the European Court of Human Rights and in international arbitral proceedings have consistently expressed the view that the Chagos Archipelago has been part of the colony of Mauritius. There is no legal or judicial authority of which Mauritius is aware in support of a contrary position. The conduct and practice of British authorities in particular, including statements by U.K. officials and representatives at the highest levels, are incompatible with a view which does not recognise that the main Island of Mauritius and the Chagos Archipelago have always been treated in law and in fact as part of the same territory.

CHAPTER 3

THE PROCESS OF DECOLONISATION AND THE DETACHMENT OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS

I. Introduction

3.1 This chapter addresses the decolonisation of Mauritius, from the limited measures of self-government in the early 1940s to the 1965 Constitutional Conference in London, when the British Government announced that it had reached the conclusion that “it was right that Mauritius should be independent and take her place among the sovereign nations of the world.”¹³⁴ Two and a half years before Mauritius achieved independence, however, the administering power detached the Chagos Archipelago from its territory, creating what it called the “British Indian Ocean Territory” (also referred to as “BIOT”).¹³⁵ Five decades after achieving independence, the decolonisation of Mauritius remains incomplete.

3.2 In setting out the historical and factual background, this chapter addresses:

- a) Mauritius’ struggle for independence,¹³⁶ and the concurrent development by the administering power of a secret plan to detach the Chagos Archipelago;¹³⁷
- b) Talks with Mauritian Ministers at the 1965 Constitutional Conference in London, at which the colonial authorities were to decide on

¹³⁴ *Mauritius Constitutional Conference Report* (24 Sept. 1965), para. 20 (**Annex 64**).

¹³⁵ In addition to the Chagos Archipelago, the “BIOT” also comprised the islands of Aldabra, Desroches and Farquhar belonging to the Seychelles. These islands were subsequently returned to Seychelles on 29 June 1976. *See* Section IX. B. below.

¹³⁶ *See* Section II below.

¹³⁷ *See* Section III below.

Mauritius' final status.¹³⁸ As explained below, these talks were carried out against the backdrop of:

- i. uncertainty about whether or not Mauritius would be granted independence;¹³⁹
 - ii. resolve on the part of the British Foreign Office and Ministry of Defence to detach the Chagos Archipelago;¹⁴⁰
 - iii. opposition by Mauritian Ministers to the detachment of the Chagos Archipelago;¹⁴¹ and
 - iv. insistence on the part of the Colonial Secretary that Mauritian Ministers must “agree” to the detachment of the Chagos Archipelago, to shield the U.K. from domestic and international criticism, including at the U.N.;¹⁴²
- c) Private meetings on “defence matters” devised by the colonial authorities, for the purpose of securing the “agreement” of Mauritian Ministers to the detachment of the Chagos Archipelago;¹⁴³
- d) A meeting held on 23 September 1965 between Sir Seewoosagar Ramgoolam (the then leader of the largest political party in Mauritius) and the British Prime Minister, Harold Wilson, during which Mr Wilson made clear that Mauritius would not be granted independence unless

¹³⁸ See Section IV below.

¹³⁹ See Section IV. A. below.

¹⁴⁰ See Section IV. B. below.

¹⁴¹ See Section IV. C. below.

¹⁴² See Section IV. D. below.

¹⁴³ See Section V below.

Premier Ramgoolam and his Ministerial colleagues “agreed” to the detachment of the Chagos Archipelago;¹⁴⁴

- e) The U.K.’s undertakings to the Mauritian Government,¹⁴⁵ and the subsequent detachment of the Chagos Archipelago by Order in Council; and¹⁴⁶
- f) The 1966 Agreement by which the U.K. made the Chagos Archipelago available to the U.S. Government for an indefinite period for the establishment of a military base on Diego Garcia, and subsequent developments, including the forcible removal of the inhabitants of the Chagos Archipelago and the return to Seychelles of three islands forming part of “BIOT”.¹⁴⁷

II. The struggle for independence

3.3 When the United Nations was established in 1945, almost one third of the world’s population lived in non-self-governing territories dependent on administering powers.¹⁴⁸ With the entry into force of the U.N. Charter in 1945, and in the face of severe financial constraints at the end of the Second World War, the British Government agreed in principle to work towards self-government and independence for all of its colonial territories. With rising anti-colonialist sentiment and the accession of India and Pakistan to independence in August 1947, it became increasingly difficult for the British Government to resist demands for self-

¹⁴⁴ See Section VI below.

¹⁴⁵ See Section VII below.

¹⁴⁶ See Section VIII below.

¹⁴⁷ See Section IX below.

¹⁴⁸ U.N. Department of Public Information, *What the U.N. Can Do to Assist Non-Self-Governing Territories* (June 2017), p. 8 available at <http://www.un.org/en/decolonization/pdf/What%20the%20UN%20can%20do.pdf> (last accessed 15 Feb. 2018).

determination, including in Mauritius.¹⁴⁹ This shift reflects the principles enshrined in the Atlantic Charter, issued by U.K. Prime Minister Winston Churchill and U.S. President Franklin D. Roosevelt on 14 August 1941. By the Charter, the two leaders sought to make known “certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world”, including:

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

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

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them...¹⁵⁰

3.4 In 1947 the colonial authorities established a new Constitution for Mauritius, by the Mauritius (Legislative Council) Order in Council. The 1947 Constitution introduced two new bodies: a Legislative Council, consisting of the British Governor as President, 19 elected members, 12 nominated by the Governor and 3 *ex-officio* members (the British Colonial Secretary, the *Procureur* and the Financial Secretary); and an Executive Council which included four elected Legislative Council members.¹⁵¹

3.5 Elections under the new Constitution were held in 1948. Out of a population of over 420,000, the electorate was composed of no more than 72,000.¹⁵² The

¹⁴⁹ Addison & Hazareesingh, *History of Mauritius* (1993), p. 91 (**Annex 137**).

¹⁵⁰ The Atlantic Charter (14 Aug. 1941) (**Annex 11**).

¹⁵¹ Moonindra Varma, *The Road to Independence* (1976), pp. 43-46.

¹⁵² Sydney Selvon, *A Comprehensive History of Mauritius* (2012), vol. 2, p. 98. In the previous election held in 1936 there had been only 11,427 registered voters. See Addison & Hazareesingh, *History of Mauritius* (1993), p. 92 (**Annex 137**).

Mauritius Labour Party (“MLP”) secured 12 of 19 seats in the Legislative Council, and increased this tally to 14 seats in the 1953 election, just short of an overall majority (as a result of the presence on the Council of the 12 members nominated by the Governor and the 3 *ex-officio* members).

3.6 After the 1953 election, the MLP voiced concern that the British Governor, rather than exercising his right to nominate members to the Legislative Council to reflect the overwhelming preference that electors had shown for MLP candidates, had flouted the wishes of the electorate.¹⁵³

3.7 In 1955, at the request of the MLP, the British Colonial Secretary agreed to receive a Mauritian delegation to discuss further constitutional reforms, at a Constitutional Conference held in London in July of that year. The MLP demanded universal suffrage and a Ministerial system of government, by which elected members of the Legislative Council would have power to manage Mauritius’ internal affairs without interference from the colonial authorities.¹⁵⁴ The MLP sought to curtail the powers of the British Governor, which included control over the civil service, finance and the judiciary.¹⁵⁵

3.8 A second Constitutional Conference was held in February 1957, followed by a new Constitution for Mauritius in 1958.¹⁵⁶ The Legislative Council was

¹⁵³ Addison & Hazareesingh, *History of Mauritius* (1993), p. 92 (**Annex 137**).

¹⁵⁴ Moonindra Varma, *The Political History of Mauritius, Vol. 1: (1883–1983)* (2011) (hereinafter “Varma, *The Political History of Mauritius* (2011)”), p. 92.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Mauritius (Constitution) Order in Council, 1958* (30 July 1958) (**Annex 16**). At the second Constitutional Conference in February 1957, the Colonial Secretary proposed to implement universal suffrage. He proposed to enlarge the Legislative Council to 40 elected members, but 12 members would still be nominated by the Governor. The Executive Council would consist of seven members elected by the Legislative Council, three *ex-officio* members and two nominated by the Governor. The Colonial Secretary’s proposals were debated in the Legislative Council but the MLP,

expanded to 40 elected members, three *ex-officio* members, and 12 members appointed by the Governor.¹⁵⁷ The non-elected Executive Council was designated as the “principal instrument of policy”.¹⁵⁸ The British Governor had a reserved power to make and amend laws without the consent of the Legislative Council if it was deemed “expedient in the interest of public order, public faith or good government”.¹⁵⁹ No Bill could become law without the Governor’s assent (acting on behalf of the Queen), and the British Colonial Secretary had the express power to disallow any law.¹⁶⁰ By these means the colonial authorities retained power and control over Mauritius.

despite having 13 votes in the Council, was defeated because the three members of the largely conservative Ralliement Mauricien party (which later became the Parti Mauricien Social Démocrate and represented the interests of the wealthy Franco-Mauritians) voted with the nominated and *ex-officio* members. A large majority of elected members had found themselves in the minority. As a result of the imposition of these new constitutional measures, the MLP’s members staged a walkout and boycotted the Legislative Council, leading to a serious constitutional crisis. These new measures were completely unacceptable to the MLP, which accused the British Government of blindly accepting the views of the Governor. The new constitutional measures were not deemed to go far enough to stem the Governor’s power and absolute discretion to control Mauritian political life. See Moonindra Varma, *The Road to Independence* (1976), pp. 68-70; Sydney Selvon, *A Comprehensive History of Mauritius* (2005), p. 414.

¹⁵⁷ *Mauritius (Constitution) Order in Council, 1958* (30 July 1958), Sections 17-18 (**Annex 16**).

¹⁵⁸ *Ibid.*, Section 5.

¹⁵⁹ *Ibid.*, Section 43(1) (“If the Governor considers that it is expedient in the interest of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Colony as a territory within the Commonwealth, and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer), that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Council fail to pass such Bill or to carry such motion within such time and in such form as the Governor thinks reasonable and expedient, the Governor may, at any time that he thinks fit, and notwithstanding any provisions of this Order or any Standing Orders of the Council, declare that such Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was so introduced or proposed or with such amendments as the Governor thinks fit that have been moved or proposed in the Council, including any committee thereof; and the Bill or motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.”)

¹⁶⁰ *Ibid.*, Sections 44-45.

3.9 An election was held on 9 March 1959, contested by four political parties: the MLP; the Parti Mauricien Social Démocrate (“PMSD”); the Muslim Committee of Action (“MCA”); and the Independent Forward Bloc (“IFB”). The electorate had increased to 277,500.¹⁶¹ Whereas the PMSD had negative views on democracy and the need for constitutional reform, the MCA and IFB were largely supportive of the MLP’s efforts to reduce Britain’s influence over Mauritian internal affairs.¹⁶² The MLP-MCA coalition obtained a majority of 29 out of the 40 seats in the Legislative Council, with the IFB and PMSD winning six and three seats respectively.¹⁶³ Led by Dr Seewoosagur Ramgoolam, the MLP reiterated its demands that the U.K. grant Mauritius immediate internal autonomy, and declared that it would seek complete independence by 1964.

3.10 A third Constitutional Conference was held in June 1961. It was agreed that Mauritius could achieve self-government after successful implementation of constitutional reforms in two stages.¹⁶⁴ The first stage was achieved after Dr Ramgoolam became Chief Minister in 1962. However, Dr Ramgoolam protested that he was not permitted to run a free and unfettered government and that Mauritius was “a colony subject to colonial laws and subject to the control and direction of the Secretary of State through his officers.”¹⁶⁵

¹⁶¹ *Ibid.*, Section 30. The 1958 Constitution extended the vote to British subjects aged 21 and above who resided in Mauritius for at least two years.

¹⁶² Varma, *The Political History of Mauritius* (2011), p. 92; Addison & Hazareesingh, *History of Mauritius* (1993), pp. 93-94 (**Annex 137**).

¹⁶³ Addison & Hazareesingh, *History of Mauritius* (1993), p. 93 (**Annex 137**). Two seats were won by independent candidates.

¹⁶⁴ During the Conference there was a rift between the PMSD, which “favoured some form of integration or association with Britain”, and the other political parties led by the MLP, which were calling for independence. See Addison & Hazareesingh, *History of Mauritius* (1993), p. 94 (**Annex 137**).

¹⁶⁵ Varma, *The Political History of Mauritius* (2011), p. 106.

3.11 The MLP performed strongly in the 1963 elections, winning 23 out of 40 seats in the Legislative Council in coalition with the MCA. For the purposes of reassuring the electorate that all Mauritians would be represented in government, and to be able to approach the colonial authorities with a united front for discussions on independence, Dr Ramgoolam formed an all-party coalition government.¹⁶⁶

3.12 The second stage of constitutional reform was implemented on 12 March 1964.¹⁶⁷ By the Mauritius (Constitution) Order 1964, the Legislative Council was renamed the Legislative Assembly, and the Executive Council became the Council of Ministers.¹⁶⁸ Dr Ramgoolam became the Premier of Mauritius, responsible for Home Affairs. However, the Colonial Secretary refused to fix any firm date for Mauritius' independence.

3.13 Notwithstanding these constitutional developments, the colonial authorities continued to exercise far-reaching control over Mauritian internal affairs. The Governor presided over the Council of Ministers, which now comprised the Premier, the Chief Secretary and between 10 and 13 Ministers. Although the Governor was expected to consult the Council of Ministers, he retained considerable power, including the power to make and amend laws without the consent of the Legislative Assembly.¹⁶⁹ The colonial authorities also had the power to assent to the making of laws by the Assembly, and to disallow laws approved by

¹⁶⁶ Addison & Hazareesingh, *History of Mauritius* (1993), p. 95 (**Annex 137**).

¹⁶⁷ This was on the basis of a motion which was passed by 41 votes to 11 on 19 November 1963.

¹⁶⁸ *Mauritius (Constitution) Order, 1964* (26 Feb. 1964) (**Annex 24**).

¹⁶⁹ See Section 50(1) of the Mauritius (Constitution) Order 1964, which is drafted in the same terms as Section 43(1) of the 1958 Constitution. *Ibid.*, Section 50(1). See also *Mauritius (Constitution) Order in Council, 1958* (30 July 1958) (**Annex 16**).

that body.¹⁷⁰ It was at the discretion of the Governor to appoint the Premier and up to 15 members of the Legislative Assembly.¹⁷¹

3.14 The fourth and final Constitutional Conference was held in London between 7 and 24 September 1965. On the final day of the Conference the British Colonial Secretary, Anthony Greenwood, announced that the U.K. Government was agreeable to the granting of independence to Mauritius, but independence was not formally achieved until 12 March 1968. As set out below, independence was granted on a condition, namely that Mauritian Ministers must “agree” to the detachment of the Chagos Archipelago from the territory of Mauritius.

III. The secret plan to detach the Chagos Archipelago

3.15 In the meantime, unknown to Mauritian Ministers, during the early 1960s the administering power devised a plan by which the Chagos Archipelago would be detached from the territory of Mauritius for the purpose of making certain islands available for joint U.K.-U.S. defence purposes. These plans were developed in secret, apparently with no regard for the interests of the newly emerging Mauritian State, or the Mauritian nationals then residing in the Chagos Archipelago (“Chagossians”).

3.16 In April 1963 the U.S. State Department proposed discussions on the “strategic use of certain small British-owned islands in the Indian Ocean”, an idea welcomed by the Foreign Office.¹⁷² In August 1963, the State Department

¹⁷⁰ See *Mauritius (Constitution) Order, 1964* (26 Feb. 1964), Sections 51-52 (**Annex 24**).

¹⁷¹ See *ibid.*, Sections 27, 58-60 and 68(1).

¹⁷² United Kingdom, “*British Indian Ocean Territory 1964-1968: Chronological Summary of Events relating to the Establishment of the B.I.O.T. in November 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes*”, FCO 32/484 (1964-

“expressed interest in establishing a military communications station on Diego Garcia and asked to be allowed to make a survey.”¹⁷³ The U.S. Ambassador in London submitted a memo to the Foreign Office proposing further discussions on “the Island Base question and communications facilities on Diego Garcia”.¹⁷⁴ In January 1964, a further U.S. memo set out proposals for the U.K. Government to “acquire certain islands, compensating and resettling the inhabitants as necessary”.¹⁷⁵ The U.S. required “austere” support facilities on Diego Garcia, with the island of Aldabra (which then formed part of Seychelles) as the next possible staging post.¹⁷⁶ None of this information was made available to, or known by, the Mauritian Ministers.

3.17 The U.K. and U.S. held the first round of formal talks on defence interests in the Indian Ocean from 25 to 27 February 1964. The U.S. delegation “confirmed their positive interest in the development of a communications facility, subject to joint survey, in Diego Garcia in the Chagos Archipelago, which is now under the administration of Mauritius.”¹⁷⁷ It was agreed that the U.K. would “be responsible for acquiring land, re-settlement of population and compensation at H.M.G.’s expense” and that the U.K. should “[p]ursue as rapidly as possible the feasibility of

1968) (hereinafter “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968)), item no. 1 (**Annex 23**).

¹⁷³ *Ibid.* Diego Garcia is the largest island in the Chagos Archipelago. See Chapter 2, Figure 2.

¹⁷⁴ *Ibid.*, item no. 2. See also United Kingdom, Foreign Office, Permanent Under-Secretary’s Department, *Secretary of State’s Visit to Washington and New York, 21-24 March: Defence Interests in the Indian Ocean*, Brief No. 14, FO 371/184524 (18 Mar. 1965) (hereinafter “*Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965)”), para. 2 (**Annex 31**).

¹⁷⁵ “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 4 (**Annex 23**).

¹⁷⁶ *Ibid.* See also *Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965), para. 5 (**Annex 31**).

¹⁷⁷ U.K. Foreign Office, *U.S. Defence Interests in the Indian Ocean: Memorandum of U.K./U.S. London Discussions*, FCO 31/3437 (27 Feb. 1964), para. 6 (**Annex 25**).

transfer of the administration of Diego Garcia (and other islands in the Chagos Archipelago) and the Agalega Islands from Mauritius.”¹⁷⁸

3.18 It was seen as imperative that the islands be detached from Mauritius and placed under direct British administration to ensure “security of tenure” and freedom from “local pressures”,¹⁷⁹ and to insulate the islands from “future political and economic encumbrances, which might nullify [their] strategic usefulness.”¹⁸⁰

A memo jointly prepared by the U.K. Foreign Office, Colonial Office and Ministry of Defence, recognised the potential difficulties of achieving that aim:

8. We must, nevertheless, not overlook the United Kingdom’s reputation as a Colonial power. It would be imprudent to expose ourselves to international and local criticism of trafficking in Colonial territory without regard to the reasonable interests of the colonies concerned (Mauritius and Seychelles)... .

...

11. Formally, we have the constitutional power to take action without the consent of the Mauritius Government, although it consists almost entirely of elected Ministers. To do this, however, would expose us to criticism in Parliament and the United Nations and damage our future relations with Mauritius. Moreover, in as much as there would still be a local population, albeit very small in number, in the Chagos Islands other than Diego Garcia, we might be criticised for creating for strategic purposes a new Colony with a less advanced constitution than it theoretically enjoys as part of Mauritius, and with no prospect of evolution. But this criticism would lose most of its force if the action were accepted by Mauritian

¹⁷⁸ *Ibid.*, para. 12.

¹⁷⁹ *Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965), para. 2 (**Annex 31**). See also “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 5 (**Annex 23**).

¹⁸⁰ U.K. Foreign Office, Colonial Office and Ministry of Defence, *U.S. Defence Interests in the Indian Ocean*, D.O. (O)(64)23, FCO 31/3437 (23 Apr. 1964) (hereinafter “*U.S. Defence Interests in the Indian Ocean* (23 Apr. 1964)”), para. 9 (**Annex 26**).

Ministers in advance. It is therefore desirable to secure their positive consent, or failing that, at least their acquiescence.

12. If we are to do this we are bound to take them reasonably fully into our confidence at the outset. We have promised the Americans that we will consult them before this is done and on the terms to be used. The Americans will be reluctant to accept that the Mauritians should be told about the extent of United States participation or about their specific strategic interests. In the short term it might at first sight appear that, if only to avoid the risk of premature leaks, and the consequent raising of the price, it would suit us better to confront the Mauritians with a fait accompli or at most tell them at the last moment what we are doing. But the Colonial Office are convinced, as is the Governor, that this would do lasting damage to our relations with Mauritius and would adversely affect the facilities which our Services now enjoy in Mauritius itself. We have considered whether the Americans' share in the enterprise could be concealed, but since it would eventually become know[n], we could be charged with duplicity and the damage would be as great and possibly greater. We might, however, be able to frame our explanation to the Mauritians in language which the Americans would accept and which would refer to the United Kingdom/ United States joint interest in the Chagos Archipelago for the defence of the free world in which the Mauritians might, as future members of the Commonwealth, be expected to share. Such an explanation would eschew any particular description of the nature of the strategic facilities or their purpose.¹⁸¹

3.19 The joint memo recommended that U.K. Ministers approve the proposals, and the Colonial Secretary was invited to consult with the Mauritius Government with a view to detaching the Chagos Archipelago from the administration of Mauritius.¹⁸² A British official commenting on the joint memo noted that:

2. The paper is obviously a compromise between the desire of the Foreign Office and the Ministry of Defence to provide the facilities required by the Americans in the Indian Ocean and the reluctance of

¹⁸¹ *U.S. Defence Interests in the Indian Ocean* (23 Apr. 1964), paras. 8, 11 and 12 (emphasis in the original) (**Annex 26**).

¹⁸² *Ibid.*, para. 15.

the Colonial Office to detach the islands in question from the administrative control of Mauritius and Seychelles.

3. As a compromise document the arguments and counter-arguments are so carefully balanced that the final recommendations are muffled. The key recommendation is in paragraph 12: the implication there is that while we are prepared to give as convincing an explanation of our intentions as possible to the Mauritians we are presenting them with a fait accompli. It is however stated in paragraph 15(c) that the Colonial Secretary will be invited to 'consult' the Mauritians on this point. I think we must be clear about this and give Ministers a firm recommendation.

4. If the Colonial Office take their stand on consulting rather than telling the Mauritians, I think a separate study should be made of the importance of our relations with Mauritius; their capacity to do us harm; and the usefulness of the facilities which the Services now enjoy there.

5. From the point of view of our foreign and defence policy, it seems hard to believe that the advantages we should gain from a joint Anglo-United States policy in the Indian Ocean could be outweighed by the disadvantage of having a row with Mauritius or the Seychelles.¹⁸³

3.20 The plan to detach the Chagos Archipelago as a *fait accompli* proceeded with considerable haste. On 27 April 1964, the State Department confirmed U.S. agreement to establishing defence facilities on Diego Garcia.¹⁸⁴ Less than two weeks later, U.K. Ministers approved proposals for the development of joint facilities in principle, but resolved that these plans should not be disclosed to the people of Mauritius and Seychelles. It was agreed that Mauritian Ministers and the

¹⁸³ United Kingdom, *Minutes from C. C. C. Tickell to Mr. Palliser: United States Defence Interests in the Indian Ocean*, FCO 31/3437 (28 Apr. 1964) (emphasis in the original) (**Annex 27**).

¹⁸⁴ "British Indian Ocean Territory 1964-1968: Chronological Summary" (1964-1968), item no. 10 (**Annex 23**).

Seychelles Executive Council would only: “at a suitable time be informed in general terms about proposed detachment of islands.”¹⁸⁵

3.21 On 29 June 1964, the then British Governor of Mauritius, Sir John Rennie, consulted for the first time with the Mauritian Premier, Dr. Ramgoolam, about the idea of a detachment. Dr. Ramgoolam expressed his unease. Governor Rennie reported that although Premier Ramgoolam was “favourably disposed to provision of facilities” he had “reservations on detachment” and “expressed preference for [a] long-term lease”.¹⁸⁶ On 13 July 1964, Governor Rennie informed the Mauritian Council of Ministers of a proposed survey of certain islands. However, the Governor did not disclose that the U.K. intended to detach the Chagos Archipelago from Mauritius.¹⁸⁷

3.22 In July and August 1964, a joint U.K.-U.S. survey of the Chagos Archipelago and Agalega (and the Seychelles islands of Coëtivy, Desroches and Farquhar) was carried out. Robert Newton, of the U.K. Colonial Office, prepared a detailed report. Consistent with the policy of secrecy, the true nature and purpose of the survey was concealed from the local Mauritians and Seychellois. Mr Newton reported that, faced with concern on Diego Garcia about the reason for the survey, he “took the line with island Managers that in a scientific age there was a growing need for accurate scientific surveys” and “made vague allusions to the

¹⁸⁵ *Ibid.*, item no. 11.

¹⁸⁶ *Ibid.*, item no. 12.

¹⁸⁷ *Ibid.*, item no. 13.

developments in radio communications.”¹⁸⁸ Efforts were also made to conceal the presence of American military personnel.¹⁸⁹

3.23 The Chagos Archipelago was surveyed from 17 to 31 July 1964, with a strong focus on Diego Garcia, which was regarded as “the most promising for technical purposes.”¹⁹⁰ The reason for the survey was “to determine the implications on the civilian population of strategic planning, and especially to assess the problems likely to arise out of the acquisition of the islands of Diego Garcia and Coetivy for military purposes.”¹⁹¹ Mr Newton concluded *inter alia* that: “There should be no insurmountable obstacle to the removal, resettlement and re-employment of the civilian population of islands required for military purposes”.¹⁹²

3.24 The Newton Report describes Diego Garcia as “eminently suitable” for the construction of an airstrip, naval storage tanks, a jetty, radio installations, housing, as well as recreational and administrative facilities.¹⁹³ The Report acknowledges that the “acquisition” of the islands “for military purposes, and changes in their administration, will almost certainly involve repercussions in the local politics of Mauritius and the Seychelles.”¹⁹⁴ It is noted that acquiring property on Diego Garcia by means of a Land Acquisition Ordinance of Mauritius “would involve the consent of Mauritian Ministers which would not necessarily be forthcoming, especially if it were represented to them that Mauritius was being deprived of

¹⁸⁸ Newton, *Survey in the Indian Ocean* (1964), Covering Letter, para. 7 (**Annex 22**).

¹⁸⁹ *Ibid.*

¹⁹⁰ Newton, *Survey in the Indian Ocean* (1964), Report, para. 1 (**Annex 22**).

¹⁹¹ *Ibid.*, para. 2.

¹⁹² *Ibid.*, para. 3.

¹⁹³ *Ibid.*, para. 20

¹⁹⁴ *Ibid.*, para. 13.

opportunities for improved trade and employment.”¹⁹⁵ The Report recommends that the U.K. Government should accept responsibility for “facilitating re-employment of the Mauritians and Seychellois on other islands and for the re-settlement in Mauritius and the Seychelles of those unwilling or unable to accept re-employment.”¹⁹⁶ It acknowledges that the cost of resettlement “will be relatively heavy.”¹⁹⁷

3.25 The Newton Report makes proposals for the administrative future of the surveyed islands “based on the assumption that it is essential to remove them from the unpredictable course of politics that tends to follow independence.”¹⁹⁸ The Report recommends that the islands should “become direct dependencies of the British Crown” and should be “administered under the authority of the Governor of the Seychelles as High Commissioner.”¹⁹⁹ The Report warns, however, of “a risk that to remove the islands from the jurisdiction of Mauritius would give rise to considerable political difficulties.”²⁰⁰ On the subject of compensation, Mr Newton noted that “it would scarcely be politic to deprive Mauritius of its dependencies without some *quid pro quo*.”²⁰¹ Recognising Mauritius’ continuing “beneficial interest” in the Chagos Archipelago, the Newton Report states that:

The issue is primarily one of relative advantages and disadvantages in regard to long-term strategy and is not a matter that can be examined in this report. It can be summarised in the question, how far adverse, but doubtless temporary, reactions in Mauritius should outweigh the need for security of tenure in certain of the islands, or

¹⁹⁵ *Ibid.*, para. 32.

¹⁹⁶ *Ibid.*, para. 35.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*, para. 48.

¹⁹⁹ *Ibid.*, para. 60.

²⁰⁰ *Ibid.*, para. 49.

²⁰¹ *Ibid.*, para. 67.

at least in Diego Garcia. A further issue is the assessment of the extent to which Mauritius might embarrass H.M.G.'s existing interests in the island before they can be replaced. Stated thus, the problem may appear over-simplified. The final decision cannot be independent of any obligations or commitments that H.M.G. might have towards Mauritius arising out of past history or any beneficial interest of Mauritius in the [Chagos Archipelago].²⁰²

3.26 Following the Newton survey, on 14 January 1965, the U.S. sent its proposals to the U.K.²⁰³ Three categories of islands were identified, in order of priority:

- a) First, the U.S. “required” Diego Garcia for the “establishment of a communications station and supporting facilities, to include an air strip and improvement of off-loading capability.” The U.S. considered that “detachment proceedings should include the entire Chagos archipelago, primarily in the interest of security, but also to have other sites in this archipelago available for future contingencies.”²⁰⁴ The State Department wanted Diego Garcia to be made available as soon as possible, suggesting that austere communications could be established within three to five months and that work on permanent facilities could commence in late 1966.²⁰⁵
- b) Second, the island of Aldabra, forming part of Seychelles, was singled out as a potential air staging post, which “impels strong

²⁰² *Ibid.*, para. 49.

²⁰³ Letter from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary's Department, U.K. Foreign Office (14 Jan. 1965) (**Annex 28**).

²⁰⁴ *Ibid.*, p. 1.

²⁰⁵ *Ibid.* See also Letter from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965), para. a (**Annex 29**).

recommendation that this island be included in any detachment package”.²⁰⁶

- c) The third category comprised five islands belonging to Mauritius and Seychelles – Coëtivy, Agalega, Farquhar, Desroches and Cosmoledo – listed in order of preference.²⁰⁷ As the U.K. intended “single-bite ... detachment proceedings”, the U.S. strongly urged it to “consider stockpiling” these islands and to detach them “on precautionary planning basis”.²⁰⁸

3.27 The U.S. recognised “the difficulties that Her Majesty’s Government will face in undertaking the necessary steps to detach these islands.”²⁰⁹ Responding to the proposals, a British Official noted that “the amount of real estate involved was rather formidable.”²¹⁰ The Foreign Office wanted to carry out the detachment as a single operation: this was explicitly in order to minimise scrutiny at the U.N.²¹¹ The British Embassy in Washington recognised that the U.K. “could not take two bites

²⁰⁶ Letter from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965), para. b (**Annex 29**).

²⁰⁷ Letter from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary’s Department, U.K. Foreign Office (14 Jan. 1965), para. c (**Annex 28**).

²⁰⁸ Letter from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965), para. c (**Annex 29**).

²⁰⁹ Letter from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary’s Department, U.K. Foreign Office (14 Jan. 1965), p. 2 (**Annex 28**).

²¹⁰ Letter from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965), p. 1 (**Annex 29**).

²¹¹ See Section VIII below and Chapter 4, Section III. A. See also United Kingdom, *Record of UK-US Talks on Defence Facilities in the Indian Ocean*, FO 371/184529 (23-24 Sept. 1965) (hereinafter “*Defence Facilities in the Indian Ocean (23-24 Sept. 1965)*”), Record of a Meeting with an American Delegation headed by Mr. Kitchen, on 23 September, 1965, Mr. Peck in the chair, p. 3. (“Mr. Peck made the point that we would want to avoid a second row in the United Nations if possible, and therefore to carry out the detachment as a single operation.”) (**Annex 62**).

at the cherry of detachment” and that it would be prudent to detach at one time all the islands which could be useful in the long run.²¹²

3.28 On 26 January 1965, the U.K. urgently asked the U.S. whether the entire Chagos Archipelago should be detached from Mauritius, or just the island of Diego Garcia. The U.S. response was:

We would not regard the detachment of the entire Chagos Archipelago as essential, but consider it highly desirable. It appears to us that full detachment now might more effectively assure that Mauritian political attention, including any recovery pressure, is diverted from Diego Garcia over the long run. In addition [...] full detachment is useful from the military security standpoint, and provides a source for additional land areas should requirements arise which could not be met on Diego Garcia.²¹³

3.29 In preparation for a visit to Washington and New York in March 1965, the British Foreign Secretary was briefed that:

any islands chosen for military facilities must be free from local pressures which would threaten security of tenure, and... in practice this must mean that the islands would be detached from the administration of Mauritius (soon due for independence) and of the Seychelles (where pressure for independence is beginning to be felt).²¹⁴

²¹² *Letter* from N. C. C. Trench of the British Embassy in Washington to E. H. Peck of the U.K. Foreign Office, FO 371/184522 (15 Jan. 1965), p. 1 (**Annex 29**).

²¹³ *Letter* from George S. Newman, Counselor for Politico-Military Affairs, U.S. Embassy in London to Geoffrey Arthur, Head of the Permanent Under-Secretary’s Department, U.K. Foreign Office (10 Feb. 1965), para. a (**Annex 30**).

²¹⁴ *Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965), para. 2 (**Annex 31**). *See also* African Section Research Department, *Detachment of the Chagos Archipelago: Negotiations with the Mauritians (1965)* (15 July 1983) (hereinafter “*Detachment of the Chagos Archipelago* (15 July 1983)”), paras. 1 and 2 (**Annex 132**).

3.30 The secret brief records Premier Ramgoolam’s “guarded”²¹⁵ reaction to the proposal and, as word emerged about what was being proposed, the growing “unfavourable reactions” from African and Asian States, the U.N. and the Cairo Conference of Non-Aligned Countries.²¹⁶ Nevertheless, U.K. Ministers would “shortly be asked to reaffirm Her Majesty’s Government’s general support for this scheme and to agree that the Colonial Office should undertake the necessary constitutional steps in Mauritius and the Seychelles.”²¹⁷ In response to rumours that the U.S. was to build military “bases” in the Indian Ocean, the U.K. attempted to deflect criticism by adopting the public line that “certain communications and other facilities were a possibility but that no decision had been taken.”²¹⁸

3.31 On 12 April 1965, British Ministers accepted the “general lines” of the U.S. proposal and decided “to seek an American contribution to the cost of detaching the islands.”²¹⁹ Three days later, the British Prime Minister told the U.S. Secretary of State that “HMG wishes to press ahead, despite possible political embarrassment in U.N. and elsewhere.”²²⁰ A Foreign Office telegram notes that Prime Minister Wilson was “anxious to press ahead with this project as rapidly as possible”.²²¹ The U.K. had selected the Chagos Archipelago and the Seychelles islands of Aldabra, Farquhar and Desroches for detachment and the development of defence facilities

²¹⁵ *Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965), para. 4 (**Annex 31**). See also *Detachment of the Chagos Archipelago* (15 July 1983), para. 1 (**Annex 132**).

²¹⁶ *Secretary of State’s Visit to Washington and New York, 21-24 March* (18 Mar. 1965), para. 4 (**Annex 31**). See also Chapter 4, Section III.

²¹⁷ *Ibid.*, para. 6.

²¹⁸ *Ibid.*, para. 4.

²¹⁹ “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 25 (**Annex 23**).

²²⁰ *Ibid.*, item no. 26.

²²¹ *Telegram* from the Foreign Office to Washington, No. 3582, FO 371/184523 (30 April 1965), para. 2 (**Annex 33**).

thereon. The telegram records the unambiguous view of the British Government that:

It is now clear that in each case the islands are legally part of the territory of the colony concerned. Generous compensation will, therefore, be necessary to secure the acceptance of the proposals by the local Governments (which we regard as fundamental for the constitutional detachment of the islands concerned) in addition to compensation for the inhabitants and commercial interests which will be displaced. The total may come to as much as £10 million. We should, therefore, like to discuss with the United States Government the possibility of a contribution to these costs from their side.²²²

3.32 It was decided that the timing of an approach to Mauritian Ministers had to be carefully considered and that it would be prudent to discuss in advance “what publicity line should be taken if the details should leak”.²²³ In mid-May 1965, the U.S. agreed to explore the possibility of making a financial contribution by means of an offset in U.S./U.K. research and development programmes. However, since the U.S. Congress was unlikely to agree to provide funds, “[g]reat secrecy was essential”.²²⁴ On 24 June 1965, the U.S. decided to contribute up to half the estimated cost of £10 million thought to be required to detach the islands.²²⁵ The U.K. agreed to keep the U.S. contribution secret from Mauritius and the Seychelles.

3.33 On 19 July 1965, Governor Rennie was instructed to communicate detachment proposals to the Mauritian Council of Ministers and to report on their

²²² *Ibid.*, para. 3 (emphasis added).

²²³ *Ibid.*, para. 5.

²²⁴ “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 29 (Annex 23).

²²⁵ *Ibid.*, item no. 30.

reactions as soon as possible.²²⁶ Colonial Secretary Anthony Greenwood instructed the Governor that:

Americans have been informed that while we could not agree to their proposals in full we are nevertheless willing in principle to pursue proposed joint development further on the basis that, subject to the agreement of the [Government of Mauritius], which we regard as essential, we would be prepared to detach from Mauritius... the whole of the Chagos Archipelago (including Diego Garcia)...²²⁷

3.34 The Colonial Secretary informed U.K. Ministers of his view that the Mauritius Government would likely demand compensation “in respect of loss of territory” and that such compensation was “clearly unavoidable” and “necessary to secure acceptance of these proposals”.²²⁸ The Governors of Mauritius and Seychelles were instructed by Mr Greenwood that the U.S. financial contribution “must be kept strictly secret” but that an indication should be sought as to the amount of compensation “necessary to secure Mauritius and Seychelles agreement.”²²⁹ The Colonial Secretary noted that the British Government “recognises that it would be reasonable for the Governments of Mauritius and Seychelles to expect some element of compensation in view of the proposed detachment of territory” and that “H.M.G.... attach considerable importance to securing the support” of Mauritian Ministers.²³⁰ Governor Rennie was told to explain that the Chagos Archipelago would be “constitutionally separated” from

²²⁶ *Telegram* from the Secretary of State for the Colonies to Mauritius & Seychelles, Nos. 198 and 219, FO 371/184526 (19 July 1965) (**Annex 37**). See also “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 32 (**Annex 23**). Prior to Mauritius’ Independence, the Governor was the Queen’s representative and formal head of the Government of Mauritius.

²²⁷ *Telegram* from the Secretary of State for the Colonies to Mauritius & Seychelles, Nos. 198 and 219, FO 371/184526 (19 July 1965), para. 1 (**Annex 37**).

²²⁸ *Ibid.*, paras. 2-3.

²²⁹ *Ibid.*, para. 4.

²³⁰ *Ibid.*, paras. 5 and 7.

Mauritius.²³¹ The islands would not be made available on any other basis, such as a lease.²³²

3.35 Legal and administrative arrangements were agreed long before Mauritian Ministers were approached. It was decided in London that the islands would be detached from Mauritius and Seychelles to form a new separate territory “established by Order in Council similar to [the] British Antarctic Territory Order in Council 1962.”²³³

3.36 On 23 July 1965, Governor Rennie wrote to Colonial Secretary Greenwood to report that Mauritian Ministers had asked for more time to consider the British proposals.²³⁴ Governor Rennie explained that Premier Ramgoolam and one of his colleagues had expressed “[d]islike of detachment”²³⁵ and that it was clear that “any attempt to detach without agreement would provoke strong protest.”²³⁶ Governor Rennie held a further meeting of the Council of Ministers on 30 July 1965 at which Mauritian Ministers expressed their strong objection to the detachment of the Chagos Archipelago. Governor Rennie reported to Colonial Secretary Greenwood that:

Ministers objected however to detachment which would be unacceptable to public opinion in Mauritius. They therefore asked

²³¹ *Ibid.*, para. 8.

²³² *Ibid.* On the refusal to make the islands available on the basis of a lease, *see also Defence Facilities in the Indian Ocean* (23-24 Sept. 1965), Record of a Meeting with an American Delegation headed by Mr. Kitchen, on 23 September, 1965, Mr. Peck in the chair, p. 2 (**Annex 62**).

²³³ *Telegram* from the Secretary of State for the Colonies to Mauritius and Seychelles, PAC 93/892/05, FO 371/184524 (21 July 1965), para. 2(b) (**Annex 38**).

²³⁴ *Telegram* from the Governor of Mauritius to the Secretary of State for the Colonies, No. 170, FO 371/184526 (23 July 1965) (**Annex 40**).

²³⁵ *Ibid.*, para. 2.

²³⁶ *Ibid.* *See also Detachment of the Chagos Archipelago* (15 July 1983), para. 3 (**Annex 132**).

that you consider ‘with sympathy and understanding’ how U.K./U.S. requirements might be reconciled with the long term lease e.g. for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius.²³⁷

3.37 Governor Rennie also reported that the views expressed by Premier Ramgoolam “were subscribed to by all the Ministers present”.²³⁸ His conclusion was that:

Attitude to detachment is awkward but not unexpected despite my warning that lease would not be acceptable. Proposals for compensation are also highly inconvenient though Ministers are setting sights high in the hope of doing the best for Mauritius. I should like to emphasise, however, that... Ministers have taken responsible line and given collective view after consultation among themselves, and that so far there has been no attempt to exploit for party advantage with a view to constitutional conference.²³⁹

3.38 Colonial Secretary Greenwood responded to Governor Rennie with instructions to reiterate to Mauritian Ministers that a lease was not possible.²⁴⁰ The Colonial Secretary suggested that Mauritian Ministers be told that a leasehold arrangement would make them vulnerable to “extremely troublesome” domestic and international accusations of harbouring “foreign bases.”²⁴¹ Mr Greenwood reaffirmed that acceptance by Mauritian Ministers was “the only acceptable

²³⁷ *Telegram* from the Governor of Mauritius to the Secretary of State for the Colonies, No. 175, FO 371/184526 (30 July 1965), para. 2 (**Annex 42**).

²³⁸ *Ibid.*, para. 5.

²³⁹ *Ibid.*, para. 6.

²⁴⁰ *Telegram* from the U.K. Secretary of State for the Colonies to J. Rennie, Governor of Mauritius, No. PAC 93/892/01 (10 Aug. 1965), para. 2 (**Annex 44**).

²⁴¹ *Ibid.*, paras. 2-3.

arrangement”.²⁴² Nevertheless, Mauritian Ministers continued to oppose U.K. proposals to detach the Chagos Archipelago and suggested talks with U.K. and U.S. representatives. Governor Rennie was unable to obtain agreement and proposed that Colonial Secretary Greenwood meet with Premier Ramgoolam in London before the next Constitutional Conference which was scheduled for 7 to 24 September 1965.²⁴³

IV. The 1965 Constitutional Conference

3.39 The 1965 Constitutional Conference (“the Conference”) was held in London. The talks between Mauritian delegates and colonial authorities took place against the backdrop of (i) uncertainty about whether Mauritius would be granted independence; (ii) an irreversible commitment on the part of the British government to detach the Chagos Archipelago from Mauritius; (iii) opposition by Mauritian Ministers to the detachment of the Chagos Archipelago; and (iv) insistence on the part of Colonial Secretary Greenwood that Mauritian Ministers “agree” to the detachment to shield the U.K. from domestic and international criticism.²⁴⁴

²⁴² *Ibid.*, para. 4.

²⁴³ *Telegram* from the Governor of Mauritius to the Secretary of State for the Colonies, No. 188, FO 371/184526 (13 Aug. 1965) (**Annex 46**).

²⁴⁴ The 1965 Conference was attended by 28 Mauritian delegates. This included the following Mauritian Ministers and party leaders: Sir Seewoosagur Ramgoolam (MLP); Attorney General Jules Koenig (PMSD), Minister Sookdeo Bissoondoyal (IFB) and Minister Abdool Razack Mohamed (MCA); Minister Maurice Paturau (independent) and Minister Jean Ah-Chuen (independent). *See Mauritius Constitutional Conference Report* (24 Sept. 1965), List of those attending Conference (**Annex 64**).

A. UNCERTAINTY ABOUT WHETHER MAURITIUS WOULD BE GRANTED INDEPENDENCE

3.40 Before and during the 1965 Constitutional Conference, Mauritius' future status was uncertain, as British officials at the highest levels continued to express doubts about the granting of independence to Mauritius. On 3 May 1965, the Foreign Office believed that the outcome of the upcoming Conference was:

unlikely to take Mauritius further than full internal self-government. It is impossible to estimate when or indeed if Mauritius will achieve full independence.²⁴⁵

3.41 Less than a month before the Conference, the Colonial Office also expressed doubt as to whether Mauritius would be granted independence:

The Mauritian political parties are divided over the question of long-term status. Some are demanding independence within the Commonwealth; others look to some form of continued association with Britain. We doubt whether it will be possible for the conference to resolve these differences, but it might succeed in arriving at definitions of 'independence' and 'free association' which could in due course be put to the Mauritius electorate, and in deciding that the future status of the island should depend on the outcome of an election or a referendum.²⁴⁶

3.42 It was believed that, depending on the approach taken by the Colonial Secretary to questions of defence and internal security, "it may well turn out to be impossible for Mauritius to advance from the status of dependency at all".²⁴⁷ Two weeks before the Conference the Colonial Office remained pessimistic about the

²⁴⁵ *Telegram* from the U.K. Foreign Office to the U.K. Embassy in Washington, No. 3665, FO 371/184523 (3 May 1965), para. 1 (**Annex 34**).

²⁴⁶ *Letter* from R. Terrell of the U.K. Colonial Office to P.H. Moberly of the U.K. Ministry of Defence, PAC 36/748/08, FO 371/184527 (11 Aug. 1965), para. 2 (**Annex 45**).

²⁴⁷ *Ibid.*, para. 12.

likelihood that the U.K. would accept that Mauritius should be granted independence:

MR SMITH (Colonial Office) outlined the present position in Mauritius and the possible outcome of the Constitutional Conference. ... The outcome of the Conference was uncertain and his Secretary of State had stated that he was open to consider any kind of solution. The most likely course of events was that the Conference was unlikely to agree on full autonomy, but would accept that Mauritius should proceed to full internal self-government, with the possibility of further progress after a future referendum.²⁴⁸

3.43 A Colonial Office note prepared for the Prime Minister made clear that the fate of Mauritius' long-term status was solely in the hands of the British Government:

The gap between the parties led by Sir S. Ramgoolam wanting independence, and the Parti Mauricien and its supporters who seek continuing association with Britain, will not be closed by negotiation. H.M.G. will have to impose a solution.²⁴⁹

3.44 Even during the Conference, British officials questioned whether Mauritius would achieve independence:

it seems that the strength of feeling against independence may make it impossible for the Conference to accept a programme by which Mauritius would proceed straightforwardly to independence.²⁵⁰

²⁴⁸ U.K. Ministry of Defence, Chiefs of Staff Committee, *Mauritius Constitutional Conference*, No. COS 154/65 (26 Aug. 1965) (hereinafter "*Mauritius Constitutional Conference* (26 Aug. 1965)"), p. 6 (**Annex 47**).

²⁴⁹ *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius* (22 Sept. 1965), p. 4 (emphasis added) (**Annex 59**). See also *Mauritius Constitutional Conference Report* (24 Sept. 1965), para. 14 (**Annex 64**).

²⁵⁰ U.K. Pacific and Indian Ocean Department, *Points for the Secretary of State at D.O.P. meeting, 9:30 a.m. Thursday, Sept. 16th*, CO 1036/1146 (15 Sept. 1965), para. 4 (**Annex 54**).

3.45 The grant of independence to Mauritius thus lay entirely in the hands of the British Government. The talks between Mauritian delegates and the colonial authorities took place under a cloud of uncertainty, which would not be lifted until the very last day of the Conference on 24 September 1965.²⁵¹

B. THE U.K. HAD ALREADY DECIDED TO DETACH THE CHAGOS ARCHIPELAGO

3.46 Long before the Conference, the U.K. and U.S. had already decided that the Chagos Archipelago would be detached from Mauritius and placed under direct British administration.²⁵² Mauritian Ministers were thus confronted with a *fait accompli*.²⁵³

3.47 In April 1964 the U.K. Foreign Office, Colonial Office and Ministry of Defence jointly recognised that it was imperative that detachment should be carried out “well in advance of Mauritian independence”.²⁵⁴ On 26 July 1965, the Foreign Office reported to the U.K. Mission to the U.N. that:

we believe that it will get progressively more difficult to detach the islands if Mauritius gets nearer to independence and impossible to do so if she becomes full independent.²⁵⁵

3.48 This was a view shared by the Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs:

²⁵¹ *Mauritius Constitutional Conference Report* (24 Sept. 1965), para. 20 (**Annex 64**).

²⁵² See Section III above.

²⁵³ United Kingdom, *Minutes from C. C. C. Tickell to Mr. Palliser: United States Defence Interests in the Indian Ocean*, FCO 31/3437 (28 Apr. 1964), para. 3 (**Annex 27**).

²⁵⁴ *U.S. Defence Interests in the Indian Ocean* (23 Apr. 1964), para. 10 (**Annex 26**).

²⁵⁵ *Letter from S. Falle of the U.K. Foreign Office to F. D. W. Brown of the U.K. Mission to the U.N.*, FO 371/184526 (26 July 1965), para. 2 (**Annex 41**).

the line taken by the Colonial Secretary with Mauritius leaders at the Conference on future defence arrangements will profoundly affect our chances of carrying them with us in the proposed detachment of Diego Garcia and the Chagos Archipelago. If we fail to persuade them now, we may never again be in a position to do so at an acceptable cost. Indeed if Mauritius opts for independence at this conference, this will be our last chance to secure the Chagos Archipelago.²⁵⁶

3.49 One week before the Conference, the British Prime Minister, Harold Wilson, made clear to Mr Greenwood that “our position on the detachment of the islands should in no way be prejudiced” during the course of the Conference and that the Colonial Secretary should bring the matter back to the Prime Minister and the Foreign Secretary “in good time for a decision to be reached on this issue before the conference reached any conclusion.”²⁵⁷ This was reiterated on 16 September 1965 at a Cabinet Committee meeting:

it was pointed out that an urgent and satisfactory decision for the detachment of the islands was necessary both in our own defence interests and in order to maintain our political and military relations with the United States.²⁵⁸

3.50 Prime Minister Wilson expressed “the hope that agreement for the detachment of the islands would be reached urgently, and in any case by the end of the present Constitutional Conference.”²⁵⁹

²⁵⁶ *Memorandum on Defence Facilities in the Indian Ocean* (26 Aug. 1965), para. 3 (**Annex 48**).

²⁵⁷ U.K. Defence and Overseas Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Tuesday 31st August, 1965, at 11 a.m.*, OPD(65), CAB 148/18 (31 Aug. 1965), p. 7 (**Annex 51**).

²⁵⁸ U.K. Defence and Overseas Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 16th September, 1965 at 9:45 a.m.*, OPD(65) (16 Sept. 1965), p. 5 (**Annex 56**).

²⁵⁹ *Ibid.*

C. MAURITIAN MINISTERS OPPOSED THE DETACHMENT OF THE CHAGOS ARCHIPELAGO

3.51 As explained above, Mauritian Ministers were steadfastly and consistently opposed to the detachment of the Chagos Archipelago.²⁶⁰ Less than two weeks before the Conference, the U.K. Chief of the Defence Staff recognised that Mr Greenwood:

had not been able to persuade the Mauritian Ministers to agree to the detachment from Mauritius of Diego Garcia and the other islands of the Chagos Archipelago... in advance of the Mauritius Constitutional Conference...²⁶¹

3.52 Mauritian Ministers continued to oppose the detachment of the Chagos Archipelago during the Conference.²⁶² A Minute prepared for the British Prime Minister on 22 September 1965 records that when proposals were discussed with Ministers in Mauritius, and more recently in London, their reaction was strong: “they cannot contemplate detachment”.²⁶³

D. THE COLONIAL SECRETARY SOUGHT TO OBTAIN MAURITIAN MINISTERS’ “AGREEMENT” TO DETACHMENT TO SHIELD THE U.K. FROM DOMESTIC AND INTERNATIONAL CRITICISM

3.53 The Foreign Office and Ministry of Defence were keen to accept U.S. defence proposals, and determined to proceed with the detachment of the Chagos Archipelago regardless of the views of Mauritian Ministers. Shortly before the

²⁶⁰ See paras. 3.30 and 3.36-3.38.

²⁶¹ *Mauritius Constitutional Conference* (26 Aug. 1965), p. 5 (**Annex 47**).

²⁶² See Section V below.

²⁶³ *Note for the Prime Minister’s Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius* (22 Sept. 1965), p. 3 (**Annex 59**).

Conference, the Deputy Secretary of State for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs proposed that:

As negotiation in Mauritius has failed to establish agreement on terms, we regard it as essential that, during their stay in London, Mauritius Ministers should be made aware of HMG's determination to go through with this project on terms which in HMG's view adequately compensate Mauritius for the loss of the remote and neglected Chagos Archipelago.

These terms should be financial compensation for Mauritius in the form of development or other aid comparable to the sum of about £3 million to be offered to the Seychelles, plus a promise of continued British responsibility for the external defence of Mauritius... .

If Mauritius Ministers refuse this offer, they should be told that, in that case, HMG will have to consider any proposals for the future status of Mauritius without the Chagos Archipelago, and will exercise their right to transfer Chagos to permanent British sovereignty under order-in-council, financial compensation as above being paid to the Mauritius Government.²⁶⁴

3.54 Taking note of these proposals, an official at the Colonial Office wrote that:

If Mauritian acquiescence cannot be obtained, then the course recommended by the joint Foreign Office/Ministry of Defence paper, i.e. forcible detachment and compensation paid into a fund, seems essential.²⁶⁵

3.55 Mr Greenwood – the Colonial Secretary – preferred, for political reasons, that the detachment of the Chagos Archipelago be accompanied by the “agreement”

²⁶⁴ *Memorandum on Defence Facilities in the Indian Ocean* (26 Aug. 1965), paras. 6b-d (**Annex 48**).

²⁶⁵ United Kingdom, *Secretary of State's Private Discussion with the Secretary of State for Defence on 15 September: Indian Ocean Islands*, FO 371/184528 (15 Sept. 1965) (hereinafter “*Secretary of State's Private Discussion with the Secretary of State for Defence* (15 Sept. 1965)”), para. 2 (**Annex 55**).

of Mauritian Ministers. A note prepared by the Foreign Office after the event, in 1982, records 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.²⁶⁶

3.56 This is also reflected in the contemporaneous records. At a Chiefs of Staff Committee meeting on 26 August 1965, a Colonial Office official said that:

The Colonial Secretary was anxious to detach the Chagos Archipelago by consent and was disinclined to detach it arbitrarily by an Order in Council, which would have international political repercussions.²⁶⁷

3.57 A brief prepared for the Colonial Secretary two days later warned that:

The Secretary of State will no doubt wish to resist strongly any suggestion that there should be any question of the matter being handled in the only other way that would be open to us for securing these facilities in the Indian Ocean if the acquiescence of the Mauritian Ministers could not be obtained... i.e. by simply forcing the thing through, using our constitutional powers. To do so would have disastrous consequences from the point of view of world opinion. It would completely disrupt the Mauritius Constitutional Conference and would in all probability make impossible for some time to come to any agreement on the constitutional future of

²⁶⁶ Note from M. Walawalkar of the African Section 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), para. 9 (**Annex 124**). See also *U.S. Defence Interests in the Indian Ocean* (23 Apr. 1964) (**Annex 26**); Telegram from U.K. Secretary of State for the Colonies to J. Rennie, Governor of Mauritius, No. PAC 93/892/01 (10 Aug. 1965) (**Annex 44**).

²⁶⁷ *Mauritius Constitutional Conference* (26 Aug. 1965), p. 6 (**Annex 47**).

Mauritius; this in turn could pose considerable internal security difficulties...²⁶⁸

3.58 At a Cabinet Committee meeting on 31 August 1965, the Foreign Secretary was also alive to the potential political advantage to be garnered by securing the “agreement” of Mauritian Ministers. The Foreign Secretary predicted that “if both the Seychelles and the Mauritius Governments agreed to our proposals, there would be no international criticism of our actions.”²⁶⁹

V. Private meetings on “defence matters”

3.59 In the days leading up to the September 1965 Conference, the Colonial Office devised a plan by which talks on detachment would take place “in parallel (and in a smaller group) with the constitutional talks, the object being to link both up in a possible package deal at the end.”²⁷⁰ Private meetings on “defence matters” would be chaired by Colonial Secretary Greenwood and attended by Governor Rennie, Premier Ramgoolam, three other Mauritian party leaders, and a leading independent Mauritian Minister.²⁷¹

3.60 The first private meeting on “defence matters” took place on 13 September 1965. The Colonial Secretary and Governor Rennie met privately with Premier

²⁶⁸ United Kingdom, *Mauritius and Diego Garcia: The Question of Consent - Note from 28 August 1965*, FCO 31/3437 (undated) (**Annex 49**).

²⁶⁹ U.K. Defence and Overseas Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Tuesday 31st August, 1965, at 11 a.m.*, OPD(65), CAB 148/18 (31 Aug. 1965), p. 6 (**Annex 51**).

²⁷⁰ U.K. Foreign Office, *Minute from E. H. Peck to Mr. Graham: Indian Ocean Islands*, FO 371/184527 (3 Sept. 1965), p. 2, para. 2 (**Annex 52**).

²⁷¹ Premier Ramgoolam was joined by three other Mauritian party leaders: Attorney General Jules Koenig (PMSD), Minister Sookdeo Bissoondoyal (IFB) and Minister Abdool Razack Mohamed (MCA). The fourth colleague was the leading independent Minister, Maurice Paturau.

Ramgoolam in advance to ask him about the likely reactions of his colleagues. Premier Ramgoolam recalled that:

after the Governor had put the proposals to the Council of Ministers he [Premier Ramgoolam] had had a separate meeting with his colleagues. At that time he had found them almost unanimously against the proposal to excise the islands from Mauritius's jurisdiction but ready to consider granting a lease on any conditions satisfactory to the British Government.²⁷²

3.61 It is recorded that at the private meeting with Mr Greenwood and Governor Rennie on 13 September, Premier Ramgoolam “expressed preference for a lease as against detachment.”²⁷³

3.62 Following this meeting, the U.K. Foreign Secretary and Defence Secretary had a private discussion during which it was decided that they would stress to Mr Greenwood the “great importance” that the U.S. attached to obtaining Diego Garcia.²⁷⁴ It was noted that if Mauritian “acquiescence” could not be obtained, it would seem essential to adopt the Foreign Office and Ministry of Defence recommendation of “forcible detachment and compensation paid into a fund”.²⁷⁵

3.63 The second private meeting on “defence matters” took place a week later, on 20 September 1965. Jules Koenig, the leader of the PMSD, referred to a meeting held at the American Embassy five days earlier at which no concessions had been

²⁷² United Kingdom, *Draft Record of the Secretary of State's Talk with Sir S. Ramgoolam at 10.00 Hours on Monday, 13th September, in the Colonial Office*, FCO 31/3834 (13 Sept. 1965), p. 1 (**Annex 53**).

²⁷³ “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 40 (**Annex 23**). See also *Detachment of the Chagos Archipelago* (15 July 1983), para. 8 (**Annex 132**).

²⁷⁴ *Secretary of State's Private Discussion with the Secretary of State for Defence* (15 Sept. 1965), para. 2 (**Annex 55**).

²⁷⁵ *Ibid.*

offered by the U.S. Government.²⁷⁶ In response Mr Greenwood suggested that Mauritian Ministers should reflect on the U.S. Government's "insistence on excision and their refusal to consider a lease".²⁷⁷ Premier Ramgoolam again made expressly clear that Mauritius could not accept detachment of the Chagos Archipelago:

the Mauritius Government was not interested in the excision of the islands and would stand out for a 99-year lease. They envisaged a rent of about £7 [million] a year for the first twenty years and say £2 [million] for the remainder. They regarded the offer of a lump sum of £1 [million] as derisory and would rather make the transfer gratis than accept it. The alternative was for Britain to concede independence to Mauritius and allow the Mauritius Government to negotiate thereafter with the British and United States Governments over Diego Garcia.²⁷⁸

3.64 Mr Greenwood argued that Diego Garcia "was not in present conditions a source of wealth to Mauritius" and that it would be in Mauritius' own interest to have an Anglo-U.S. military presence in the area.²⁷⁹ In response, Premier Ramgoolam, supported by two of his colleagues, reiterated that he understood the facilities to be in the interest of the whole Commonwealth, and repeated that:

he would prefer to make the facilities available free of charge rather than accept a lump sum of £1 [million] which was insignificant seen against Mauritius' annual recurrent budget amounting to about

²⁷⁶ Mauritian party leaders had met with the U.S. Embassy Minister for Economics, Mr Armstrong, who "did his best to persuade the Mauritian Ministers that there was no chance of the US increasing Mauritius' sugar or immigration quotas." See *Detachment of the Chagos Archipelago* (15 July 1983), para. 8 (**Annex 132**).

²⁷⁷ United Kingdom, *Mauritius - Defence Issues: Record of a Meeting in the Colonial Office at 9:00 a.m. on Monday, 20th September, 1965*, FO 371/184528 (20 Sept. 1965), p. 1 (**Annex 57**).

²⁷⁸ *Ibid.*, pp. 2-3 (emphasis in the original).

²⁷⁹ *Ibid.*, p. 3.

£13.5 [million] – with the development budget the total was about £20 [million].²⁸⁰

3.65 Premier Ramgoolam again stressed that excision was not an option, insisting instead on a 99-year lease.²⁸¹ The Colonial Secretary said that the U.S. Government had been “categorical in insisting that British sovereignty must be retained over Chagos” and warned the Mauritian Ministers that if detachment could not be achieved “the whole project might well fall through” and the U.S. Government would “look elsewhere for the facilities”.²⁸² Premier Ramgoolam “suggested that it might be better if the whole matter were left until Mauritius were independent and were then negotiated with the independent Government.”²⁸³

3.66 The Colonial Secretary replied that “it might be possible for him to secure agreement to increasing the proposed compensation from £1 million in the direction of £2 million.”²⁸⁴ Premier Ramgoolam said that “Mauritius ministers had not come to bargain”, adding that they “could not bargain over their relationship with the United Kingdom and the Commonwealth.”²⁸⁵

3.67 Later that day, 20 September, Colonial Secretary Greenwood met with the British Prime Minister and the Defence Secretary and reported on the latest stage

²⁸⁰ *Ibid.*, p. 4.

²⁸¹ *Ibid.*, p. 5.

²⁸² *Ibid.*, pp. 5-6.

²⁸³ *Ibid.*, p. 7.

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

of the Conference. It was agreed that the Prime Minister would meet with Premier Ramgoolam to have “a private word”.²⁸⁶

VI. Premier Ramgoolam’s meeting with Prime Minister Wilson

3.68 The meeting between the British Prime Minister, Harold Wilson, and Premier Ramgoolam took place at 10.00 am on 23 September 1965 at 10 Downing Street.

3.69 A minute prepared by the Prime Minister’s private secretary – in advance of the meeting – spells out the objective of Harold Wilson’s “private word” with Premier Ramgoolam:

Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago. I attach a brief prepared by the Colonial Office, with which the Ministry of Defence and the Foreign Office are on the whole content. The key sentence in the brief is the last sentence of it on page three.²⁸⁷

3.70 The brief prepared by the Colonial Office confirms that the Mauritian Ministers “cannot contemplate detachment but propose a long lease”.²⁸⁸ The conclusion of the brief, including the “key last sentence”, states that:

Throughout consideration of this problem, all Departments have accepted the importance of securing consent of the Mauritius Government to detachment. The Premier knows the importance we

²⁸⁶ United Kingdom, *Note for the Record relating to a Meeting held at No. 10 Downing Street on 20 September 1965 between the U.K. Prime Minister, the Colonial Secretary and the Defence Secretary* (20 Sept. 1965), paras. 1-2 (**Annex 58**).

²⁸⁷ *Note for the Prime Minister’s Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius* (22 Sept. 1965), p. 1 (emphasis added) (**Annex 59**).

²⁸⁸ *Ibid.*, p. 3.

attach to this. In the last resort, however, detachment could be carried out without Mauritius consent, and this possibility has been left open in recent discussions in Defence and Overseas Policy Committee. The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, without Mauritius consent, but this would be a grave step.²⁸⁹

3.71 A separate minute from Colonial Secretary Greenwood expresses anxiety that the “bases issue” would make the Constitutional Conference more difficult, and that care should be taken not to make it obvious that the U.K. was in fact offering independence to Mauritius on condition of detachment of the Chagos Archipelago:

I am sure that we should not seem to be trading Independence for detachment of the Islands. That would put us in a bad light at home and abroad and would sour our relations with the new state.²⁹⁰

3.72 At the meeting with Premier Ramgoolam, Prime Minister Wilson said that he “wished to discuss with Sir Seewoosagur a matter which was not strictly speaking within the Colonial Secretary’s sphere: it was the Defence problem and in particular the question of the detachment of Diego Garcia.”²⁹¹ Following the advice of Colonial Secretary Greenwood, and for the sake of appearances, Prime Minister Wilson added: “This was of course a completely separate matter and not

²⁸⁹ *Ibid.* (emphasis in the original). It is noteworthy that, in a handwritten note at the top of the first page, Prime Minister Wilson asked for the last sentence of this paragraph to be further explained to him.

²⁹⁰ *Ibid.*, p. 2.

²⁹¹ U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 1 (**Annex 60**).

bound up with the question of Independence.”²⁹² However, the British Prime Minister went on to say that:

in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.²⁹³

3.73 Premier Ramgoolam understood Prime Minister Wilson’s words to be in the nature of a threat. He understood that if he and his colleagues did not “agree” to the detachment of the Chagos Archipelago, Mauritius would not be granted independence.²⁹⁴ In the years that followed this meeting, senior British civil servants, diplomats and politicians, including Prime Minister Wilson, have (privately) acknowledged that Mauritius was granted independence on condition of “agreement” to detachment.²⁹⁵ This was also the view expressed by Judges Kateka and Wolfrum in their Dissenting and Concurring Opinion in the *Chagos Marine Protected Area Arbitration*.²⁹⁶ No contrary view was expressed by any of the three other arbitrators who sat in that case.

3.74 On 25 May 1967, less than two years after the meeting with Premier Ramgoolam, Prime Minister Wilson attended a Cabinet Committee meeting in the

²⁹² *Ibid.*, pp. 1-2.

²⁹³ *Ibid.*, p. 3.

²⁹⁴ In the years that followed, Premier Ramgoolam (who was to become Prime Minister of newly independent Mauritius) spoke of having chosen independence for Mauritius over the retention of the Chagos Archipelago. See Chapter 4, Section II. A.

²⁹⁵ See paras. 3.74-3.80 below.

²⁹⁶ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), paras. 76-77 (**Dossier No. 409**).

company of *inter alia* the Chancellor of the Exchequer, and the Secretaries of State for Commonwealth Affairs, Economic Affairs, Defence and the Home Department. The Commonwealth Secretary is recorded as having said that:

at the time when the agreement for the detachment of BIOT was signed in 1965, Mauritian Ministers were unaware of our negotiations with the United States Government for a contribution by them towards the cost of compensation for detachment. They were further told that there was no question of a further contribution to them by the United States Government since this was a matter between ourselves and Mauritius, that the £3 million was the maximum we could afford, and that unless they accepted our proposals we should not proceed with the arrangements for the grant to them of independence.²⁹⁷

Prime Minister Wilson, who spoke shortly thereafter to summarise the meeting, did not make any comment on, correction or clarification to, the Commonwealth Secretary's statement.²⁹⁸

3.75 On 4 March 1983, shortly before a Mauritian Parliamentary Select Committee was to publish a report on the detachment of the Chagos Archipelago, the British High Commissioner in Port Louis wrote to the Foreign Office to warn that:

de Lestrac [the Mauritian Minister of External Affairs, Tourism & Emigration] is reported as saying in Paris that Ramgoolam had to agree to the excision under duress because the alternative put to him

²⁹⁷ U.K. Defence and Overseas Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1., on Thursday, 25th May 1967 at 9:45 a.m.*, OPD(67) (25 May 1967), p. 2 (emphasis added) (**Annex 90**).

²⁹⁸ *Ibid.*, p. 3.

was a referendum on Independence (which presumably he feared because of the strength in those days of Duval)...²⁹⁹

3.76 Five days later, Margaret Walawalkar, of the Foreign Office Research Department, responded as follows:

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. ... 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.³⁰⁰

3.77 The British Government organised the September 1965 Conference in such a way that independence and "agreement" to detachment formed part of an inseparable "package deal".³⁰¹ An official at the Foreign Office, Edward Peck,

²⁹⁹ 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), para. 2(a) (**Annex 126**). On the Select Committee's Report, see paras. 4.10-4.14 below.

³⁰⁰ 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), para. 2 (emphasis added, save that the word "could" is underlined in the original) (**Annex 127**).

³⁰¹ U.K. Foreign Office, *Minute from E. H. Peck to Mr. Graham: Indian Ocean Islands*, FO 371/184527 (3 Sept. 1965), p. 2, paras. 1-2 (**Annex 52**).

writing one week before Premier Ramgoolam's meeting with Prime Minister Wilson, noted that:

It seems likely that the detachment of the islands may have to be arranged as a package deal at the conclusion of the Constitutional Talks.³⁰²

3.78 The fact that independence and detachment were part of a "package deal" was also acknowledged in a Minute dated 14 February 1967 to Mr Fairclough, a senior Colonial Office official:

H.M.G.'s decision to come out publicly in favour of independence for Mauritius was part of the deal between our own present Prime Minister and the Premier of Mauritius regarding the detachment of certain Mauritius dependencies for Biot.³⁰³

3.79 Mr Fairclough had first-hand knowledge of the link between independence and detachment: he had attended the first two private meetings with Mauritian Ministers on "defence matters". On the same day as Prime Minister Wilson's meeting with Premier Ramgoolam, the U.K. held separate (and secret) talks on the detachment of the Chagos Archipelago with a large U.S. delegation in London.³⁰⁴ Mr Fairclough described the progress of the talks with Mauritian Ministers to the American delegation in these terms:

The British side had tried to keep the independence issue which the conference was really meant to deal with, separate from the defence

³⁰² *Secretary of State's Private Discussion with the Secretary of State for Defence* (15 Sept. 1965), para. 1 (**Annex 55**).

³⁰³ United Kingdom, *Minute from M. Z. Terry to Mr. Fairclough - Mauritius: Independence Commitment*, FCO 32/268 (14 Feb. 1967), para. 4 (**Annex 86**).

³⁰⁴ *Defence Facilities in the Indian Ocean* (23-24 Sept. 1965), Record of a Meeting with an American Delegation headed by Mr. Kitchen, on 23 September, 1965, Mr. Peck in the chair (**Annex 62**).

project, but the outcome of the latter was found to depend partly on the former problem.³⁰⁵

3.80 Writing on this subject in a top secret note 11 years later, Mr Fairclough again acknowledged that Mauritian Ministers “agreed” to the detachment of the Chagos Archipelago as a necessary condition, and in exchange for, obtaining the independence of Mauritius. In the context of discussing the implications of the U.S. secret financial contribution, Mr Fairclough expressed concern that Premier Ramgoolam would be:

held up to ridicule in the forthcoming election campaign for having been ‘duped’ by the British and would again be attacked for having sold Chagos too cheaply in order to secure the agreement of the British Government that Mauritius should proceed to independence.³⁰⁶

3.81 Five decades later, Judges Kateka and Wolfrum, having carefully considered the nature and context of the meeting between Prime Minister Wilson and Premier Ramgoolam, came to the following conclusion:

It was further pointed out—correctly—that Mauritius had no choice. The detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not.

A look at the discussion between Prime Minister Harold Wilson and Premier Sir Seewoosagur Ramgoolam suggests that the [sic] Wilson’s threat that Ramgoolam could return home without independence amounts to duress. The Private Secretary of Wilson used the language of “frighten[ing]” the Premier “with hope”. The Colonial Secretary equally resorted to the language of intimidation. Furthermore, Mauritius was a colony of the United Kingdom when

³⁰⁵ *Ibid.*, p. 1 (emphasis added).

³⁰⁶ U.K. Colonial Office, *Minute from A. J. Fairclough of the Colonial Office to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary*, FCO 16/226 (22 May 1967), para. 7 (emphasis added) (**Annex 89**). The spelling of the word “duped” appears to have been corrected by hand.

the 1965 agreement was reached. The Council of Ministers of Mauritius was presided over by the British Governor who could nominate some of the members of the Council. Thus there was a clear situation of inequality between the two sides.³⁰⁷

VII. The Lancaster House Undertakings

3.82 The third and final private meeting between Mauritian Ministers and Colonial Secretary Greenwood on “defence matters” took place only a few hours after Premier Ramgoolam’s meeting with Prime Minister Wilson. Mr Greenwood “explained that he was required to inform his colleagues of the outcome of his talks with Mauritian Ministers about the detachment of the Chagos Archipelago at 4 p.m. that afternoon and was therefore anxious that a decision should be reached at the present meeting.”³⁰⁸ Mr Greenwood urged Mauritian Ministers to agree to the detachment of the Chagos Archipelago and not “lose this opportunity.”³⁰⁹ He reiterated that, in the absence of their “agreement”, “it would be possible for the British Government to detach [the Chagos Archipelago] from Mauritius by Order in Council.”³¹⁰

3.83 Premier Ramgoolam made one last attempt to reject detachment in favour of a lease. The Colonial Secretary told him bluntly that this was “not acceptable.”³¹¹

³⁰⁷ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), paras. 76-77 (footnotes omitted) (**Dossier No. 409**). The other three members of the Tribunal considered that the Tribunal lacked jurisdiction over the issue, and therefore expressed no view on that part of the case.

³⁰⁸ United Kingdom, *Record of a Meeting Held in Lancaster House at 2.30 p.m. on Thursday 23rd September: Mauritius Defence Matters*, CO 1036/1253 (23 Sept. 1965), para. 1 (**Annex 61**).

³⁰⁹ *Ibid.*, para. 2.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*, para. 3.

The record of that meeting sets out the U.K.'s view of the understanding that was eventually reached with Mauritian Ministers:

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 £3 [million] 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 concession 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.³¹²

3.84 Against this background of escalating pressure to “agree” to detachment as a condition of independence – described by Judges Kateka and Wolfrum as “duress”³¹³ – Premier Ramgoolam reluctantly “agreed”. He told Colonial Secretary Greenwood that, under the circumstances, these proposals were “acceptable to him and Messrs. Bissoondoyal and Mohamed in principle”, but that he would discuss the matter with his other ministerial colleagues.³¹⁴ He did so in the knowledge that in absence of such an “agreement”, Mauritius would not obtain independence. Mr Paturau could not accept the detachment and noted that “since the decision was not unanimous, he foresaw serious political trouble over it in Mauritius.”³¹⁵ Mr Koenig did not attend the meeting.³¹⁶

3.85 A further U.K.-U.S. meeting was held the next day. Mr Fairclough reported to the U.S. delegation that “Dr. Ramgoolam and a majority of Ministers present had agreed to the detachment of the Chagos Archipelago”.³¹⁷ Mr Fairclough went on to

³¹² *Ibid.*, para. 22. See also *Handwritten amendments proposed by S. Ramgoolam*, FCO 31/3834 (**Annex 63**).

³¹³ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 77 (**Dossier No. 409**).

³¹⁴ United Kingdom, *Record of a Meeting Held in Lancaster House at 2.30 p.m. on Thursday 23rd September: Mauritius Defence Matters*, CO 1036/1253 (23 Sept. 1965), para. 23 (**Annex 61**).

³¹⁵ *Ibid.*, para. 18.

³¹⁶ *Ibid.*, para. 6.

³¹⁷ *Defence Facilities in the Indian Ocean* (23-24 Sept. 1965), Summary record of ‘Plenary’ meeting between the United Kingdom and United States officials (led by Mr. Kitchen), Mr. Peck in the Chair on 24 September, 1965, p. 1 (**Annex 62**).

assure the Americans that “the necessary legal measures would be comparatively quick”.³¹⁸ However, it was agreed that:

the term ‘detachment’ should be avoided in any public statements on this subject, and that some other phrase – e.g. the retention under the administration of Her Majesty’s Government should be devised in its place.³¹⁹

3.86 It was decided that the U.K. would proceed to “make the necessary constitutional and administrative arrangements for the detachment of [the] Chagos Archipelago from Mauritius”.³²⁰ At a side meeting it was explained how the U.K. would carry out the detachment:

the Colonial Office envisaged the detachment operation taking place in three stages. During the first stage normal life would continue on the islands detached but not yet needed for defence facilities. In the middle stage the population would have to be cleared off any island when it was needed for defence purposes. This process would take a little time. During the final stage it was envisaged that an island with defence facilities installed on it would be free from local civilian inhabitants.³²¹

3.87 Before proceeding with the detachment, the U.K. sought the approval of the Mauritian Government. In a despatch to the Foreign Office, a Colonial Office official explained that this was necessary because “the Governor [of Mauritius] originally broached the subject with the full Council of Ministers, and our talks in London were only with the main party leaders and an Independent Minister”.³²²

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

³²⁰ *Ibid.*, Note on Further Action, p. 1 (**Annex 62**).

³²¹ *Ibid.*, Record of a Meeting of U.K. and U.S. Officials on 24 September, 1965, to Discuss Draft B, Mr. Peck in the Chair, para. 3 (**Annex 62**).

³²² Letter from T. Smith of the U.K. Colonial Office to E. Peck of the U.K. Foreign Office, PAC 93/892/01, FO 371/184529 (8 Oct. 1965), para. 2 (**Annex 67**).

Moreover, “the last and critical meeting” had taken place without Mr Koenig, who had walked out of the Constitutional Conference.³²³ It was noted that securing Mauritian Ministers’ agreement “was not a very easy proceeding” and that the U.K. had agreed to stipulations “some of which are perhaps rather tiresome”.³²⁴

3.88 On 6 October 1965, instructions were sent to Governor Rennie to secure the “agreement” of the Mauritius Government to the detachment “on the conditions enumerated in (i) – (viii) in paragraph 22” of the Record of the Meeting held on 23 September 1965.³²⁵ The Colonial Secretary specified that:

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. ...

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.

³²³ *Ibid.* See also *Minute from Secretary of State for the Colonies to the Prime Minister* (5 Nov. 1965), para. 4 (**Annex 70**).

³²⁴ *Letter from T. Smith of the U.K. Colonial Office to E. Peck of the U.K. Foreign Office*, PAC 93/892/01, FO 371/184529 (8 Oct. 1965), para. 2 (**Annex 67**).

³²⁵ U.K. Colonial Office, *Despatch No. 423 to the Governor of Mauritius*, PAC 93/892/01, FO 371/184529 (6 Oct. 1965), para. 2 (**Annex 65**). Subsequently, on 20 October 1965, formal instructions were sent to the Governor of Seychelles to confirm the agreement of the Executive Council to detach Aldabra, Farquhar and Desroches from Seychelles. See also “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 47 (**Annex 23**).

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).³²⁶

3.89 In the meantime, on 27 October 1965, the Foreign Office wrote to the U.K. Mission to the U.N. to find out when discussions on the decolonisation of Mauritius were likely to take place, citing concern that “any hostile reference” to the detachment of the Chagos Archipelago could have the effect of “jeopardiz[ing] final discussions in the Mauritius Council of Ministers”.³²⁷ The U.K. Mission replied that discussions were imminent, but that it was not possible to predict exactly when.³²⁸

3.90 On 5 November 1965, Governor Rennie informed the Colonial Secretary that the Mauritius “Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago” on the conditions set out at paragraph 22 of the Record of the Meeting of 23 September 1965.³²⁹ He added that PMSD Ministers had dissented and were “considering their position in the government.”³³⁰ The “agreement” of Mauritian Ministers was expressly on the understanding that:

(1) [the] 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.

³²⁶ U.K. Colonial Office, *Despatch No. 423 to the Governor of Mauritius*, PAC 93/892/01, FO 371/184529 (6 Oct. 1965), paras. 3-6 (**Annex 65**).

³²⁷ *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4104, FO 371/184529 (27 Oct. 1965) (hereinafter *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4104 (27 Oct. 1965)”) (**Annex 68**).

³²⁸ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697, FO 371/184529 (28 Oct. 1965) (hereinafter “*Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697 (28 Oct. 1965)”) (**Annex 69**).

³²⁹ *Telegram* from the Governor of Mauritius to the Secretary of State for the Colonies, No. 247, FO 371/184529 (5 Nov. 1965), para. 1 (**Annex 71**).

³³⁰ *Ibid.*, para. 2.

(2) As regards (vii) undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or

(b) any payment or financial obligation by Mauritius as condition of return.

(3) In (viii) ‘on or near’ means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.³³¹

VIII. The formal detachment of the Chagos Archipelago

3.91 On 5 November 1965, Colonial Secretary Greenwood wrote to Prime Minister Wilson to confirm that the Mauritius Council of Ministers had “agreed” to detachment.³³² He added that it is “essential that the arrangements for detachment of these islands should be completed as soon as possible.”³³³ The need for rapid action was explained explicitly as being based on concerns as to the reaction at the United Nations:

6. From the United Nations point of view the timing is particularly awkward. We are already under attack over Aden and Rhodesia, and whilst it is possible that the arrangements for detachment will be ignored when they become public, it seems more likely that they will be added to the list of ‘imperialist’ measures for which we are attacked. We shall be accused of creating a new colony in a period of decolonisation and of establishing new military bases when we should be getting out of the old ones. If there were any chance of avoiding publicity until this session of the General Assembly adjourns at Christmas there would be advantage in

³³¹ *Ibid.*, para. 1.

³³² *Minute from Secretary of State for the Colonies to the Prime Minister* (5 Nov. 1965), para. 3 (**Annex 70**).

³³³ *Ibid.*, para. 5.

delaying the Order in Council until then. But to do so would jeopardize the whole plan.

7. The Fourth Committee of the United Nations has now reached the item on Miscellaneous Territories and may well discuss Mauritius and Seychelles next week. If they raise the question of defence arrangements on the Indian Ocean Islands before we have detached them, the Mauritius Government will be under considerable pressure to withdraw their agreement to our proposals. Moreover we should lay ourselves open to an additional charge of dishonesty if we evaded the defence issue in the Fourth Committee and then made the Order in Council immediately afterwards. It is therefore important that we should be able to present the U.N. with a fait accompli.

8. In these circumstances I propose to arrange for an Order in Council to be made on Monday 8th November. A prepared written Parliamentary Question will be tabled on 9th November and answered on 10th November in the terms of the attached draft. Supplementary background guidance has been prepared for use with the press.

9. If we can meet the timetable set out in the previous paragraph we shall have a good chance of completing the operation before discussion in the Fourth Committee reaches the Indian Ocean Islands. We shall then be better placed to meet the criticism which is inevitable at whatever time we detach these islands from Mauritius and Seychelles.³³⁴

3.92 On 6 November 1965, Mr Greenwood informed Governor Rennie that for “planning purposes” the Colonial Office was assuming that an Order in Council would be made on 8 November 1965 with immediate effect, but that no publicity

³³⁴ *Ibid.*, paras. 6-9 (emphasis added, save that “fait accompli” is underlined in the original). See also *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4104 (27 Oct. 1965) (**Annex 68**); *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697 (28 Oct. 1965) (**Annex 69**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4310, FO 371/184529 (6 Nov. 1965) (**Annex 72**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4327 (8 Nov. 1965) (**Annex 75**); *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965) (**Annex 77**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4361 (10 Nov. 1965) (**Annex 78**).

would be given until 10 November. The Colonial Secretary explained that the Order would detach the islands and create “a separate colony”.³³⁵

3.93 On the same day, the Foreign Office reported to the U.K. Mission to the U.N. in New York that Mauritian Ministers had “accepted proposals on 5 November subject to certain understandings”.³³⁶ The Foreign Office, like the Colonial Office, wished for detachment to occur as soon as possible:

2. In view of possible publicity and consequent pressure on the Mauritius and Seychelles Governments to change their minds, we are proceeding with detachment immediately. We are arranging for an Order in Council to be made on 8 November and for a prepared Parliamentary Question to be tabled on 9 November for written answer on 10 November... .

3. If this operation is complete before Mauritius comes up in the Fourth Committee it seems to us that you will then be better placed to deal with the inevitable criticism. We hope therefore that you will do your best to ensure that discussion of Mauritius and other territories in the Indian Ocean is put off for as long as possible, and at least until 11 November.³³⁷

3.94 The Foreign Office advised the U.K. Mission to “concert tactics with the United States Delegation”³³⁸ and sent additional Guidance to the U.K. Mission.³³⁹ This Guidance falsely stated that: “The islands chosen have virtually no permanent

³³⁵ *Telegram* from the U.K. Secretary of State for the Colonies to the Governor of Mauritius (No. 267) and the Governor of Seychelles (No. 356), PAC 93/892/01, FO 371/184529 (6 Nov. 1965), paras. 1-2 (**Annex 73**).

³³⁶ *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4310, FO 371/184529 (6 Nov. 1965), para. 1 (**Annex 72**).

³³⁷ *Ibid.*, paras. 2-3.

³³⁸ *Ibid.*, para. 5.

³³⁹ *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4327 (8 Nov. 1965) (**Annex 75**).

inhabitants”.³⁴⁰ Lord Caradon, the British Permanent Representative to the U.N. in New York, reported to the Foreign Office that there was nothing that could be done to prevent a debate on the detachment, and he recognised that this position “may well lead to charges of failure to carry out our Charter obligations to those who are permanent inhabitants.”³⁴¹ The British Permanent Representative noted that: “If we could say there are... no permanent inhabitants many of these difficulties would not arise, but the use of ‘virtually’ ... seems to preclude this.”³⁴²

3.95 On 8 November 1965, the Colonial Secretary informed Governor Rennie that the “British Indian Ocean Territory” had been established by Order in Council:

A meeting of the Privy Council was held this morning, 8th November, and an Order in Council entitled the British Indian Ocean Territory Order 1965... has been made constituting the ‘British Indian Ocean Territory’ consisting of the Chagos Archipelago and Aldabra, Farquhar and Desroches islands.³⁴³

3.96 The Order in Council established the “BIOT” with a “Commissioner” having wide-ranging powers *inter alia* to make laws and grant pardons or respite from the execution of any criminal sentence.³⁴⁴ Section 18(2) of the Order in

³⁴⁰ *Ibid.*, para. 2(h). On the expulsion of the Chagossians by the U.K., see Section IX below and Chapter 4, Section IV.

³⁴¹ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965), para. 2 (**Annex 77**).

³⁴² *Ibid.*, para. 4.

³⁴³ *Telegram* from the U.K. Secretary of State for the Colonies to the Governor of Mauritius, No. 298, FO 371/184529 (8 Nov. 1965), para. 5 (**Annex 76**).

³⁴⁴ United Kingdom, “*The British Indian Ocean Territory Order 1965*” (8 Nov. 1965) (**Annex 74**). Section 3 of the Order provides that:

3. As from the date of this Order—

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

Council amended Section 90(1) of the 1964 Mauritius Constitution to remove the Chagos Archipelago from the definition of “Mauritius”.³⁴⁵

IX. Subsequent actions, including the forcible removal of the inhabitants

3.97 One month after the detachment of the Chagos Archipelago, the U.N. General Assembly adopted Resolution 2066 (XX) on the Question of Mauritius. This expressed “deep concern” as to the steps taken to detach the Chagos Archipelago. It invited “the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”,³⁴⁶ an invitation that has been ignored by the British Government.

3.98 On 30 December 1966, a secret exchange of notes between the U.K. and U.S. concluded an “Agreement Concerning the Availability for Defense Purposes

(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.

The 1965 Order was amended in 1968 by the “British Indian Ocean Territory (Amendment) Order 1968” (26 Jan. 1968), to correct inaccuracies in the description of the Chagos Archipelago and the Aldabra Group in Schedules 2 and 3 of the 1965 Order.

³⁴⁵ *Ibid.*, Section 18(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 the Cargados Carajos... .

Section 18 also amended the Seychelles Letter Patent 1948, deleting the words “and the Farquhar Islands” from the definition of “the Colony” in Article 1(1); deleting references to “Desroches”; and the “Aldabra Group” from the first schedule and also made corresponding deletions to Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960.

³⁴⁶ *Question of Mauritius* (16 Dec. 1965) (**Dossier No. 146**). See also paras. 4.29-4.31 below.

of the British Indian Ocean Territory” (“the 1966 Agreement”).³⁴⁷ This provided that the “BIOT” was to remain under U.K. sovereignty and be available to “meet the needs of both Governments for defense.”³⁴⁸ The Agreement provided that “[t]he required sites shall be made available to the United States authorities without charge”³⁴⁹ and that “the islands shall remain available to meet the possible defense needs of the two Governments for an indefinitely long period.”³⁵⁰ Paragraph 11 sets out the temporal scope of the Agreement:

after an initial period of 50 years this Agreement shall continue in force for a further period of twenty years unless, not more than two years before the end of the initial period, either Government shall have given notice of termination to the other, in which case this Agreement shall terminate two years from the date of such notice.³⁵¹

3.99 The initial 50-year period ran from 30 December 1966 to 30 December 2016. Neither the U.K. nor the U.S. gave notice of termination during the period December 2014 to December 2016. As a result, by operation of paragraph 11, the 1966 Agreement was extended for a further period of 20 years, until 30 December 2036.³⁵² That extension was not the subject of any prior consultation with

³⁴⁷ “Exchange of Notes Constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of United States of America Concerning the Availability for Defence Purposes of the British Indian Ocean Territory”, 603 U.N.T.S. 273 (No. 8737) (22 Aug. 1967), entered into force 30 Dec. 1966. The U.S. and U.K. signed two further Agreements on 30 December 1966: a Secret Exchange of Notes on Financing and an Exchange of Notes on the Seychelles Satellite Tracking Facility. The Seychelles Satellite Tracking Station Agreement was published on 25 January 1967.

³⁴⁸ *Ibid.*, paras. 1 and 2.

³⁴⁹ *Ibid.*, para. 4.

³⁵⁰ *Ibid.*, para. 11.

³⁵¹ *Ibid.*

³⁵² Mauritius was not consulted about the extension of the 1966 Agreement. See para. 4.22 below. See also U.K. House of Lords, “Written Statement: Update on the British Indian Ocean Territory”, No. HLWS257 (16 Nov. 2016) (hereinafter “Update on the British Indian Ocean Territory” (16 Nov. 2016)) (**Annex 185**).

Mauritius. Mauritius first learned about it in media reports.³⁵³

A. THE FORCIBLE REMOVAL OF THE CHAGOSIANS

3.100 The 1966 Agreement required that the administering power take “those administrative measures that may be necessary” to enable defense requirements to be met.³⁵⁴ An Agreed Minute confirms that the “administrative measures” referred to are “those necessary for modifying or terminating any economic activity then being pursued in the islands, resettling any inhabitants, and otherwise facilitating the availability of the islands for defence purposes.”³⁵⁵ Accordingly, between 1967 and 1973, the administering power forcibly removed the entire population of the Chagos Archipelago. It did so in steps: by preventing the return of those who had temporarily left the Chagos Archipelago, by relocating those living on Diego Garcia to other islands, and finally by forcibly removing those who remained.

3.101 The administering power was fearful that it might be subjected to the obligations arising under Article 73(e) of the U.N. Charter, which requires reports to be transmitted to the U.N. regarding economic and social conditions in non-self-governing territories. The U.K. Mission to the U.N. in New York acknowledged that “it would not be difficult for our critics to develop the arguable thesis that detachment by itself was a breach of Article 73.”³⁵⁶ The administering power

³⁵³ Owen Bowcott, “Chagos islanders cannot return home, UK Foreign Office confirms”, *The Guardian* (16 Nov. 2016), available at <https://www.theguardian.com/world/2016/nov/16/chagos-islanders-cannot-return-home-uk-foreign-office-confirms> (last accessed 17 Feb. 2018).

³⁵⁴ “Exchange of Notes Constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of United States of America Concerning the Availability for Defence Purposes of the British Indian Ocean Territory”, para. 2(a), 603 U.N.T.S. 273 (No. 8737) (22 Aug. 1967), entered into force 30 Dec. 1966.

³⁵⁵ Government of the United Kingdom and Government of the United States, *Agreed Minute*, FO 93/8/401 (30 Dec. 1966), para. I. (emphasis added) (**Annex 85**).

³⁵⁶ *Despatch* from F. D. W. Brown of the U.K. Mission to the U.N. to C. G. Eastwood of the Colonial Office, No. 15119/3/66 (2 Feb. 1966), para. 11 (**Annex 80**).

thereupon depopulated the Chagos Archipelago in part to avoid the “BIOT” being added by the U.N. Committee of 24 to its list of non-self-governing territories.³⁵⁷

3.102 The Foreign Office noted a U.S. recommendation to use the term “migrant laborers” when referring to the Chagossians, but conceded that although “it was a good term for cosmetic purposes... it might be difficult to make completely credible as some of the ‘migrants’ are second generation Diego residents.”³⁵⁸ Nevertheless, the administering power went on to assert in the U.N. and in statements to Parliament that – contrary to what it well knew to be the facts – there was no “permanent population” in the Chagos Archipelago. The Chagossians were described by the administering power as mere “contract laborers” and “contract workers”.³⁵⁹ One British official wrote:

We detach these islands – in itself a matter which is criticised. We then find, apart from the transients, up to 240 ‘ilois’ whom we propose either to resettle (with how much vigour of persuasion?) or to certify, more or less fraudulently, as belonging somewhere else. This all seems difficult to reconcile with the ‘sacred trust’ of Art. 73, however convenient we or the US might find it from the viewpoint of defence. It is one thing to use ‘empty real estate’; another to find squatters in it and to make it empty.³⁶⁰

3.103 The Permanent Under-Secretary in the Foreign Office asserted that: “We must surely be very tough about this. The object of the exercise is to get some rocks

³⁵⁷ See *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4361 (10 Nov. 1965), para. 5 (**Annex 78**).

³⁵⁸ See *Vine, Island of Shame* (2009), p. 102 (**Annex 151**).

³⁵⁹ See *ibid.*, pp. 92 and 105. Mauritius has objected to the designation of the Chagossians as “contract workers” and “contract laborers”, and has maintained that the Chagossians have always been, and are citizens of Mauritius and as such have always been residing in Mauritius.

³⁶⁰ See *ibid.*, p. 91. The term “ilois” is sometimes used to refer to the Chagossians. It is estimated that there were between 1,000 and 1,500 Chagossians living in the Chagos Archipelago at this time, and at least 250 and 500 in mainland Mauritius. See also *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4361 (10 Nov. 1965), para. 3 (**Annex 78**).

which will remain *ours*; there will be no indigenous population except seagulls”.³⁶¹ Denis Greenhill (later the Baron of Harrow) replied that: “Unfortunately along with the Birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc. When this has been done, I agree we must be very tough.”³⁶²

3.104 In March 1967, the U.S. announced that it intended to begin construction work in Diego Garcia in the second half of 1968.³⁶³ The administering power purchased the land in the Chagos Archipelago from Chagos Agalega Ltd for £660,000 and leased the islands back to the company to continue operating the plantations on its behalf.³⁶⁴ After May 1967, the administering power ordered Chagos Agalega Ltd to prevent the return of inhabitants who had travelled away from the Chagos Archipelago.³⁶⁵ Those who sought to board vessels from the main Island of Mauritius were turned away.³⁶⁶ At the end of 1967, Moulinie & Co took over the management of the Chagos Archipelago from the Chagos Agalega Ltd.³⁶⁷ Faced with the impending closure of the plantations, medical and school staff began leaving the Chagos Archipelago, and food stocks diminished.³⁶⁸

³⁶¹ *Ibid.*, p. 91 (emphasis in the passage quoted by Vine).

³⁶² *Ibid.*

³⁶³ A survey to that end took place in June and July 1967. See “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), items no. 71 and 78 (**Annex 23**). The U.S. proposal was for a \$46 million facility, including a 12,000-foot runway. See Vine, *Island of Shame* (2009), p. 100 (**Annex 151**).

³⁶⁴ Vine, *Island of Shame* (2009), p. 92 (**Annex 151**).

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.* By 1969 at least 356 Chagossians were prevented from returning to the Archipelago. See *ibid.*, p. 94.

³⁶⁷ *Ibid.*, p. 92.

³⁶⁸ *Ibid.*, p. 93.

3.105 On 24 January 1971, the “Administrator” of the “BIOT” announced to the inhabitants of Diego Garcia that the island would shortly be closed. Bewildered, many Chagossians chose to stay in the Chagos Archipelago and relocated to Peros Banhos and Salomon.³⁶⁹ Those who refused to leave Diego Garcia were threatened that they would be shot or bombed.³⁷⁰ The “BIOT Commissioner”, Sir Bruce Greatbatch, passed the Immigration Ordinance 1971, by which no person could enter or be present in the Chagos Archipelago without being in possession of a permit.³⁷¹ Shortly thereafter, agents of the “BIOT” and Moulinie & Co continued removing inhabitants to the outlying islands, including Peros Banhos and Salomon.³⁷²

3.106 In the days before the last inhabitants were removed from Diego Garcia, Sir Bruce Greatbatch ordered Marcel Moulinie, who had been left in charge of the island, to kill the Chagossians’ pet dogs. It is recorded that:

he first tried to shoot the dogs with the help of Seabees armed with M16 rifles. When this failed as an expeditious extermination method, he attempted to poison the dogs with strychnine. This too failed. Sitting in his home overlooking a secluded beach in the Seychelles 33 years later, Moulinie explained to me how he finally used raw meat to lure the dogs into a sealed copra-drying shed, the *Kalorifer*. Locking them in the shed, he gassed the howling dogs with exhaust piped in from U.S. military vehicles. Setting coconut husks ablaze, he burnt the dogs’ carcasses in the shed. The Chagossians were left to watch and ponder their fate.³⁷³

³⁶⁹ *Ibid.*, pp. 108-109.

³⁷⁰ *Ibid.*, p. 112. During this period military aircraft frequently flew low over the islands. *See also* J. Pilger, *Freedom Next Time* (2006), p. 46.

³⁷¹ *See* para 4.52 below.

³⁷² Vine, *Island of Shame* (2009), p. 113 (**Annex 151**).

³⁷³ *Ibid.*, pp. 113-114 (footnotes omitted). *See also* J. Pilger, *Freedom Next Time* (2006), pp. 45-46.

3.107 At the end of October 1971, the final 146 inhabitants of Diego Garcia were packed into a ship, the *Nordvær*, which had a maximum capacity of 72. During the initial four-day journey to Seychelles and the ensuing 1200 miles to Mauritius, most of those aboard were exposed to the elements. Many became ill and two women are reported to have miscarried.³⁷⁴ By May 1973, all those individuals remaining in Peros Banhos and Salomon had been rounded up and permanently removed from the Chagos Archipelago.³⁷⁵ The Mauritian and international reaction to the forcible removal of the Chagossians is addressed at paragraphs 4.49 to 4.61 below.³⁷⁶

B. THE RETURN OF ALDABRA, FARQUHAR AND DESROCHES TO SEYCHELLES

3.108 For 10 years after the creation of the “BIOT” the three ex-Seychelles islands remained empty, save for a Royal Society scientific station on Aldabra and temporary coconut plantations on Farquhar and Desroches.³⁷⁷ Before granting independence to Seychelles, the U.K. acknowledged that the “BIOT islands will be an issue” at the forthcoming Seychelles Constitutional Conference in March 1975.³⁷⁸ It was noted that although Seychelles’ leaders had “agreed to the arrangement in 1965”, the opposition Seychelles Peoples United Party had since consistently demanded the return of the islands.³⁷⁹

³⁷⁴ See Vine, *Island of Shame* (2009), p. 114 (**Annex 151**).

³⁷⁵ David Vine, “From the Birth of the *Ilois* to the ‘Footprint to Freedom’: A History of Chagos and the Chagossians”, in *EVICTION FROM THE CHAGOS ISLANDS* (S. Evers & M. Kooy eds., 2011), p. 34.

³⁷⁶ Mauritius reserves the right to provide supplementary information pertaining to the expulsion of the Chagossians in its Written Comments on the written statements of other Member States.

³⁷⁷ *Memorandum* by the Secretary of State for Foreign and Commonwealth Affairs on the “British Indian Ocean Territory: The Ex-Seychelles Islands”, OPD(75)9, FCO 40/674 (27 Feb. 1975), para. 1 (**Annex 103**).

³⁷⁸ *Ibid.*, para. 3.

³⁷⁹ *Ibid.*

3.109 In November 1975, the Foreign Office indicated that it was minded to return the ex-Seychelles islands to Seychelles prior to independence.³⁸⁰ The U.K. recognised the impossibility of using the islands for defence purposes, as they were populated, and “[a]fter the outcry over the workers removed from the Chagos Archipelago, it would be extremely difficult politically to do the same thing in the ex-Seychelles islands.”³⁸¹ The British Foreign Secretary expressed strong preference for returning the islands to Seychelles and avoid “a potential continuing embarrassment.”³⁸² The Foreign Office recognised that, given “the determination of some elements in Seychelles political life and in the OAU and in the United Nations to make an issue of the matter”, return of the islands to Seychelles was more likely to “permit the peaceful transition to independence” and “might also create less international complications over the maintenance of the rest of BIOT, particularly Diego Garcia.”³⁸³ A Foreign Office brief recognised that retention of the Seychelles islands could lead to “a united front in pressing for ‘territorial integrity’”, based on a sympathetic claim that the U.K. took unfair advantage over its colony in pressing it to agree to the excision of part of its territory.³⁸⁴

³⁸⁰ United Kingdom, *Minutes of Anglo-U.S. Talks on the Indian Ocean Held on 7 November 1975 at the State Department, Washington DC*, FCO 40/687 (7 Nov. 1975), para. 48 (**Annex 108**).

³⁸¹ United Kingdom, *Anglo/US Consultations on the Indian Ocean: November 1975-Agenda Item III, Brief No. 4: Future of Aldabra, Farquar and Desroches*, FCO 40/687 (Nov. 1975), para. 2(d) (**Annex 107**).

³⁸² United Kingdom, “*British Indian Ocean Territory: The Ex-Seychelles Islands*”, FCO 40/686 (22 July 1975), p. 1 (**Annex 104**).

³⁸³ U.K. Foreign and Commonwealth Office, “*BIOT: The Ex-Seychelles Islands*”, FCO 40/686 (15 Oct. 1975), para. 2 (**Annex 105**).

³⁸⁴ See United Kingdom, *Anglo/US Consultations on the Indian Ocean: November 1975-Agenda Item III, Brief No. 4: Future of Aldabra, Farquar and Desroches*, FCO 40/687 (Nov. 1975), para. 2(a) (**Annex 107**). See also *ibid.*, para. 4(e) (“It is arguable that there is a continuing obligation on Seychelles to respect the agreement setting up the BIOT and they received generous compensation for loss of sovereignty. The trouble is that it is all too easy to win sympathy for the claim that we took advantage of the ‘colonial’ state of Seychelles in the 1960’s.”)

3.110 On 18 March 1976, representatives of the U.K. and Seychelles signed an agreement providing for the return of Aldabra, Farquhar and Desroches to Seychelles on 29 June 1976, the day of Seychelles' independence.³⁸⁵ The return of these islands to Seychelles stands in stark contrast to the U.K.'s decision to retain the Chagos Archipelago as a British colony.

X. Conclusion

3.111 The historical record paints a clear and incontrovertible picture as to the process of the decolonisation of Mauritius. Mauritian Ministers attending the 1965 Constitutional Conference in London were confronted with a *fait accompli*. The detachment of the Chagos Archipelago had long been pre-determined by two great powers, acting in secrecy and without regard to the wishes of the Mauritian Government and its citizens. British officials and politicians at the highest levels have acknowledged – before, during and since the event – that independence was offered to Mauritius only as part of a “package deal”, and that the British Government threatened that Mauritius would not be granted independence if its Ministers did not “agree” to the detachment of the Chagos Archipelago.

3.112 Mauritian Ministers faced an impossible choice: there was no genuine alternative, or choice to be made. In the words of Prime Minister Wilson, Mauritian

³⁸⁵ United Kingdom, “*Heads of Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the British Indian Ocean Territory and the Government of Seychelles Concerning the Return of Aldabra, Desroches and Farquhar to Seychelles to be Executed on Independence Day*”, FCO 40/732 (18 Mar. 1976) (**Annex 110**). See also *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, UNCLOS Annex VII Tribunal, Memorial of the Republic of Mauritius, Volume IV, Figure 3 (“British Indian Ocean Territory’: 1965 – 1976”), available at <https://files.pca-cpa.org/mu-uk/Annexes%20to%20Memorial/MM%20Charts.pdf> (1 Aug. 2012) (last accessed 17 Feb. 2018).

Ministers could return to Mauritius “either with Independence or without it.”³⁸⁶ The price to pay for independence, which should have been freely granted under international law, was an “agreement” to detachment of an integral part of Mauritius’ territory, and to its conversion into a new British colonial possession, contrary to the interests of the Mauritian people.

³⁸⁶ U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (**Annex 60**).

CHAPTER 4

NATIONAL AND INTERNATIONAL REACTIONS TO THE DETACHMENT OF THE CHAGOS ARCHIPELAGO

I. Introduction

4.1 This Chapter describes the reactions and responses to the detachment of the Chagos Archipelago from Mauritius, over the half century that has since passed. It includes the statements and actions of Mauritius itself, of the United Nations, and of important groups of States, including: the Organisation of African Unity and the African Union; the Non-Aligned Movement; the Group of 77 and China; the African, Caribbean and Pacific Group of States; and the Africa-South America Summit. This Chapter also describes the reaction of Mauritius and the international community to the forcible removal of all the inhabitants of the Chagos Archipelago.

II. The reaction of Mauritius

4.2 Following a general election held in Mauritius on 7 August 1967, the parties favouring independence achieved a clear majority.³⁸⁷ At the first meeting of the newly-elected Legislative Assembly, on 22 August 1967, a resolution was adopted by which the administering power was requested to “take the necessary steps to

³⁸⁷ Three parties (the Labour Party led by Sir Seewoosagur Ramgoolam, the Muslim Committee of Action and the Independent Forward Bloc) jointly contested the election as the Independence Party. The Parti Mauricien Social Démocrate campaigned on a platform of “something less than complete independence”. The Independence Party secured 54.8% of the vote and 43 out of 70 seats in the Legislative Assembly. See Addison & Hazareesingh, *History of Mauritius* (1993), p. 96 (**Annex 137**).

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”.³⁸⁸

4.3 On 29 February 1968, the Mauritius Independence Act was enacted, by which 12 March 1968 was designated as the “appointed day” on and after which “Her Majesty’s Government in the United Kingdom shall have no responsibility for the government of Mauritius.”³⁸⁹ The Chagos Archipelago was excluded from the territorial scope of the Mauritius Independence Act 1968 by operation of Section 5(1), which defined “Mauritius” as comprising “the territories which immediately before the appointed day constitute the Colony of Mauritius.”³⁹⁰ On 4 March 1968, the administering power promulgated a new Constitution for Mauritius by means of an Order in Council, which took effect on the appointed day and replaced the pre-existing constitutional orders.³⁹¹ Whereas the Chagos Archipelago was included in the territory of Mauritius under Section 90(1) of the 1964 Constitution, Section 111 of the 1968 Constitution confined the territory of Mauritius to “the territories which immediately before 12th March 1968 constituted the colony of Mauritius”.³⁹² The effect of these legislative provisions, in combination with the Order in Council of 8 November 1965, was that on 12 March 1968 Mauritius attained independence only in part; the Chagos Archipelago

³⁸⁸ Mauritius Legislative Assembly, *Accession of Mauritius to Independence within the Commonwealth of Nations* (22 Aug. 1967), p. 856 (**Annex 91**).

³⁸⁹ United Kingdom, *Mauritius Independence Act 1968* (1968), Section 1(1) (**Annex 93**).

³⁹⁰ *Ibid.*, Section 5(1).

³⁹¹ See United Kingdom, *The Mauritius Independence Order 1968 and Schedule to the Order: The Constitution of Mauritius* (4 Mar. 1968), Section 4(1) of the Order and Section 2 of the Constitution (**Annex 96**).

³⁹² *Ibid.*, Section 111 of the Constitution. *C.f. Mauritius (Constitution) Order, 1964* (26 Feb. 1964), Section 90(1), which provides that “‘Mauritius’ means the island of Mauritius and the Dependencies of Mauritius” (**Annex 24**).

remained under the control of the administering power as the “British Indian Ocean Territory”.

A. MAURITIUS’ REACTION TO THE DETACHMENT OF THE CHAGOS ARCHIPELAGO

4.4 Upon independence, Sir Seewoosagar Ramgoolam became the first Prime Minister of Mauritius. From the outset, his government faced widespread popular criticism over the conditions upon which independence had been achieved, in particular the detachment of the Chagos Archipelago. In response, Prime Minister Ramgoolam, who served until June 1982, repeatedly explained that he and his fellow Mauritian Ministers had been given no choice by the administering power: they were told that independence would be granted only upon Mauritius’ “acceptance” of detachment of the Chagos Archipelago, and that absent such “acceptance” there would be no independence.³⁹³ Prime Minister Ramgoolam also pledged that Mauritius would seek the return of the Chagos Archipelago from the U.K. by means of “patient diplomacy at bilateral and international levels”.³⁹⁴

4.5 In the period immediately following its independence, while Mauritius was still heavily dependent economically on the administering power, it exercised

³⁹³ In response to criticism from opposition parties, the Mauritian Government consistently explained that it would not have been possible to prevent the detachment of the Chagos Archipelago from Mauritius. During a Parliamentary debate on 26 June 1974, the Mauritian Prime Minister set out in more detail the modalities of the detachment and explained why it was unavoidable. The illegality of the detachment was recognised across the domestic political spectrum. *See, e.g.,* Mauritius Legislative Assembly, Committee of Supply, *Consideration of the Appropriation (1974-75) Bill (No. XIX of 1974)* (26 June 1974), pp. 1946-1947 (**Annex 102**); Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon. G. Ollivry* (9 Apr. 1974), p. 266 (**Annex 101**); Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by Hon. M. A. Peeroo* (15 Mar. 1977) (**Annex 111**).

³⁹⁴ *See* Mauritius Legislative Assembly, *Diego Garcia – Anglo-American Treaty*, No. B/539 (8 Nov. 1977), p. 3179 (**Annex 113**); Mauritius Legislative Assembly, *Reply to PQ No. B/967* (20 Nov. 1979), p. 5025 (**Annex 116**).

caution in pursuing its claim to restoration of its full territorial integrity. However, it became increasingly assertive in calling for the return of the Chagos Archipelago to Mauritius, and the disbandment of the “British Indian Ocean Territory”. On 9 October 1980, Prime Minister Ramgoolam, in his address to the 35th session of the United Nations General Assembly, reaffirmed the position of Mauritius that the colonial administration of the Chagos Archipelago should be disbanded and the territory restored to Mauritius as part of its “natural heritage”:

Here it is necessary for me to emphasize that Mauritius, being in the middle of the Indian Ocean, has already – at the seventeenth ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity [OAU], held at Freetown from 1 to 4 July this year – reaffirmed its claim to Diego Garcia and the Prime Minister of Great Britain in a parliamentary statement has made it known that the island will revert to Mauritius when it is no longer required for the global defence of the West. Our sovereignty having thus been accepted, we should go further than that, and disband the British Indian Ocean Territory and allow Mauritius to come into its natural heritage as before its independence.³⁹⁵

4.6 The following month, Prime Minister Ramgoolam was asked by a news organisation why he “agreed” to the detachment of the Chagos Archipelago by the administering power. He responded: “There was a nook [sic] around my neck. I could not say no. I had to say yes otherwise the noose could have tightened.”³⁹⁶ Similarly, when a member of the Opposition stated during a debate that the Prime Minister’s Mauritian Labour Party had given its “consent” to detachment, he responded: “We had no choice.”³⁹⁷ He explained: “We were a colony and Great

³⁹⁵ See Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017)* (**Annex 100**). See also U.N. General Assembly, 35th Session, *Address by Sir Seewoosagur Ramgoolam, Prime Minister of Mauritius*, U.N. Doc. A/35/PV.30 (9 Oct. 1980), para. 40 (**Dossier No. 269**).

³⁹⁶ Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980), p. 4223 (**Annex 123**).

³⁹⁷ Mauritius Legislative Assembly, *Speech from the Throne – Address in Reply: Statement by the Prime Minister of Mauritius* (11 Apr. 1979), p. 456 (**Annex 115**).

Britain could have excised the Chagos Archipelago.”³⁹⁸ This was the consistent position of the Government of Mauritius post-independence.

4.7 According to Sir Harold Walter, the Minister of External Affairs:

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!³⁹⁹

4.8 The same view was expressed by Mauritius’ Minister of Economic Planning and Development:

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 [sic], because of the relationship. The major issue was to gain independence, and therefore the consent was viciated [sic], there was no consent at all.⁴⁰⁰

4.9 On 15 June 1982, Sir Anerood Jugnauth, who had attended the 1965 Constitutional Conference, became the second Prime Minister of Mauritius. He served until December 1995.⁴⁰¹ Prime Minister Jugnauth maintained the same position and policy as his predecessor: that the detachment of the Chagos Archipelago from Mauritius had been a condition imposed on Mauritius by the

³⁹⁸ Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980), p. 4223 (**Annex 123**).

³⁹⁹ Mauritius Legislative Assembly, *The Interpretation and General Clauses (Amendment) Bill (No. XIX of 1980)*, *Committee Stage* (26 June 1980), p. 3413 (**Annex 117**).

⁴⁰⁰ *Ibid.*, p. 3399.

⁴⁰¹ Minister Mentor, Minister of Defence, Minister for Rodrigues, Sir Anerood Jugnauth GCSK KCMG QC served as Prime Minister of Mauritius on three separate occasions: from 15 June 1982 to December 1995; from 21 September 2000 to September 2003; and from 15 December 2014 to 23 January 2017.

administering power in return for the granting of independence, that as such it was unlawful, and that the Archipelago rightly belonged to Mauritius and should be returned to Mauritius without delay.

4.10 In furtherance of that policy, on 21 July 1982, the Mauritius Legislative Assembly set up a Select Committee to look into the circumstances that had led to the detachment of the Chagos Archipelago. The Select Committee was composed of nine members of the Mauritian Parliament and was chaired by the Minister of External Affairs, Tourism & Emigration.

4.11 On 11 November 1982, in advance of the publication of the Select Committee's Report, the British High Commissioner in Port Louis warned the Foreign Office that:

While there is nothing very alarming in this at present I feel sure 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.⁴⁰²

4.12 The Select Committee's Report was published on 1 June 1983. Reflecting on the final communiqué issued by U.K. Colonial Secretary Anthony Greenwood at the Mauritius Constitutional Conference on 24 September 1965, the Report notes that:

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

⁴⁰² Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3622 (11 Nov. 1982) (**Annex 125**).

western interest to balance increased Soviet activities in the Indian Ocean.’

However, in the light of evidence produced by representatives of the political parties which took part in the Mauritius Constitutional Conference 1965,... 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.⁴⁰³

4.13 The Select Committee heard evidence from eight witnesses, including Sir Seewoosagur and representatives of the other participating political parties.⁴⁰⁴ The Report notes that “Sir Seewoosagur maintained that the choice he made between the independence of Mauritius and the excision of the archipelago was a most judicious one.”⁴⁰⁵ It is recorded that in his evidence before the Select Committee, Sir Seewoosagur made clear that he was given a straight choice, as between independence and no independence. 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... If I had to choose between independence and the ceding of Diego Garcia I would have done again the same thing.⁴⁰⁶

4.14 Paragraph 52E of the Select Committee Report concludes that:

Sir Seewoosagur Ramgoolam’s statement before the Select Committee is highly indicative of the atmosphere which prevailed

⁴⁰³ Mauritius Legislative Assembly, *Report of the Select Committee on the Excision of the Chagos Archipelago*, No. 2 of 1983 (June 1983), para. 23 (footnotes omitted) (**Annex 129**).

⁴⁰⁴ *Ibid.*, Appendix A.

⁴⁰⁵ *Ibid.*, para. 25.A.

⁴⁰⁶ *Ibid.*, para. 36.

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 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... 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.⁴⁰⁷

⁴⁰⁷ *Ibid.*, para. 52E. On 17 June 1983, the British High Commissioner in Mauritius forwarded the Select Committee Report to the Foreign Office, noting that “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”. *Letter* from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (17 June 1983) (**Annex 130**). One month later, an official relayed the Foreign Office’s view back to the High Commissioner: “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.” *Letter* from P. Hunt of the East African Department to J. N. Allan of the British High Commission in Port Louis, FCO 31/3834 (14 July 1983) (**Annex 131**).

4.15 Mauritius has been consistent in its clear and explicit denunciation of the detachment of the Chagos Archipelago as unlawful, and its assertion of sovereignty over the Archipelago. It has made statements to this effect before the U.N. General Assembly on more than 30 occasions.⁴⁰⁸ In particular, Mauritius has repeatedly emphasised that the Chagos Archipelago was detached from its territory in contravention of international law and General Assembly Resolutions 1514 (XV) and 2066 (XX), and that, as a result, the process of decolonisation in Mauritius remains incomplete. Of the many examples one may cite:

- a) On 15 October 1982, at the 37th session of the General Assembly, Prime Minister Sir Anerood Jugnauth, said:

At this juncture I should like to dwell on an issue which affects the vital interests of Mauritius; I mean the Mauritian claim of sovereignty over the Chagos Archipelago, which was excised by the then colonial Power from the territory of Mauritius in contravention of General Assembly resolutions 1514 (XV) and 2066 (XX).⁴⁰⁹

- b) On 27 September 1989, at the 44th session of the General Assembly, Deputy Prime Minister and Minister of External Affairs and Emigration, Sir Satcam Boolell said:

As the Assembly is aware, the Government and people of Mauritius have not accepted the fact that an important part and parcel of their territory has

Although the Foreign Office note takes issue with the use of the word “blackmail” in paragraph 52E of the Report, it does not challenge Sir Seewoosagur’s evidence, which appears earlier at paragraph 25, that he had been required to make a choice between independence and retention of the Chagos Archipelago.

⁴⁰⁸ See Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts)* (1974-2017) (**Annex 100**).

⁴⁰⁹ Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts)* (1974-2017) (**Annex 100**). See also U.N. General Assembly, 12th Special Session, *Agenda Item 8: General Debate*, U.N. Doc. A/S-12/PV.25 (23 June 1982), para. 68 (**Dossier No. 271**).

been excised by the former colonial Power in contravention of United Nations General Assembly resolutions 1514 (XV) and 2066 (XX).⁴¹⁰

- c) On 30 September 1999, at the 54th session of the General Assembly, Deputy Prime Minister and Minister of Foreign Affairs and International Trade, Rajkeswur Purryag said:

We have consistently drawn the attention of the Assembly to the issue of the Chagos Archipelago, which was detached from Mauritius by the former colonial Power prior to our independence in 1968, and also to the plight of over 2000 people who were forced to leave the land of their birth, where they had lived for generations, for resettlement in Mauritius. This was done in total disregard of the United Nations declaration embodied in resolution 1514 (XV), of 14 December 1960 and resolution 2066 (XX), of 16 December 1965, which prohibit the dismemberment of colonial Territories prior to independence.

Mauritius has repeatedly asked for the return of the Chagos Archipelago, including Diego Garcia, on which a United States military base has been built, and thereby the restoration of its territorial integrity. The over 2,000 displaced Ilois people have been facing tremendous difficulties in adapting in mainland Mauritius, in spite of all the efforts that Mauritius has made to assist them in this process.⁴¹¹

⁴¹⁰ Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017) (Annex 100)*. See also U.N. General Assembly, 44th Session, Provisional Verbatim Record of the Eighth Meeting, *Agenda Item 9: General Debate*, U.N. Doc. A/44/PV.8 (28 Sept. 1989), p. 87 (**Dossier No. 284**).

⁴¹¹ Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017) (Annex 100)*. See also U.N. General Assembly, 54th Session, 18th Plenary Meeting, *Agenda Item 9: General Debate*, U.N. Doc. A/54/PV.18 (30 Sept. 1999), p. 12 (**Dossier No. 291**).

- d) On 28 September 2007, at the 62nd session of the General Assembly, Prime Minister Dr Navinchandra Ramgoolam said:

In 1965 when the Constitutional Conference for the granting of independence to Mauritius was convened, the Chagos Archipelago, amongst many other islands, formed an integral part of the territory of Mauritius and should have remained as such in accordance with the Charter of the United Nations and General Assembly resolutions 1514 of 1960 and 2066 of 1965. Resolution 1514 (1960) states *inter alia*: ‘Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.’ The excision of the Chagos Archipelago by the colonial power at the time of our independence constitutes a dismemberment of our territory in total disregard of resolutions 1514 of 1960 and 2066 of 1965. Furthermore, it is also a violation of the Charter of the United Nations itself.⁴¹²

- e) On 28 September 2013, at the 68th session of the General Assembly, Prime Minister Dr Navinchandra Ramgoolam said:

The dismemberment of part of our territory, the Chagos Archipelago – prior to independence – by the then colonial power, the United Kingdom, in clear breach of international law, leaves the process of decolonisation not only of Mauritius but of Africa, incomplete.⁴¹³

⁴¹² Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017) (Annex 100)*. See also U.N. General Assembly, 62nd Session, 10th Plenary Meeting, *Agenda Item 8: General Debate*, U.N. Doc. A/62/PV.10 (28 Sept. 2007), p. 21 (**Dossier No. 306**).

⁴¹³ Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017) (Annex 100)*. See also U.N. General Assembly, 68th Session, 18th Plenary Meeting, *Agenda Item 8: General Debate*, U.N. Doc. A/68/PV.18 (28 Sept. 2013), p. 6 (**Dossier No. 316**).

- f) On 2 October 2015, at the 70th session of the General Assembly, Prime Minister Sir Anerood Jugnauth said:

In this regard, this Assembly has a direct institutional interest in the resolution of this matter. The Assembly, of course, has historically played a central role in addressing decolonisation, through the exercise of its powers and functions especially in relation to Chapters XI through XIII of the UN Charter. Under its Resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples, this Assembly declared that any attempt aimed at the disruption of the territorial integrity of such a country is incompatible with the purposes and principles of the UN Charter. In Resolution 2066 (XX) of 16 December 1965, a resolution dealing specifically with Mauritius, the Assembly drew attention to the duty of the administering power not to dismember the territory and not to violate the territorial integrity of the then colony. Therefore, this Assembly has the responsibility in helping to complete the historic process of decolonisation which it was so successful in instigating and overseeing in the second half of the last century. This is why, Mr. President, we are convinced that this Assembly should now establish a mechanism to allow and monitor the full implementation of the UNGA resolutions.⁴¹⁴

4.16 Mauritius has also consistently protested in other instances, including against *inter alia* (i) the inclusion of the “British Indian Ocean Territory” in the list of Overseas Countries and Territories of the U.K. as part of the proposal of the European Commission relating to the association of overseas countries and

⁴¹⁴ Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts) (1974-2017) (Annex 100)*. See also U.N. General Assembly, 70th Session, 25th Plenary Meeting, *Agenda Item 8: General Debate*, U.N. Doc. A/70/PV.25 (2 Oct. 2015), p. 16 (**Dossier No. 318**).

territories with the European Community;⁴¹⁵ (ii) the inclusion of the “British Indian Ocean Territory” in the list of Overseas Countries and Territories to which the provisions of Part Four of the Lisbon Treaty apply;⁴¹⁶ and (iii) the declaration deposited with the Swiss Federal Council concerning the applicability of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem insofar as it purports to extend ratification of the Protocol to the “British Indian Ocean Territory”.⁴¹⁷

B. MAURITIUS’ REACTION TO THE ANNOUNCEMENT OF A “MARINE PROTECTED AREA” IN AND AROUND THE CHAGOS ARCHIPELAGO

4.17 In the decades since Mauritius’ independence, the U.K. has made creeping assertions of maritime zones and imposed various restrictions. This culminated in the unilateral announcement on 1 April 2010 of a no-take “Marine Protected Area” (“MPA”) in and around the Chagos Archipelago (excluding Diego Garcia) spanning some 640,000 square kilometres.⁴¹⁸ On 9 February 2009, the British

⁴¹⁵ *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) (**Annex 142**).

⁴¹⁶ *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) (**Annex 149**).

⁴¹⁷ *Note Verbale* from the Permanent Mission of the Republic of Mauritius to the United Nations Office and other International Organisations in Geneva to the Permanent Mission of Switzerland to the United Nations Office and other International Organisations in Geneva, No. 361/2011 MMG/HR/19 (28 Nov. 2011) (**Annex 159**).

⁴¹⁸ See *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, UNCLOS Annex VII Tribunal, Memorial of the Republic of Mauritius (1 Aug. 2012), Chapter 4, available at <https://www.pcacases.com/web/sendAttach/1796> (last accessed 17 Feb. 2018). On 29 May 2001, States Parties to UNCLOS decided that, for States for which the Convention entered into force before 13 May 1999 (which include Mauritius and the United Kingdom), the 10-year time period within which submissions for an extended continental shelf have to be made to the Commission on the Limits of the Continental Shelf (“CLCS”) shall be taken to have commenced on 13 May 1999. See UNCLOS Meeting of States Parties, 11th Meeting, *Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law*

newspaper *The Independent* published an article setting out “[a]n ambitious plan” to turn the Chagos Archipelago into “a huge marine reserve”.⁴¹⁹ The news came as a surprise to Mauritius, which had no prior knowledge of any such plans. Mauritius strenuously protested against the unilateral initiative, making clear that while it was “supportive of domestic and international initiatives for environmental protection” it stressed that “any party initiating proposals for promoting the protection of the marine and ecological environment of the Chagos Archipelago, should solicit and obtain the consent of the Government of Mauritius prior to implementing such proposals.”⁴²⁰

of the Sea, U.N. Doc. SPLOS/72 (29 May 2001). At the 18th meeting of States Parties to the Convention, on 20 June 2008, it was decided that the 10-year time limit for the submission of claims to an extended continental shelf beyond 200 nautical miles would be satisfied by submitting to the U.N. Secretary-General preliminary information indicative of the outer limits of the continental shelf. See UNCLOS Meeting of States Parties, 18th Meeting, *Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a)*, U.N. Doc. SPLOS/183 (20 Jun. 2008). At bilateral talks held on 14 January 2009, the U.K. delegation led by Colin Roberts of the Overseas Territories Directorate at the Foreign Office, informed Mauritius that the U.K. was not interested in submitting on its own a claim to the CLCS for an extended continental shelf in respect of the Chagos Archipelago. On 6 May 2009, Mauritius submitted Preliminary Information to the CLCS concerning the Extended Continental Shelf in the Chagos Archipelago Region. See Republic of Mauritius, *Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183*, MCS-PI-DOC (May 2009) (**Dossier No. 415**). No State, including the U.K., has lodged any objection to Mauritius’ submission, nor has any other State made any competing submission. This compares with other situations where objections have been lodged. See the list of relevant communications at: United Nations, *Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles, available at* http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm (last accessed 17 Feb. 2018). Now that the 10-year limit has passed, no other State – including the United Kingdom – can avail itself of the procedures under UNCLOS with respect to an extended continental shelf for the Chagos Archipelago.

⁴¹⁹ Sadie Gray, “Giant Marine Park Plan for Chagos – Islanders may return to be environmental wardens”, *The Independent* (9 Feb. 2009) (**Annex 152**).

⁴²⁰ *Note Verbale* from the Mauritius Ministry of Foreign Affairs to the U.K. Foreign and Commonwealth Office, No. 1197/28 (10 Apr. 2009) (**Annex 153**).

4.18 On 12 May 2009, Colin Roberts, the then Director of the Overseas Territories Directorate at the Foreign Office, attended a meeting with a Political Counselor at the U.S. Embassy in London, along with Joanne Yeadon, the head of the Foreign Office “BIOT and Pitcairn Section”. On 2 December 2010, *The Guardian* newspaper published a copy of a U.S. diplomatic cable in which it was reported that Mr Roberts had said to his U.S. counterpart that “establishing a marine park would, in effect, put paid to resettlement claims of the archipelago’s former residents” (who are referred to as “Man Fridays”) and that the British Government “do not regret the removal of the population,’ since removal was necessary for the BIOT to fulfil its strategic purpose”.⁴²¹

4.19 Following the announcement of the “MPA” in and around the Chagos Archipelago, Mauritius issued a Notification and Statement of Claim on 20 December 2010, instituting proceedings against the U.K. under Article 287 and Annex VII, Article 1 of UNCLOS.⁴²² Mauritius’ case before the UNCLOS Tribunal was in two parts:

- a) the U.K. does not have sovereignty over the Chagos Archipelago, is not “the coastal State” for the purposes of UNCLOS and cannot declare an “MPA” or other maritime zones around the Chagos Archipelago; and
- b) the “MPA” is fundamentally incompatible with the rights and obligations provided for by UNCLOS.

⁴²¹ “U.S. embassy cables: Foreign Office does not regret evicting Chagos islanders”, *The Guardian* (15 May 2009) (**Annex 154**). Under cross-examination in domestic litigation, whereas Mr Roberts admitted that it is likely he would have said words to the effect that there should be no human footprint in the Chagos Archipelago other than Diego Garcia, he denied using the term “Man Fridays” in relation to the Chagossians. See *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2013] EWHC 1502 (Admin) (11 June 2013), para. 59.

⁴²² *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Notification Under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of Claim and Grounds on Which it is Based (20 Dec. 2010) (**Dossier No. 407**).

4.20 Following two rounds of written submissions and a hearing in Istanbul from 22 April to 9 May 2014, the Tribunal delivered its Award on 18 March 2015.⁴²³ As to the first limb of Mauritius’ argument, the Tribunal held by three votes to two that it lacked jurisdiction to consider whether the U.K. is “the coastal State” for the purposes of UNCLOS. As such, the unanimous Award does not express any view as to the legal consequences that flow from the detachment of the Chagos Archipelago. However, Judges James Kateka and Rüdiger Wolfrum, in their Dissenting and Concurring Opinion, concluded that the detachment of the Chagos Archipelago showed “a complete disregard for the territorial integrity of Mauritius by the United Kingdom which was the colonial power.”⁴²⁴

4.21 As to the second limb of Mauritius’ argument, the Tribunal unanimously found that:

- a) the establishment of the “MPA” was in violation of Articles 2(3), 56(2) and 194(4) of UNCLOS;
- b) the U.K.’s undertakings (i) to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes; (ii) to ensure fishing rights would remain available to Mauritius; and (iii) to preserve the benefit of any minerals or oil discovered in or near the Chagos Archipelago for Mauritius; are legally binding as a matter of international law; and

⁴²³ The Tribunal was composed of Professor Ivan Shearer (President), Judge Albert Hoffmann, Judge James Kateka, Judge Sir Christopher Greenwood CMG QC and Judge Rüdiger Wolfrum.

⁴²⁴ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 91 (**Dossier No. 409**).

- c) the undertaking to return the Chagos Archipelago to Mauritius “gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago.”⁴²⁵

4.22 In the three years since the Tribunal delivered its Award, Mauritius has not been made aware of any measures taken by the U.K. to implement it. Moreover, as explained in Chapter 3 above, without prior consultation with Mauritius, the 1966 “Agreement Concerning the Availability for Defense Purposes of the British Indian Ocean Territory” was extended for a further 20 years in December 2016.⁴²⁶ It is a matter of concern that despite the Tribunal’s ruling that Mauritius has “an interest in significant decisions that bear upon the possible future uses” of the Chagos Archipelago, Mauritius was not consulted with regard to the extension of the 1966 Agreement.⁴²⁷

III. International reaction to the detachment of the Chagos Archipelago

4.23 The detachment of the Chagos Archipelago was widely criticised at the international level, including at the U.N., both before and after Mauritius’ independence. There has been sustained international criticism directed at the administering power in relation to the dismemberment of Mauritius and the failure to lawfully complete the process of decolonisation.

⁴²⁵ *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), paras. 298 and 547 (**Dossier No. 409**).

⁴²⁶ See paras. 3.98-3.99 above. See also “Update on the British Indian Ocean Territory” (16 Nov. 2016) (**Annex 185**).

⁴²⁷ *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), para. 298 (**Dossier No. 409**).

A. REACTION AT THE UNITED NATIONS

4.24 Well before the detachment, the scene had been set at the United Nations for the reaction that would follow. On 14 December 1960, five years prior to the detachment of the Chagos Archipelago, the General Assembly adopted Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples. Operative paragraph 6 provides 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.”⁴²⁸

4.25 On 27 November 1961, the U.N. General Assembly adopted Resolution 1654 (XVI), noting with deep concern that “contrary to the provisions of paragraph 6 of [Resolution 1514], acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonization”.⁴²⁹ Recalling the requirement that “[i]mmediate steps shall be taken” to enable peoples of non-self-governing and non-independent territories to “enjoy complete independence and freedom”,⁴³⁰ the General Assembly established the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

⁴²⁸ *Colonial Declaration* (14 Dec. 1960) (**Dossier No. 55**).

⁴²⁹ U.N. General Assembly, 16th Session, *The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/RES/1654(XVI) (27 Nov. 1961) (hereinafter “*Implementation of the Colonial Declaration* (27 Nov. 1961)”) (**Dossier No. 101**).

⁴³⁰ *Ibid.*, Preamble.

(“the Committee of 24”) tasked with monitoring the implementation of Resolution 1514 (XV).⁴³¹

4.26 The U.N.’s reaction to the detachment of the Chagos Archipelago came as no surprise to the administering power. The day after the creation of the “BIOT”, on 9 November 1965, the British Permanent Representative to the U.N. in New York, Lord Caradon, foresaw that there would be widespread recognition that the detachment of the Chagos Archipelago from Mauritius was a breach of paragraph 6 of General Assembly Resolution 1514 (XV):

An alternative line may be against the alleged breach of paragraph 6 of resolution 1514(xv) involved in detachment (and this may somewhat direct attention from status of the new territory). This is likely to attract wide support. We would reply that Islands were administered under Mauritius and Seychelles for convenience and that paragraph 6 is therefor [sic] irrelevant.⁴³²

4.27 The Foreign Office was concerned that “any hostile reference” to the detachment in the U.N. might jeopardise efforts to procure the “agreement” of Mauritian Ministers.⁴³³ British representatives openly discussed the possibility of delaying discussion of the Indian Ocean Islands, “e.g. by prolongation of Rhodesia debate or resumption of discussion on Aden” in order to present the detachment as

⁴³¹ *Ibid.*, paras. 3-9.

⁴³² *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965), para. 7 (**Annex 77**).

⁴³³ *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4104 (27 Oct. 1965) (**Annex 68**). *See* para. 3.89 above. *See also Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697 (28 Oct. 1965) (**Annex 69**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4310, FO 371/184529 (6 Nov. 1965) (**Annex 72**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4327 (8 Nov. 1965) (**Annex 75**); *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965) (**Annex 77**); *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4361 (10 Nov. 1965) (**Annex 78**).

a “fait accompli”.⁴³⁴ A briefing paper prepared by the Foreign Office in consultation with the Commonwealth Office and Ministry of Defence notes (under the heading “tactics”) that:

So far, the United Nations has dealt with the subject of B.I.O.T. almost entirely in the context of Mauritius. In last year’s Fourth Committee and General Assembly no cognisance was taken of the existence of B.I.O.T. as a separate entity and many delegations may not then have tumbled to the fait accompli of separation.⁴³⁵

4.28 On 16 November 1965, Lord Caradon reported to the Foreign Office that the “BIOT” had been raised at a U.N. General Assembly Fourth Committee debate and that speakers had accused the U.K. of:

- (a) creation of a new ‘colony’;
- (b) inadmissibility of detaching land from a colonial Government regardless of compensation (‘hush money’) paid;
- (c) damage to interests of a minority even if representatives of the majority had been persuaded to agree; and
- (d) violation of Resolution 1514 (XV).⁴³⁶

⁴³⁴ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2697 (28 Oct. 1965) (**Annex 69**). See para. 3.91 above. See also *Minute from Secretary of State for the Colonies to the Prime Minister* (5 Nov. 1965), para. 7 (**Annex 70**).

⁴³⁵ U.K. Foreign Office, “*Presentation of British Indian Ocean Territory in the United Nations*”, IOC (66)136, FO 141/1415 (8 Sept. 1966), para. 13 (emphasis in the original) (**Annex 81**). See also *Despatch* from F. D. W. Brown of the U.K. Mission to the U.N. to C. G. Eastwood of the Colonial Office, No. 15119/3/66 (2 Feb. 1966), para. 3 (“Many delegations may not have tumbled to the fait accompli of separation”). (emphasis in the original) (**Annex 80**).

⁴³⁶ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2971 (16 Nov. 1965) (**Annex 79**).

4.29 On 24 November 1965, India and Tanzania proposed a draft resolution in the Fourth Committee, which was to become General Assembly Resolution 2066 (XX). Speaking in the Fourth Committee, the Tanzanian representative stated that:

2. The United Kingdom Government had stated that plans were afoot to grant independence to the Territory of Mauritius not later than 1966. Although that might be true, such plans had not yet become concrete and the situation was still nebulous. Hence, after reaffirming the inalienable right of the people of Mauritius to freedom and independence, the sponsors of the draft resolution had invited the administering Power to take effective measures with a view to the immediate and full implementation of General Assembly resolution 1514 (XV). There were the gravest misgivings about the method by which independence would be granted. Freedom was indivisible and it would be a denial of freedom to grant independence while attaching to it obligations or conditions which would result in a loss of that independence.

3. The United Kingdom Government had spoken of its vested legal rights in some of the islands of Mauritius and had mentioned divisions of administrative and other responsibilities. Operative paragraph 6 of resolution 1514 (XV) contained a clear statement on the territorial integrity of colonial Territories and it must be interpreted unequivocally, without legal quibbles. ... To dismember the territory of Mauritius and to create a new colonial entity and establish a military base there would create a point of tension which would be detrimental to the peaceful transition of a colonial Territory and people to freedom and independence.⁴³⁷

4.30 The Indian representative, co-sponsoring the draft resolution, noted that:

5.... Mauritius was ripe for independence and General Assembly resolution 1514 (XV) should be implemented in its regard without further delay. The steps taken by the administering Power concerning the constitutional future of the Territory had been noted. He drew particular attention to the last preambular paragraph of the draft resolution, which recalled paragraph 6 of resolution 1514 (XV). Operative paragraph 4 of the draft resolution invited the

⁴³⁷ U.N. General Assembly, Fourth Committee, 20th Session, 1566th Meeting, *Agenda items 23, 69 & 70*, U.N. Doc. A/C.4/SR.1566 (24 Nov. 1965) (**Dossier No. 153**).

administering Power to take no action which would contravene that provision. From any point of view, military or economic, dismemberment was undesirable and contrary to resolution 1514 (XV).

6. The Prime Minister of India, speaking in the Indian Parliament recently, had referred to a report that the United Kingdom Secretary of State for the Colonies had stated that the United Kingdom would have a new Territory in the Indian Ocean, the British Indian Ocean Territory, which would be available for the construction of defence facilities by the United Kingdom and United States Governments, although no plans had so far been made. A few days later, India's position with regard to that report had been stated in the Indian Parliament: namely, that the idea of a colonial Power detaching part of a Territory for such purposes was repugnant and contrary to General Assembly resolution 1514 (XV). India, which was a signatory of the Cairo Declaration of the Second Conference of Heads of State or Government of Non-Aligned Countries, was strongly opposed to any move by an administering Power to dismember a Territory for any reason.⁴³⁸

4.31 On 16 December 1965, just over a month after the detachment of the Chagos Archipelago, the General Assembly adopted Resolution 2066 (XX) on the "Question of Mauritius". That resolution, in full, provides that:

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,

⁴³⁸ *Ibid.*

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.⁴³⁹

4.32 The following year, in 1966, there was further criticism of the detachment of the Chagos Archipelago, at meetings of Sub-Committee I of the Committee of 24. This was reported to the Foreign Office by the U.K. Mission to the U.N. in New York:

⁴³⁹ *Question of Mauritius* (16 Dec. 1965) (emphasis added and footnotes omitted) (**Dossier No. 146**).

- a) The representative from Tanzania, chairing a meeting on 9 September, stated that negotiations between a colony and the administering power could not be valid as these “could not be on an equal basis.”⁴⁴⁰
- b) Another Tanzanian representative at a meeting on 12 September noted the significance that the “dismemberment of Mauritius and Seychelles had been carried out by [the] United Kingdom a few days before General Assembly Resolution 2066(XX)”, and that although the U.K. asserted that the islands were uninhabited they “belonged to Mauritius and Seychelles.”⁴⁴¹ The representative “demanded guarantees that the territories’ integrity would be respected”.⁴⁴²
- c) The Syrian representative urged the Committee to investigate the “creation of a new colony.”⁴⁴³
- d) The representative of Mali stated that the administering power’s establishment of military bases was “contrary to the colonial peoples’ right to self-determination and independence.”⁴⁴⁴
- e) The Russian representative “demanded immediate self-determination and independence for all.”⁴⁴⁵
- f) The Tunisian representative called for the immediate implementation of Resolution 1514 (XV) and for the dismemberment of Mauritius and

⁴⁴⁰ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1872 (9 Sept. 1966), para. 5 (**Annex 82**).

⁴⁴¹ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1877 (12 Sept. 1966), para. 2 (**Annex 83**).

⁴⁴² *Ibid.*

⁴⁴³ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1872 (9 Sept. 1966), para. 1 (**Annex 82**).

⁴⁴⁴ *Ibid.*, para. 2.

⁴⁴⁵ *Ibid.*, para. 4.

Seychelles to be renounced.⁴⁴⁶

- g) The representative from Yugoslavia said that: “The United Kingdom was not entitled to dismember the territories or to use them for military purposes.”⁴⁴⁷

4.33 On 27 September 1966, Sub-Committee I issued a report on Mauritius, Seychelles and St. Helena which concluded that:

The study of the situation in Mauritius, Seychelles and St. Helena shows that the administering Power has so far not only failed to implement the provisions of resolution 1514 (XV) in these Territories, but has also violated the territorial integrity of two of them by creating a new territory, the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, in direct contravention to resolution 2066 (XX) of the General Assembly.⁴⁴⁸

4.34 On 20 December 1966, the U.N. General Assembly adopted resolution 2232 (XXI) concerning a number of non-self-governing territories, including Mauritius and Seychelles. The resolution recalls Resolutions 1514 (XV) and 2066 (XX) and provides:

The General Assembly,

...

Deeply concerned at the information contained in the report of the Special Committee on the continuation of policies which aim, among other things, at the disruption of the territorial integrity of

⁴⁴⁶ Telegram from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 1877 (12 Sept. 1966), para. 1 (**Annex 83**).

⁴⁴⁷ *Ibid.*, para. 3.

⁴⁴⁸ U.N. General Assembly, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Report of Sub-Committee I: Mauritius, Seychelles and St. Helena*, U.N. Doc. A/AC.109/L.335 (27 Sept. 1966), para. 54 (**Annex 84**).

some of these Territories and at the creation by the administering Powers of military bases and installations in contravention of the relevant resolutions of the General Assembly,

...

Conscious that these situations require the continued attention and the assistance of the United Nations in the achievement by the peoples of the Territories of their objectives, as embodied in the Charter of the United Nations and in the Declaration on the Granting of Independence to Colonial Countries and Peoples,

...

2. *Reaffirms* the inalienable right of the peoples of these Territories to self-determination and independence;

3. *Calls upon* the administering Powers to implement without delay the relevant resolutions of the General Assembly;

4. *Reiterates* its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)...⁴⁴⁹

4.35 The General Assembly further resolved that the U.N. should render all help to the peoples of Mauritius in their efforts to freely decide their future status and requested the Committee of 24 to “continue to pay special attention to these Territories and to report on the implementation of the present resolution”.⁴⁵⁰

⁴⁴⁹ U.N. General Assembly, 21st Session, *Question of American Somoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2232(XXI) (20 Dec. 1966) (**Dossier No. 171**).

⁴⁵⁰ *Ibid.*, paras. 6 and 7.

4.36 On 21 April 1967, Lord Caradon reported to the Foreign Office further strong criticism at Sub-Committee I:

- a) The representative from Mali stated that the U.N. Charter “requirement of respect for territorial integrity had not been observed.”⁴⁵¹
- b) The representative from Ethiopia said that the U.K. had done little “to implement numerous United Nations resolutions.”⁴⁵²
- c) The Syrian representative asked whether the “BIOT” facilities “had the truly free consent of the Mauritian people who owned the islands.”⁴⁵³

4.37 In its report of 17 May 1967, Sub-Committee I reiterated its view that:

By creating a new territory, ‘the British Indian Ocean Territory’, composed of islands detached from Mauritius and Seychelles, the administering Power continues to violate the territorial integrity of these Non-Self-Governing Territories and to defy resolutions 2066 (XX) and 2232 (XXI) of the General Assembly.⁴⁵⁴

4.38 One month later, on 19 June 1967, the Committee of 24 adopted a resolution which notes “with deep regret the failure of the administering Power to implement General Assembly resolution 1514 (XV)” and endorses the conclusions and

⁴⁵¹ *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 60 (21 Apr. 1967), para. 1 (**Annex 87**).

⁴⁵² *Ibid.*, para. 2.

⁴⁵³ *Ibid.*, para. 3.

⁴⁵⁴ U.N. General Assembly, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, *Report of Sub-Committee I: Mauritius, Seychelles and St. Helena*, U.N. Doc. A/AC.109/L.398 (17 May 1967), para. 126 (annexed to U.N. General Assembly, 22nd Session, *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Agenda Item 23*, U.N. Doc. A/6700/Add.8* (11 Oct. 1967)) (**Annex 88**).

recommendations of the report of Sub-Committee I.⁴⁵⁵ The resolution states that the Committee of 24:

6. Deplores the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI), and calls upon the administering Power to return to these Territories the islands detached therefrom...⁴⁵⁶

4.39 On 19 December 1967, the General Assembly adopted Resolution 2357 (XXII), in which it again expressed deep concern at the continuation of policies aimed “at the disruption of the territorial integrity of some of the Territories”. The General Assembly reiterated that:

any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)...⁴⁵⁷

4.40 Since the adoption of Resolution 2357 (XXII), numerous U.N. bodies – including *inter alia* the General Assembly, the Committee of 24, and the Human Rights Committee – have remained heavily involved in matters concerning the decolonisation of Mauritius, the detachment of the Chagos Archipelago, the

⁴⁵⁵ U.N. General Assembly, 22nd Session, *Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Agenda Item 23*, U.N. Doc. A/6700/Add.8* (11 Oct. 1967), para. 194 (emphasis omitted) (**Annex 92**).

⁴⁵⁶ *Ibid.*

⁴⁵⁷ U.N. General Assembly, 22nd Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2357(XXII) (19 Dec. 1967), para. 4 (**Dossier No. 198**).

creation of the “BIOT”, the construction and maintenance of military facilities in Diego Garcia, and the forcible removal of the Chagossians and the prevention of their return. This is illustrated by the following eight examples, taken from the Dossier prepared by the U.N. Secretariat:

- a) In a Report adopted at its 700th meeting in 1969, the Committee of 24 reiterated that “any actions, whether on the part of the administering Power alone or in conjunction with another power, to construct military bases in the so-called ‘British Indian Ocean Territory’ are incompatible with the Charter and would lead to increased tension in Africa and Asia”.⁴⁵⁸
- b) In a 1972 Report on Military Activities and Arrangements by administering powers in Territories under their Administration, the Committee of 24 concluded that military activities (including the construction of a military base in Diego Garcia) “inevitably delays the process of decolonization”. The Committee reaffirmed that

the military activities and arrangements by colonial
Powers in the Territories under their administration

⁴⁵⁸ United Nations, 24th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, Doc. No. A/7623/Rev.1, Vol. III, Supplement No. 23 (1974), p. 4, Recommendations, para. 9 (**Dossier No. 323**). In a Report adopted at its 757th meeting in 1970, the Committee of 24 also noted that the Chagos Archipelago was “formerly part of Mauritius”. See U.N. General Assembly, 25th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, Doc. No. A/8023/Rev.1, Vol. III, Supplement No. 23 (1973), p.14, para. 34 (**Dossier No. 324**). In relation to the three islands detached from Seychelles, the Committee concluded that the administering power “has persistently refused to comply with the provisions of resolution 1514 (XV)” and “continues to violate the territorial integrity of the Seychelles”. *Ibid.*, p. 3, Conclusions, para. 4. In its recommendations, the Committee confirmed “that the detachment of a number of islands from the Seychelles by the administering Power, and the setting up of the so-called ‘British Indian Ocean Territory’ with the purpose of establishing a military base in that Territory jointly with the United States of America, is incompatible with the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples. It reiterates its decision that such actions are not in keeping with either the interests of the inhabitants or with those of the African continent or with international peace and security”. *Ibid.*, p. 4, Recommendations, para. 4. The Committee called upon the administering power to “respect the territorial integrity of the Seychelles and to return immediately to that Territory the islands detached from it in 1965”. *Ibid.*, para. 5.

and the existence of foreign military bases in those Territories constitute one of the most serious impediments to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960, and pose a grave threat to international peace and security.⁴⁵⁹

- c) In a Report adopted at its 876th meeting in 1972, the Committee of 24 recognised that the administering power detached the Chagos Archipelago from Mauritius and three islands from Seychelles “without prior consultation with the people of the Territory.”⁴⁶⁰
- d) In a Report adopted at its 1011th meeting in 1975, the Committee of 24 reaffirmed that military activities and arrangements by administering powers are “a serious impediment” to the implementation of General Assembly Resolution 1514 (XV) and that these activities “are thus contrary to the aims and purposes of the Charter of the United Nations and are an abuse by the administering Powers of their responsibilities towards peoples under their administration.”⁴⁶¹
- e) At a 1983 meeting of the Ad Hoc Committee on the Indian Ocean, the representative from Mozambique expressed the view that “Diego Garcia, a territory arbitrarily wrenched from the national whole of

⁴⁵⁹ United Nations, 27th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Decision of the Special Committee*, Doc. No. A/8723/Rev.1, Vol. II, Supplement No. 23 (1975), pp. 169-170, Conclusions, paras. 9 and 11 (**Dossier No. 326**).

⁴⁶⁰ United Nations, 27th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: Decisions of the Special Committee*, Doc. No. A/8723/Rev.1, Vol. IV, Supplement No. 23 (1975), p. 7, Conclusions, para. 6 (**Dossier No. 327**).

⁴⁶¹ United Nations, 30th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, Doc. No. A/10023/Rev.1, Vol. I, Supplement No. 23 (1977), pp. 177-178, Conclusions, para. 13 (**Dossier No. 332**). The Committee also called upon the U.K. “to withdraw from the agreement with the United States of America on the establishment of military installation in the Indian Ocean”. *Ibid.*, p. 179, Recommendations, para. 10.

Mauritius, has now become the most threatening base of aggression against the peoples and countries of the Indian Ocean region.”⁴⁶² Likewise, the representative from the Union of Soviet Socialist Republics described Diego Garcia as having been “torn away from Mauritius” and stated that “the creation and consolidation of military bases on Diego Garcia are a threat to the sovereignty, territorial integrity and peaceful development of Mauritius and other States.”⁴⁶³

- f) At a plenary meeting of the General Assembly on the implementation of Resolution 1514 (XV) on 6 December 1983, the Byelorussian representative stated that the establishment of military bases, including in Diego Garcia, is directly contrary to “the aims of decolonization proclaimed in [Resolution 1514 (XV)] and hinder the fulfilment of the Declaration.”⁴⁶⁴ The delegation from Mongolia called for Resolution 1514 (XV) to be “fully implemented in the case of all other colonial peoples and dependent Territories, including Diego Garcia”.⁴⁶⁵ Cuba’s representative, referring to Diego Garcia, said that “the struggle against the vestiges of colonialism has not ended”.⁴⁶⁶ The delegation from Madagascar expressed the view that the presence of military bases in certain non-self-governing territories are “obstacles to the implementation” of Resolution 1514 (XV).⁴⁶⁷ The representative from Hungary said that military bases in the Pacific and Indian Oceans, the

⁴⁶² U.N. General Assembly, First Committee, 38th Session, 48th Meeting, *Agenda Item 59: Implementation of the Declaration of the Indian Ocean as a Zone of Peace: Report of the Ad Hoc Committee on the Indian Ocean*, U.N. Doc. A/C.1/38/PV.48 (2 Dec. 1983), p. 19 (**Dossier No. 277**).

⁴⁶³ *Ibid.*, p. 26.

⁴⁶⁴ U.N. General Assembly, 38th Session, 84th Plenary Meeting, *Agenda Item 18: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/38/PV.84 (6 Dec. 1983), para. 98 (**Dossier No. 278**).

⁴⁶⁵ U.N. General Assembly, 38th Session, 85th Plenary Meeting, *Agenda Item 18: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/38/PV.85 (6 Dec. 1983), para. 23 (**Dossier No. 279**). *See also* the statement by the representative from Vietnam at para. 56.

⁴⁶⁶ *Ibid.*, para. 114.

⁴⁶⁷ *Ibid.*, para. 9.

Caribbean and South Atlantic “impede decolonization”.⁴⁶⁸ Ukraine’s delegation referred to the denial, for strategic interests, of “the sacred right of the peoples to self-determination” and described the seizure of the Chagos Archipelago as illegal.⁴⁶⁹

- g) In 1985, the Human Rights Committee considered the situation with regard to territories that had not yet become independent, and asked the U.K. “what its intentions were concerning islands which had belonged to Mauritius and which had subsequently been incorporated into the British Indian Ocean Territories”.⁴⁷⁰ Likewise, in 1989, the Human Rights Committee enquired about “whether the population of the Archipelago had been asked its opinion about self-determination” and asked for more information concerning the current social and political status of the former inhabitants of the Chagos Archipelago.⁴⁷¹
- h) At the 23rd meeting of the Sub-Commission on the Promotion and Protection of Human Rights in 2000, it was stated that the General Assembly “had adopted a number of resolutions emphasizing that the detachment of the Chagos islands from Mauritius was in contravention of [Resolution 1514 (XV)]” and that “[t]he case of the displaced Ilois population, whose right to return was still being denied, was a human tragedy that deserved the attention of the Sub-Commission.”⁴⁷²

⁴⁶⁸ *Ibid.*, para. 30.

⁴⁶⁹ *Ibid.*, para. 146.

⁴⁷⁰ U.N. Human Rights Committee, 40th Session, *Report of the Human Rights Committee*, U.N. Doc. A/40/40, Supplement No. 40 (1985), para. 536 (**Dossier No. 385**). The U.K. representative said in response that “the United Kingdom had no intention of detaching any part of Mauritius”. *Ibid.*, para. 537.

⁴⁷¹ U.N. Human Rights Committee, 44th Session, *Report of the Human Rights Committee*, U.N. Doc. A/44/40 (1989), para. 494 (**Dossier No. 386**).

⁴⁷² Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 52nd Session, 23rd Meeting, *Summary Record*, U.N. Doc. E/CN.4/Sub.2/2000/SR.23 (30 May 2001), p. 5, para. 9 (Mr Sik Yuen) (**Dossier No. 348**). *See also* the comments by the Observer for Mauritius at para. 18.

4.41 For the past fifty years, the U.N. General Assembly has manifested a clear and continuing interest in the decolonisation of Mauritius and the detachment of the Chagos Archipelago. As described above, Mauritius has raised these matters before the General Assembly on more than 30 occasions since 1980.⁴⁷³ And, as addressed below, there has been extensive and ongoing criticism of the administering power's forcible removal of the inhabitants of the Chagos Archipelago, and the refusal to allow their resettlement (on which see paragraphs 4.49 to 4.61).

B. REACTION OF THE INTERNATIONAL COMMUNITY

4.42 For more than five decades, continued and sustained international condemnation has been directed at the unlawful detachment of the Chagos Archipelago from the territory of Mauritius. This is reflected in resolutions and declarations adopted by the Organisation of African Unity ("O.A.U.")⁴⁷⁴ and subsequently the African Union ("A.U.");⁴⁷⁵ the Non-Aligned Movement

⁴⁷³ See paras. 4.5 and 4.15. See also Republic of Mauritius, *References to the Chagos Archipelago in Annual Statements Made by Mauritius to the United Nations General Assembly (extracts)* (1974-2017) (**Annex 100**).

⁴⁷⁴ *Resolution on Diego Garcia* (1-4 July 1980) (**Annex 118**); 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) (**Annex 140**); Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26(LXXIV) (5-8 July 2001) (**Annex 144**).

⁴⁷⁵ Assembly of the African Union, 15th Ordinary Session, *Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago*, Assembly/AU/Dec.331(XV) (27 July 2010) (**Annex 156**); African Union, Assembly of Heads of State and Government, 16th Ordinary Session, *Resolution adopted at the 16th Ordinary Session*, Assembly/AU/Res.1(XVI) (30-31 Jan. 2011) (**Annex 158**); Assembly of the African Union, 21st Ordinary Session, *Declaration on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa*, Assembly/AU/Decl.1(XXI) (26-27 May 2013) (**Annex 165**); Assembly of the African Union, 21st Ordinary Session, *Solemn Declaration on the 50th Anniversary of the OAU/AU*, Assembly/AU/2(XXI)Rev.1 (26 May 2013) (**Annex 164**); Assembly of the African Union, 25th Ordinary Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/901(XXVII), Assembly/AU/Rev.1(XXV) (14-15 June 2015) (**Annex 175**); Executive Council of the African Union, 30th Ordinary Session, *Decision on the 2016 Annual Report of the Chairperson of the AU*

("N.A.M.");⁴⁷⁶ the Group of 77 and China ("G77");⁴⁷⁷ the Africa-South America Summit;⁴⁷⁸ and the African, Caribbean, and Pacific Group of States ("A.C.P.").⁴⁷⁹ What follows is a sample of those resolutions and declarations.

I. Organisation of African Unity and the African Union

4.43 In a resolution adopted as early as July 1980, the O.A.U. demanded "that Diego Garcia be unconditionally returned to Mauritius and that its peaceful

Commission, Doc. EX.CL/994(XXX) (27 Jan. 2017); (**Annex 189**); African Union, 28th Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/994(XXX), Assembly/AU/Res.1 (XXVIII) (30-31 Jan. 2017) (**Annex 190**).

⁴⁷⁶ Non-Aligned Movement, *Extracts from Selected Non-Aligned Movement Declarations* (1964-2012) (**Annex 21**); Non-Aligned Movement, 17th Mid-Term Ministerial Meeting of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (26-29 May 2014) (**Annex 172**); Non-Aligned Movement, 17th Summit of Heads of State and Government of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (17-18 Sept. 2016) (**Annex 186**); Chair of the Coordinating Bureau of the Non-Aligned Movement *Political Declaration of New York* (20 Sept. 2017) (**Annex 194**). *See also Note Verbale* from the High Commission of India in Port Louis to the Mauritius Ministry of Foreign Affairs, POR/162/1/97 (9 May 1997) (**Annex 139**).

⁴⁷⁷ U.N. Conference on Trade and Development, 13th Session, *Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIII (extract)* (23 Apr. 2012) (**Dossier No. 466**); Ministers for Foreign Affairs of the Member States of the Group of 77, *Ministerial Declarations adopted at the Thirty-Sixth and Thirty-Seventh Annual Meetings of Ministers for Foreign Affairs of the Member States of the Group of 77* (28 Sept. 2012 & 26 Sept. 2013) (**Annex 162**); Group of 77 and China, Summit of Heads of State and Government of the Group of 77, *Declaration: For a New World Order for Living Well* (14-15 June 2014) (**Annex 173**); Group of 77 and China, 38th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (26 Sept. 2014) (**Annex 174**); Group of 77 and China, 14th Session, *Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIV*, TD/507 (17-22 July 2016) (**Annex 181**); Group of 77 and China, 40th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (23 Sept. 2016) (**Annex 183**); Group of 77 and China, 41st Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (22 Sept. 2017) (**Annex 195**).

⁴⁷⁸ Africa-South America Summit, 2nd Summit, *Declaration of Nueva Esparta* (26-27 Sept. 2009) (**Annex 155**); Africa-South America Summit, 3rd Summit, *Malabo Declaration* (20-22 Feb. 2013) (**Annex 163**).

⁴⁷⁹ African, Caribbean and Pacific Group of States, *Declaration of the 8th Summit of Heads of State and Government of the ACP Group of States: Port Moresby Declaration* (31 May-1 June 2016) (**Annex 179**); African, Caribbean and Pacific Group of States, 104th Session of the ACP Council of Ministers, *Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago*, Decision No. 7/CIV/16 (29-30 Nov. 2016) (hereinafter "*Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago* (29-30 Nov. 2016)") (**Annex 187**).

character be maintained.”⁴⁸⁰ The O.A.U. has also called 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”.⁴⁸¹ On 27 July 2010, the A.U. adopted a decision in which it:

RE-AFFIRMS that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence, forms an integral part of the territory of the Republic of Mauritius and **CALLS UPON** the United Kingdom to expeditiously put an end to its continued unlawful occupation of the Chagos Archipelago with a view to enabling Mauritius to effectively exercise its sovereignty over the Archipelago.⁴⁸²

4.44 Most recently, on 31 January 2017, the A.U. adopted a resolution in which it:

4. RECALLS in this regard the previous resolutions adopted by the Assembly, in particular, Resolution Assembly/AU/Res.1(XXV) of June 2015 of the Assembly of the African Union held in Johannesburg, South Africa, expressing its full support to the efforts and actions in accordance with international law, including those of a diplomatic and legal nature at the level of the United Nations system, which may be taken by the Government of the Republic of Mauritius for the early and unconditional return of the Chagos Archipelago, including Diego Garcia, to the effective control of the Republic of Mauritius;

⁴⁸⁰ *Resolution on Diego Garcia* (1-4 July 1980) (**Annex 118**).

⁴⁸¹ Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26(LXXIV) (5-8 July 2001) (**Annex 144**).

⁴⁸² Assembly of the African Union, 15th Ordinary Session, *Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago*, Assembly/AU/Dec.331(XV) (27 July 2010) (**Annex 156**).

5. NOTES that at the request of the Government of the Republic of Mauritius, an item entitled “Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965” has been included in the agenda of the 71st Session of the United Nations General Assembly and that action on that item is likely to be taken in June 2017;

6. RESOLVES to fully support the action initiated by the Government of the Republic of Mauritius at the level of the United Nations General Assembly with a view to ensuring the completion of the decolonization of the Republic of Mauritius and enabling the Republic of Mauritius to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia...⁴⁸³

2. *Non-Aligned Movement*

4.45 Since March 1983, the N.A.M. has recognised that the Chagos Archipelago “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).”⁴⁸⁴ The N.A.M. has acknowledged that the Chagos Archipelago “forms an integral part of the territory of the Republic of Mauritius”⁴⁸⁵ and has called upon the administering power to effect its “early return”⁴⁸⁶ and to do so “without delay.”⁴⁸⁷

⁴⁸³ African Union, 28th Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/994(XXX), Assembly/AU/Res.1 (XXVIII) (30-31 Jan. 2017) (**Annex 190**).

⁴⁸⁴ Non-Aligned Movement, *Extracts from Selected Non-Aligned Movement Declarations* (1964-2012), p. 5, para. 81 (**Annex 21**).

⁴⁸⁵ See, e.g., *ibid.*, p. 20, para. 285.

⁴⁸⁶ See, e.g., *ibid.*, p. 10, para. 171.

⁴⁸⁷ *Ibid.*, p. 9, para. 14.

3. *Group of 77 and China*

4.46 The G77 has repeatedly affirmed that the Chagos Archipelago was “unlawfully excised by the United Kingdom from the territory of Mauritius, prior to independence, in violation of international law and UN General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965”⁴⁸⁸ and that “[f]ailure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries.”⁴⁸⁹

4. *Africa-South America Summit*

4.47 The 2013 Malabo Declaration adopted by the Third Africa-South America Summit affirms that:

the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of the Republic of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius.⁴⁹⁰

5. *African, Caribbean and Pacific Group of States*

4.48 The 2016 Port Moresby Declaration, adopted by the 8th Summit of A.C.P. Heads of State and Government, recognised the unlawful excision of the Chagos Archipelago by the former administering power, in violation of General Assembly

⁴⁸⁸ Group of 77 and China, 41st Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (22 Sept. 2017), para. 200 (**Annex 195**).

⁴⁸⁹ Group of 77 and China, 40th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (23 Sept. 2016), para. 150 (**Annex 183**).

⁴⁹⁰ Africa-South America Summit, 3rd Summit, *Malabo Declaration* (20-22 Feb. 2013), para. 28 (**Annex 163**).

Resolutions 1514 (XV) and 2066 (XX).⁴⁹¹ At its 104th Session on 30 November 2016, the A.C.P. Council of Ministers deplored “the continued unlawful occupation by the United Kingdom of the Chagos Archipelago, thereby denying the Republic of Mauritius the exercise of its sovereignty over the Archipelago and making the decolonization of the Republic of Mauritius and of Africa incomplete”.⁴⁹²

IV. Reaction to the forcible removal of the Chagossians

4.49 The forcible removal of the Chagossians, and the denial by the administering power, over five decades, of their right to resettle in the Chagos Archipelago, have been heavily criticised and have resulted in numerous domestic legal challenges in the U.K. The Government of Mauritius has committed, as soon as the process of decolonisation is complete, to allow for the resettlement of the Chagossians, and any other Mauritian citizen who wishes to live in the Chagos Archipelago. Mauritius has also made clear that “there is no strategic or defence impediment” for the return to the outer islands of the Archipelago of persons of Mauritian origin who were living in the Chagos Archipelago, and that it has “no objection to the continued presence of the US military base on Diego Garcia”.⁴⁹³

⁴⁹¹ African, Caribbean and Pacific Group of States, *Declaration of the 8th Summit of Heads of State and Government of the ACP Group of States: Port Moresby Declaration* (31 May-1 June 2016), para. 21 (**Annex 179**).

⁴⁹² *Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago* (29-30 Nov. 2016) (**Annex 187**).

⁴⁹³ *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) (**Annex 141**). *See also Letter* from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (**Annex 147**); *Letter* from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (**Annex 148**); *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (**Annex 168**); *Letter*

4.50 On 23 February and 23 June 1972, the Prime Minister of Mauritius had discussions with British representatives on a resettlement scheme for the former residents of the Chagos Archipelago.⁴⁹⁴ The U.K. agreed to pay £650,000 to the Mauritian Government, “provided that the Mauritius Government accept such payment in full and final discharge of [the U.K.’s] undertaking, given at Lancaster House, London, on 23 September 1965, to meet the cost of resettlement of persons displaced from the Chagos Archipelago”.⁴⁹⁵ On 4 September 1972, the Mauritian Prime Minister accepted payment of £650,000 as the cost of the resettlement scheme.

4.51 In 1975, Michel Vencatassen, a former resident of the Chagos Archipelago who was forcibly removed in 1971, brought a compensation claim in the High Court in London against the British Government. The claim was for “damages for intimidation and deprivation of liberty in connection with his departure from Diego Garcia, but the proceedings came to be accepted on both sides as raising the whole question of the legality of the removal of the Chagossians from the islands.”⁴⁹⁶ After lengthy negotiations, the claim was settled in 1982 on the basis that the U.K. Government pay £4 million into a trust fund for the former residents of the Chagos Archipelago, on the condition that they renounce their rights to future claims arising

from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (**Annex 193**). *See also* Chapter 7, Part III. B. 2.

⁴⁹⁴ *Letter* from the British High Commission in Port Louis to the Prime Minister of Mauritius (26 June 1972) (**Annex 98**).

⁴⁹⁵ *Ibid.*, para. 2.

⁴⁹⁶ As summarised by Lord Hoffmann in *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 12.

out of their removal from the islands.⁴⁹⁷ The Ilois Trust Fund Act was enacted on 30 July 1982, and put in place the mechanism required by the 1982 Agreement.⁴⁹⁸

4.52 In 1998, another former resident of the Chagos Archipelago, Olivier Bancoult, applied to the High Court in London for judicial review of the U.K. Immigration Ordinance 1971, Section 4(1) of which provided that: “No person shall enter the Territory or, being in the Territory, shall be present or remain in the Territory, unless he is in possession of a permit...”.⁴⁹⁹ This provision provided the purported legal basis for the expulsion, and then the continued exclusion, of the Chagossians from the Chagos Archipelago. Mr Bancoult sought a declaration that the Ordinance was void because it purported to authorise the expulsion of Chagossians from the Chagos Archipelago, and a declaration that the policy which prevented him from returning to and residing in the Archipelago was unlawful. On 3 November 2000, the High Court gave judgment in favour of Mr Bancoult, holding that the 1971 Ordinance was unlawful on the basis that the Government had purported to make it under a power to legislate for the “peace, order and good

⁴⁹⁷ *Ibid.*, para. 13. On 7 July 1982, Mauritius and the U.K. signed an Agreement relating to the payment of further compensation. See Agreement concerning the Ilois from the Chagos Archipelago (with exchange notes of 26 October 1982), 1316 U.N.T.S. 21924 (7 July 1982), entered into force 28 Oct. 1982. In a report of the Commission on Human Rights’ Working Group on Minorities, it is suggested that the “no return” clause in the 1982 agreement was not understood by many of the Chagossians who were illiterate. See Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities, Report on the visit by the Working Group to Mauritius, *Examining Possible Solutions to Problems Involving Minorities, Including the Promotion of Mutual Understanding Between and Among Minorities and Governments*, U.N. Doc. E/CN.4/Sub.2/AC.5/2002/2 (3 April 2002), para. 37 (**Dossier No. 363**).

⁴⁹⁸ Republic of Mauritius, *Ilois Trust Fund Act 1982*, Act No. 6 of 1982 (30 July 1982). Section 12 of the Act provided that: “Nothing in this Act shall affect the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia.”

⁴⁹⁹ *R (on the application of Bancoult) v. Secretary of State for the Foreign and Commonwealth Office*, [2001] Q.B. 1067 (3 Nov. 2000), para. 5.

government” of the territory, which did not include the power to expel the residents. Accordingly, the Court quashed the Ordinance.⁵⁰⁰

4.53 In response, the then Foreign Secretary Robin Cook stated that the British Government accepted the ruling and did not intend to appeal; that work on the feasibility of resettling the former residents took on a new importance in light of the judgment; that in the meantime a new Immigration Ordinance would be put in place in order to allow the former residents to return to the outer islands of the Archipelago; and that: “This Government has not defended what was done or said thirty years ago... we made no attempt to conceal the gravity of what happened.”⁵⁰¹ The British Government adopted the Immigration Ordinance 2000, largely identical to the 1971 Ordinance, but providing that the restrictions on entry to the Chagos Archipelago did not apply to the Chagossians, save in respect of Diego Garcia.

4.54 In April 2002, the High Court dismissed a claim brought by Chagossians against the British Government, claiming compensation and restoration of their property rights, and declarations of their entitlement to return to all the islands of the Chagos Archipelago, and to measures facilitating their return.⁵⁰² On 9 October 2003, the High Court dismissed additional claims.⁵⁰³ The Court of Appeal refused leave to appeal on grounds relating to English law, while recognising that the compensation which the former residents had received “has done little to repair the wrecking of their families and communities, to restore their self-respect or to make

⁵⁰⁰ *R (on the application of Bancoult) v. Secretary of State for the Foreign and Commonwealth Office*, [2001] Q.B. 1067 (3 Nov. 2000).

⁵⁰¹ Quoted by Lord Hoffmann in *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 17.

⁵⁰² Summarised by Lord Hoffmann in *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 20.

⁵⁰³ *Chagos Islanders v. The Attorney General*, [2003] EWHC 2222 (QB) (9 Oct. 2003).

amends for the underhand official conduct now publicly revealed by the documentary record.”⁵⁰⁴

4.55 In 2004, in disregard of its previous commitment to work towards resettlement of the Chagos Archipelago, the British Government repealed the Immigration Ordinance 2000 and introduced the “British Indian Ocean Territory (Constitution) Order 2004”, Section 9 of which restored the pre-2001 position of complete exclusion of all persons from the Chagos Archipelago, including the former residents whose right to be present on all islands other than Diego Garcia had been recognised in 2001 by the High Court.⁵⁰⁵

4.56 Mr Bancoult challenged the 2004 Order by way of a further claim for judicial review. The High Court held that the 2004 Order, and an immigration order made in parallel to it,⁵⁰⁶ were irrational in that they did not promote the interests of the Chagossians; the Court therefore quashed the Orders.⁵⁰⁷ The Court of Appeal upheld this decision, on the basis that (i) the removal or subsequent exclusion of the Chagossians for reasons unconnected with their collective wellbeing was an abuse of the power of colonial governance exercisable by Her Majesty in Council; and (ii) Foreign Secretary Robin Cook’s press statement after the 2000 High Court

⁵⁰⁴ *Chagos Islanders v. The Attorney General*, [2004] EWCA Civ 997 (22 July 2004), para. 54.

⁵⁰⁵ Section 9(2) provides that “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.” See *R (on the Application of Bancoult) v. The Secretary of State for Foreign and Commonwealth Affairs* [2006] EWHC 1038 (Admin) (11 May 2006), para. 91.

⁵⁰⁶ United Kingdom, “*British Indian Ocean Territory (Immigration) Order 2004*” (10 June 2004). See *R (on the Application of Bancoult) v. The Secretary of State for Foreign and Commonwealth Affairs* [2006] EWHC 1038 (Admin) (11 May 2006), para. 9 (“By virtue of the British Indian Ocean Territory (Immigration) Order 2004... also made by Her Majesty in Council, presence within the Territory without a permit became an offence punishable by 3 years’ imprisonment. It is clear that no permit will be granted to allow Chagossians to resume living in any of the islands.”)

⁵⁰⁷ *R (on the Application of Bancoult) v. The Secretary of State for Foreign and Commonwealth Affairs* [2006] EWHC 1038 (Admin) (11 May 2006).

decision, and the Immigration Ordinance 2000, were promises to the former residents which gave rise to a legitimate expectation that, in the absence of a relevant change of circumstances (and none had been identified), their rights of entry to and abode in the Chagos Archipelago would not be revoked.⁵⁰⁸

4.57 The British Government appealed to the House of Lords (then the highest court in the U.K.), which allowed the appeal by a 3-2 majority, holding that the power to take the measures in question was not limited to objectives connected to the “peace, order and good government” of the territory, but extended to the wider interests of the U.K.; that such matters were the primary responsibility of the executive, not the courts; and that the measures could not be said to be irrational, given a broader interpretation of the power to make them.⁵⁰⁹ The Court was, however, highly critical of the Government’s conduct in the Chagos Archipelago. Lord Hoffmann stated that:

My Lords, it is accepted by the Secretary of State that the removal and resettlement of the Chagossians was accomplished with a callous disregard of their interests.⁵¹⁰

⁵⁰⁸ *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2007] EWCA Civ 498 (23 May 2007).

⁵⁰⁹ *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008).

⁵¹⁰ *Ibid.*, para. 10. Mr Bancoult challenged the decision of the House of Lords before the European Court of Human Rights. See *Chagos Islanders v. The United Kingdom*, Decision on Application No. 35622/04, European Court of Human Rights (11 Dec. 2012), available at <http://hudoc.echr.coe.int/eng?i=001-115714> (last accessed 20 Feb. 2018). The European Court of Human Rights (Fourth Section) rejected the application on the basis that the applicants had accepted and received compensation, and had effectively renounced further claims. In August 2010, Mr Bancoult issued a further judicial review claim before the High Court in London challenging the lawfulness of the U.K.’s decision to establish the “MPA”, on the basis that the decision had an ulterior motive (namely the continued exclusion of the former residents of the Chagos Archipelago), and that the purported process of consultation had been seriously flawed by reason of the non-disclosure of significant information. On 8 February 2018, the U.K. Supreme Court dismissed an appeal brought by Mr Bancoult by 5-2 (*R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2018] UKSC 3).

4.58 On 8 July 2013, the British Government announced a feasibility study into the resettlement of the Chagossians, which would entail consultation with interested parties.⁵¹¹ Of the Chagossian respondents to the consultation, 98% expressed a desire to return to the Chagos Archipelago.⁵¹² The Government commissioned the consulting firm KPMG to carry out the study, which considered three resettlement options (large-scale, medium-scale and small-scale resettlement). The study concluded that there were no fundamental legal obstacles preventing resettlement and that potential environmental impacts could be ameliorated through mitigation measures. It was recognised that there are income opportunities in the Chagos Archipelago in artisanal fishing and the development of small coconut plots, as well as the potential to develop high-end and eco-tourism.⁵¹³

4.59 Nevertheless, on 16 November 2016, the British Government declared, without prior consultation with Mauritius, that it “has decided against resettlement of the Chagossians people ... on the grounds of feasibility, defence and security interests and cost to the British taxpayer.”⁵¹⁴ At the same time, the Government announced it would fund a package worth approximately £40 million over the next

⁵¹¹ U.K. Foreign and Commonwealth Office, Written Ministerial Statement, “*Update on the British Indian Ocean Territory Policy Review*” (8 July 2013) (**Annex 167**).

⁵¹² U.K. Foreign and Commonwealth Office, “*BIOT Resettlement Policy Review: Summary of Responses to Public Consultation*” (21 Jan. 2016), p. 3 (**Annex 178**).

⁵¹³ KPMG LLP, “*Feasibility study for the resettlement of the British Indian Ocean Territory*” (31 Jan. 2015), available at <https://www.gov.uk/government/speeches/policy-review-of-resettlement-of-the-british-indian-ocean-territory> (last accessed 20 Feb. 2018).

⁵¹⁴ “*Update on the British Indian Ocean Territory*” (16 Nov. 2016) (**Annex 185**). This decision is the subject of judicial review proceedings in the U.K. See *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2018] UKSC 3, para. 1.

10 years to support improvements in the livelihood of the Chagossian community outside the Archipelago.⁵¹⁵

4.60 On 6 December 2017, following the General Assembly’s request for an Advisory Opinion, the “Chagos Islands (BIOT) All-Party Parliamentary Group” (“A.P.P.G.”), a cross-party Group comprising 20 members of the House of Commons and the House of Lords of the U.K. Parliament,⁵¹⁶ issued a Statement, which provides that:

The most pressing issue for the APPG is the continuing exile of the Chagossian people, a shameful blot on the UK’s human rights record. The Group has urged successive governments to restore the right of abode and the right of return to their homeland for all those wishing to do so, whether for resettlement, work or visits and to establish a pilot resettlement on Diego Garcia, as recommended by KPMG in 2015. There is no need for the UK to postpone a pilot resettlement any longer. The ICJ proceedings, which can take several years, must not be used as an excuse for delaying the restoration on moral, ethical and political grounds, of the right of abode. It is noted that the Government of Mauritius strongly supports the right of return and resettlement.

The Group believes that an overall settlement with Mauritius and the Chagos Islanders is long overdue. For the UK to continue to argue against an ICJ Advisory Opinion would have consequences for the UK’s reputation in the UN. An Advisory Opinion, which addresses the question put by the General Assembly, would provide a way forward and a solid basis for settling these issues, thus contributing to a resolution of an urgent human rights tragedy that has endured for over 50 years. Members hope that the ICJ will expedite its work and that its forthcoming Advisory Opinion will inspire the United Nations General Assembly to work with the

⁵¹⁵ *Ibid.*

⁵¹⁶ Membership of the A.P.P.G. includes *inter alia* the current leader of the Labour Party (Jeremy Corbyn, who is the Honorary President) and Lord Steel (the former leader of the Liberal Democrats and the Liberal Party). Lord Luce, a Conservative peer who was Minister of State for Foreign and Commonwealth Affairs between in 1981-1982 and 1983-1985, has also been a member of the A.P.P.G.

parties directly concerned to bring an end to the exile of the Chagossian people and contribute to the process of decolonisation.

The APPG has been persistent in analysing the fluctuating arguments deployed by governments against resettlement such as cost, infeasibility, defence, security, treaty obligations to the US, child safeguarding, climate change, erosion, rising sea levels and conservation. The Group continues to believe that with political will these issues can be addressed and resolved. Indeed the Group understands that the US has no objection to a pilot resettlement on Diego Garcia.⁵¹⁷

4.61 The expulsion of the Chagossians and the denial of their right to return has also been criticised by the international community, including at the U.N. In November 2016, the A.C.P. Council of Ministers “reiterated that the denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago is a manifest breach of international law and outrageously flouts their human rights”.⁵¹⁸ As illustrated by the four examples below, various U.N. bodies, including the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, have shown a continuing interest in the removal of the Chagossians and their right of return:

- a) In April 2002, the Working Group on Minorities reported on a visit to Mauritius between 7 and 10 September 2001. It was noted that the former inhabitants of the Chagos Archipelago “were forced to evacuate their homes and move to the main island”.⁵¹⁹ The Working Group

⁵¹⁷ Chagos Islands (BIOT) All-Party Parliamentary Group, *Statement issued at its 65th meeting on 6 December 2017 by the Chagos Islands (BIOT) All-Party Parliamentary Group on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 to be considered by the International Court of Justice* (6 Dec. 2017) (**Annex 196**).

⁵¹⁸ *Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago* (29-30 Nov. 2016) (**Annex 187**).

⁵¹⁹ Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities, *Examining Possible Solutions To Problems Involving Minorities, Including the Promotion of Mutual Understanding Between and Among Minorities and Governments*, Doc. No. E/CN.4/Sub.2/AC.5/2002/2 (3 Apr. 2002), para. 36 (**Dossier No. 363**).

expressed concern with regard to the social and economic difficulties faced by the Chagossians.⁵²⁰

- b) In its Concluding Observations on the sixth periodic report submitted by the U.K. under Article 40 of the International Covenant on Civil and Political Rights in 2008, the Human Rights Committee recommended that: “[t]he State party should ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard.”⁵²¹
- c) At the 2112th meeting of the Committee on the Elimination of Racial Discrimination in 2011, considering the 18th to 20th periodic reports of the U.K., the British Government was asked which measures it “intended to take to resolve the problem of persons expelled by the United Kingdom from the Chagos Islands”.⁵²² It was also recalled that “thousands of persons of African descent had been forced by the United Kingdom to leave the Chagos archipelago ... and that many of them still hoped to be able to return to their homes one day.”⁵²³
- d) In a 2011 Report relating to its 78th and 79th sessions, the Committee on the Elimination of Racial Discrimination stated that it was “deeply concerned” that the International Convention on the Elimination of All Forms of Racial Discrimination does not apply to the “BIOT” and expressed regret that “the BIOT (Immigration) Order 2004 not only bans Chagossians (Ilois) from entering Diego Garcia but also bans them from entering the outlying islands located over 100 miles away, on the

⁵²⁰ *Ibid.*, para. 47.

⁵²¹ U.N. Human Rights Committee, 93rd Session, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant - Concluding observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc. CCPR/C/GBR/CO/6 (30 July 2008) (hereinafter “*Concluding observations of the Human Rights Committee: United Kingdom and Northern Ireland (30 July 2008)*”), para. 22 (**Dossier No. 397**).

⁵²² Committee on the Elimination of Racial Discrimination, 79th Session, 2112th Meeting, *Summary Record*, U.N. Doc. CERD/C/SR.2112 (13 Jan. 2012), p. 7, para. 29 (Mr Avtonomov) (**Dossier No. 375**).

⁵²³ *Ibid.*, p. 8, para. 32 (Mr Murillo Martínez).

grounds of national security”.⁵²⁴ The Committee recommended that “all discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands in the BIOT be withdrawn.”⁵²⁵

V. Conclusion

4.62 As set out above, the purported detachment of the Chagos Archipelago and the failure by the administering power to complete the process of decolonisation has been strongly and consistently rejected by Mauritius, which has received strong support from around the world. Despite concerted efforts by the administering power to shield itself from scrutiny, there has been widespread and repeated international criticism – including in the U.N. General Assembly and in the Committee of 24 – for more than 50 years. The vast majority of States have expressed the view, including by reference to General Assembly Resolutions 1514 (XV) and 2066 (XX), that the detachment of the Chagos Archipelago was unlawful since it amounted to the disruption of the national unity and territorial integrity of Mauritius shortly before independence. The legal consequences that flow from this, by reference to the two questions posed by the General Assembly, are addressed in the Chapters that follow.

⁵²⁴ United Nations General Assembly, 66th Session, *Report of the Committee on the Elimination of Racial Discrimination relating to the 78th and 79th sessions*, U.N. Doc. A/66/18 (2011), p. 115, para. 12 (**Dossier No. 374**).

⁵²⁵ *Ibid.*

CHAPTER 5

THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION REQUESTED BY THE GENERAL ASSEMBLY, AND THERE ARE NO REASONS FOR THE COURT TO DECLINE TO GIVE IT

5.1 This Chapter addresses the jurisdiction of the Court to issue the Advisory Opinion that has been requested in General Assembly Resolution 71/292 of 22 June 2017, and the propriety of doing so. **Section I** shows that the Court has jurisdiction to give the Advisory Opinion requested, because the General Assembly is an organ duly authorised to seek an advisory opinion from the Court, and because the request raises questions of a legal character. **Section II** demonstrates that there are no reasons for the Court to decline to give its advisory opinion on the matters which the General Assembly has placed before it.

I. The Court Has jurisdiction to give the Advisory Opinion requested by the General Assembly in Resolution 71/292

5.2 The Court derives its advisory jurisdiction from Article 65(1) of its Statute, which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

5.3 In its application of this provision, the Court has explained that “[i]t is... a precondition of the Court’s competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security

Council, that question should be one arising within the scope of the activities of the requesting organ.”⁵²⁶

5.4 It follows that in the present case two conditions must be satisfied for the Court to exercise its advisory jurisdiction: (i) the request for an advisory opinion must be made by a duly authorised organ, and (ii) the questions put to the Court must be of a legal character.⁵²⁷ For the reasons set out below, both conditions are fulfilled here.

A. THE GENERAL ASSEMBLY IS AN ORGAN DULY AUTHORISED TO REQUEST AN ADVISORY OPINION FROM THE COURT

5.5 For the Court to have jurisdiction to give an advisory opinion, it is “necessary at the outset for the body requesting the opinion to be ‘authorized by... the Charter of the United Nations to make such a request.’”⁵²⁸

5.6 The U.N. Charter provides in Article 96(1) that the General Assembly “may request the International Court of Justice to give an advisory opinion on any legal question.” The express terms of this provision leave no doubt that the General

⁵²⁶ *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 333-334, para. 21. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004* (hereinafter “*Construction of a Wall (Advisory Opinion)*”), p. 144, para. 14. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010* (hereinafter “*Declaration of Independence in Respect of Kosovo (Advisory Opinion)*”), p. 413, para. 19.

⁵²⁷ Because the request has been made by the General Assembly, there is no need to establish that the questions set out in the General Assembly’s Resolution 71/292 of 22 June 2017 should be ones arising within the scope of the Assembly’s activities.

⁵²⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996* (hereinafter “*Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*”), p. 232, para. 11 (quoting Statute of the International Court of Justice, Art. 65(1)).

Assembly is “an organ duly authorized to seek [an advisory opinion] under the Charter”.⁵²⁹

5.7 When the General Assembly requests an advisory opinion from the Court in accordance with its own rules, the presumption is that the Assembly has exercised its power validly. As the Court has explained, “[a] resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ’s rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted.”⁵³⁰ Resolution 71/292 was adopted by the General Assembly pursuant to its established rules by a recorded vote of 94 in favour to 15 against, with 65 abstentions.⁵³¹

5.8 Unlike other organs of the United Nations and specialised agencies, whose power to request advisory opinions is restricted to legal questions “arising within the scope of their activities”,⁵³² the General Assembly’s power is not so restricted. Nonetheless, as shown in Chapter 4, the subject matter of Resolution 71/292 has

⁵²⁹ *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 333, para. 21. See also *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* p. 232, para. 11; *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 413, para. 21.

⁵³⁰ *South West Africa (Advisory Opinion)*, p. 22, para. 20. See also *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996* (hereinafter “*Use of Nuclear Weapons (Advisory Opinion)*”), p. 82, para. 29.

⁵³¹ See U.N. General Assembly, 71st Session, 88th Plenary Meeting, *Agenda item 87: Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos archipelago from Mauritius in 1965*, U.N. Doc. A/71/PV.88 (22 June 2017), pp. 17-18 (**Dossier No. 6**).

⁵³² U.N. Charter (1945), Art. 96(2).

been regularly addressed by the Assembly in the exercise of its powers and functions under Chapters XI to XIII of the Charter.⁵³³

5.9 Because the request for an advisory opinion was validly adopted by a duly authorised organ acting within its competence and raises questions directly relating to its mandate, the first requirement for the exercise of the advisory jurisdiction under Article 65(1) of the Statute of the Court is fully satisfied.

B. THE GENERAL ASSEMBLY HAS ASKED THE COURT TO GIVE AN ADVISORY OPINION ON LEGAL QUESTIONS

5.10 Pursuant to Article 96(1) of the U.N. Charter and Article 65(1) of the Statute, the Court may give an advisory opinion only on a “legal question.”

5.11 Addressing this requirement, the Court has explained that “questions... framed in terms of law and rais[ing] problems of international law... are by their very nature susceptible of a reply based on law” and “therefore they appear... to be questions of a legal character.”⁵³⁴ Further: “a question which expressly asks whether or not a particular action is compatible with international law certainly appears to be a legal question”.⁵³⁵

⁵³³ See paras. 4.28-4.41 above.

⁵³⁴ *Western Sahara (Advisory Opinion)*, p. 18, para. 15. See also *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, pp. 414-415, para. 25; *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, pp. 233-234, para. 13.

⁵³⁵ *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, pp. 414-415, para. 25 (“It is also for the Court to satisfy itself that the question on which it is requested to give its opinion is a ‘legal question’ within the meaning of Article 96 of the Charter and Article 65 of the Statute. In the present case, the question put to the Court by the General Assembly asks whether the declaration of independence to which it refers is ‘in accordance with international law’. A question which expressly asks the Court whether or not a particular action is compatible with international law certainly appears to be a legal question; as the Court has remarked on a previous occasion, questions

5.12 The questions raised by the General Assembly in Resolution 71/292 are expressly of a legal character. Both questions are framed in legal terms, raise issues of international law, and ask the Court to determine the legal consequences arising from specific circumstances. To address those questions, the Court will have to perform a quintessentially judicial task: to assess whether or not the process of decolonisation of Mauritius was lawfully completed, and to determine the international legal consequences arising from the administering power's continued administration of the Chagos Archipelago.

5.13 In discharging its judicial task, the Court will have to identify, interpret and apply the relevant rules of international law, including obligations reflected in the General Assembly's prior resolutions on decolonisation. This exercise will result in an Advisory Opinion that is squarely based on law. Indeed, the questions in the present case are "scarcely susceptible of a reply otherwise than on the basis of law."⁵³⁶

5.14 That the Court will have to address issues of fact in rendering its Advisory Opinion is not a bar to the request. As the Court explained in *South West Africa*, "the contingency that there may be factual issues underlying the question posed does not alter its character as a 'legal question' as envisaged in Article 96 of the

'framed in terms of law and rais[ing] problems of international law... are by their very nature susceptible of a reply based on law' (*Western Sahara (Advisory Opinion)*, p. 18, para. 15) and therefore appear to be questions of a legal character for the purposes of Article 96 of the Charter and Article 65 of the Statute.") See also *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13 ("The question put to the Court by the General Assembly is indeed a legal one, since the Court is asked to rule on the compatibility of the threat or use of nuclear weapons with the relevant principles and rules of international law. To do this, the Court must identify the existing principles and rules, interpret them and apply them to the threat or use of nuclear weapons, thus offering a reply to the question posed based on law.")

⁵³⁶ *Western Sahara (Advisory Opinion)*, p. 18, para. 15. See also *Construction of a Wall (Advisory Opinion)*, p. 153, para. 37.

Charter.”⁵³⁷ The reference in this provision to legal questions “cannot be interpreted as opposing legal to factual issues”, because “to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues.”⁵³⁸

5.15 Nor is the legal character of the questions undermined by the fact that they may also touch on issues of a political nature.⁵³⁹ The Court has affirmed that “the political nature of the motives which may be said to have inspired the request and the political implications that the opinion given might have are of no relevance in the establishment of its jurisdiction to give such an opinion.”⁵⁴⁰ Rather, the Court’s “long-standing jurisprudence” makes clear that it “cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task,

⁵³⁷ *South West Africa (Advisory Opinion)*, p. 27, para. 40.

⁵³⁸ *South West Africa (Advisory Opinion)*, p. 27, para. 40.

⁵³⁹ *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 415, para. 27 (“[T]he Court has repeatedly stated that the fact that a question has political aspects does not suffice to deprive it of its character as a legal question... . Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law. The Court has also made clear that, in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, *Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61, and *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13).”)

⁵⁴⁰ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13. *See also Construction of a Wall (Advisory Opinion)*, p. 155, para. 41; *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 415, para. 27; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33 (“Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate”).

namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law”.⁵⁴¹

5.16 It follows that the second requirement for the exercise of advisory jurisdiction under Article 65(1) of the Statute of the Court is also fulfilled.

5.17 With both requirements satisfied, the Court plainly has jurisdiction to give the Advisory Opinion requested by the General Assembly in Resolution 71/292.

II. There are no compelling reasons for the Court to decline to give the Advisory Opinion that has been requested

5.18 Article 65(1) of the Court’s Statute “leaves the Court a discretion as to whether or not it will give an Advisory Opinion that has been requested of it, once it has established its competence to do so.”⁵⁴²

5.19 However, notwithstanding the discretionary character of its advisory jurisdiction, “the present Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion.”⁵⁴³ Indeed, the

⁵⁴¹ *Construction of a Wall (Advisory Opinion)*, p. 155, para. 41 (quoting *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, pp. 171-72, para. 14). See also *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13; *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 415, para. 27.

⁵⁴² *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, pp. 234-335, para. 14. See also *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44 (“The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that ‘The Court *may* give an advisory opinion...’ (emphasis added), should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met...”); *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, pp. 415-416, para. 29.

⁵⁴³ *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44. It is only in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* that the Court declined to give its advisory opinion,

Court has been “mindful of the fact that its answer to a request for an advisory opinion ‘represents its participation in the activities of the Organization, and, in principle, should not be refused’”.⁵⁴⁴ The Court’s advisory opinions “have the purpose of furnishing to the requesting organs the elements of law necessary for them in their action.”⁵⁴⁵ Given its responsibilities “as the principal judicial organ of the United Nations”, the Court has repeatedly stated that “only ‘compelling

on the ground that the request for an advisory opinion submitted by the World Health Organization did not relate to a question arising “within the scope of [the] activities” of that organisation. *See Use of Nuclear Weapons (Advisory Opinion)*, p. 77, para. 23. However, this limitation has no application in the present case, since Article 96(1) of the U.N. Charter confers on the General Assembly the competence to request an advisory opinion on *any* legal question.

On only one occasion, many decades ago, did the Court’s predecessor, the Permanent Court of International Justice, take the view that it should not respond to a question put to it for an advisory opinion by the Council of the League of Nations (in the *Eastern Carelia* case). However, the *ratio decidendi* of that case is not applicable to cases such as the present. The differences between that case and a case such as the present were clearly highlighted by the Court in *Western Sahara*: “[i]n [*Eastern Carelia*], one of the States concerned was neither a party to the Statute of the Permanent Court nor, at the time, a Member of the League of Nations, and lack of competence of the League to deal with a dispute involving non-member States which refused its intervention was a decisive reason for the Court’s declining to give an answer. In the present case, Spain is a member of the United Nations and has accepted the provisions of the Charter and Statute; it has thereby in general given its consent to the exercise by the Court of its advisory jurisdiction. It has not objected, and could not validly object, to the General Assembly’s exercise of its powers to deal with the decolonization of a non-self-governing territory and to seek an opinion on questions relevant to the exercise of those powers.” *Western Sahara (Advisory Opinion)*, pp. 23-24, para. 30. In the present case too, all States concerned are members of the United Nations and have accepted the provisions of the Charter and the Statute. As such, they have given their consent to the exercise by the Court of its advisory jurisdiction, and none of them could validly object to the General Assembly’s exercise of its powers to deal with the decolonisation process and to seek an opinion about legal aspects of that process.

⁵⁴⁴ *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44 (emphasis added). *See also Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 235, para. 14 (“The Court’s Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an ‘organ of the United Nations’, represents its participation in the activities of the Organization, and, in principle, should not be refused.”)

⁵⁴⁵ *Construction of a Wall (Advisory Opinion)*, p. 162, para. 60.

reasons’ should lead the Court to refuse its opinion in response to a request falling within its jurisdiction”.⁵⁴⁶

5.20 No compelling reason exists to *refuse to give* the Advisory Opinion that has been requested in the present case. To the contrary, there are compelling reasons for *giving* the Advisory Opinion. These were identified by the General Assembly in introducing the operative text of Resolution 71/292:

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

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular paragraph 6 thereof, which states that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations,

Recalling also its resolution 2066 (XX) of 16 December 1965, in which it invited the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV) and to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, and its resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

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

⁵⁴⁶ *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 416, para. 30 (emphasis added). See also *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 78, para. 29.

Recalling its resolution 65/119 of 10 December 2010, in which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism, and its resolution 71/122 of 6 December 2016, in which it called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples... .

5.21 As this language makes clear, the Advisory Opinion requested by the General Assembly is intended to provide it with necessary legal guidance as it addresses matters that have long been among its highest priorities: the granting of independence to colonial countries and peoples; the protection of colonial peoples' inalienable rights to sovereignty, national unity, and territorial integrity; the full and immediate implementation of Resolution 1514 (XV), in circumstances where the process of decolonisation has not yet been completed; compliance with Resolution 2066 (XX) on the decolonisation of Mauritius without dismembering it or violating its territorial integrity; and the need for the General Assembly to play an active role in the process of decolonisation wherever it has not yet been completed. The importance of these matters to the General Assembly, and the need for the Court's guidance with respect to them, are underscored by the fact that 94 States voted in favour of Resolution 71/292, with only 15 voting against it.

5.22 Some of the States which opposed Resolution 71/292 took the position that the questions put to the Court concern a bilateral dispute between the Mauritius and the administering power, and that answering those questions would circumvent the requirement of consent to jurisdiction.⁵⁴⁷ This argument is misconceived. In fact,

⁵⁴⁷ The United Kingdom stated that "questions on the British Indian Ocean Territory have long been... [and] should remain bilateral". The U.K. stressed that it does not and will not consent to the bilateral dispute being submitted for judicial settlement. For its part, the United States stated that the resolution was an attempt "to circumvent the Court's lack of contentious jurisdiction over this purely bilateral matter." Similarly, Canada stated that "settlement of contentious cases between States through the International Court of Justice requires the consent of both parties", but "[s]eeking the referral of a contentious case between States through the General Assembly's power to request

the same arguments have been made in opposition to the Court’s exercise of its advisory jurisdiction in other cases, and have always been rejected by the Court.

5.23 For example, in the *Wall* case, Israel contended that “the subject-matter of the question posed by the General Assembly [was] ‘an integral part of the wider Israeli-Palestinian dispute concerning questions of terrorism, security, borders, settlements, Jerusalem and other related matters’”.⁵⁴⁸ Israel emphasised that it had never consented to the settlement of this dispute by the Court or by other means of compulsory jurisdiction. Accordingly, Israel submitted that the Court should decline to give the Advisory Opinion, because “the request concern[ed] a contentious matter between Israel and Palestine, in respect of which Israel has not consented to the exercise of that jurisdiction.”⁵⁴⁹

5.24 Notably, the U.K. similarly argued in the *Wall* case that the construction of the wall had “undoubtedly given rise to a bilateral dispute between Israel and Palestine”, with “title to territory hav[ing] been identified as a principal concern.”⁵⁵⁰ The U.K. also submitted that answering the question put to the Court “would be deciding an issue in a bilateral dispute and thereby circumventing the requirement of consent in the contentious jurisdiction.”⁵⁵¹

an advisory opinion circumvents that fundamental principle”. U.N. General Assembly, 71st Session, 88th Plenary Meeting, U.N. Doc. A/71/PV.88 (22 June 2017) (**Dossier No. 6**).

⁵⁴⁸ *Construction of a Wall (Advisory Opinion)*, p. 157, para. 46.

⁵⁴⁹ *Ibid.*

⁵⁵⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for an Advisory Opinion by the United Nations General Assembly)*, Written Statement of the United Kingdom of Great Britain and Northern Ireland (Jan. 2004), p. 21, para. 3.32.

⁵⁵¹ *Ibid.*, p. 21, para. 3.31.

5.25 The Court dismissed the arguments made by Israel and the U.K. While acknowledging that “Israel and Palestine have expressed radically divergent views on the legal consequences of Israel’s construction of the wall, on which the Court has been asked to pronounce”,⁵⁵² the Court emphasised that the subject-matter of the General Assembly’s request could not “be regarded as only a bilateral matter between Israel and Palestine.”⁵⁵³ The Court explained that “[g]iven the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court’s view that the construction of the wall must be deemed to be directly of concern to the United Nations.”⁵⁵⁴ On that basis, the Court determined that:

The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.⁵⁵⁵

5.26 The Court’s decision in the *Wall* case was consistent with its earlier decision in *Western Sahara*. There, the General Assembly, recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV)), requested that the Court give an advisory opinion on two questions related to the ongoing decolonisation efforts in regard to Western Sahara: whether Western

⁵⁵² *Construction of a Wall (Advisory Opinion)*, p. 158, para. 48.

⁵⁵³ *Ibid.*, pp. 158-159, para. 49.

⁵⁵⁴ *Ibid.*, p. 159, para. 49.

⁵⁵⁵ *Ibid.*, p. 159, para. 50.

Sahara at the time of colonisation by Spain was *terra nullius*, and if not, what the legal ties were between Western Sahara and Morocco and Mauritania.

5.27 Those questions were put to the Court against the backdrop of a pending dispute between Spain and Morocco, which had competing sovereignty claims over Western Sahara.⁵⁵⁶ Spain did not consent to Morocco's request to submit the dispute to the Court,⁵⁵⁷ and opposed the exercise of the Court's advisory jurisdiction. During the proceedings, Spain invited the Court to refuse to exercise that jurisdiction, arguing that:

The subject of the dispute which Morocco invited it to submit jointly to the Court for decision in contentious proceedings, and the subject of the questions on which the advisory opinion is requested, are substantially identical; thus the advisory procedure is said to have been used as an alternative after the failure of an attempt to make use of the contentious jurisdiction with regard to the same question. Consequently, to give a reply would, according to Spain, be to allow the advisory procedure to be used as a means of bypassing the consent of a State, which constitutes the basis of the Court's jurisdiction.... Such circumvention of the well-established principle of consent for the exercise of international jurisdiction would

⁵⁵⁶ *Western Sahara (Advisory Opinion)*, p. 25, para. 34. Spain in its communication addressed on 10 November 1958 to the Secretary-General of the United Nations stated: "Spain possesses no non-self-governing territories, since the territories subject to its sovereignty in Africa are, in accordance with the legislation now in force, considered to be and classified as provinces of Spain." *Ibid.* "This gave rise to the 'most explicit reservations' of the Government of Morocco, which, in a communication to the Secretary-General of 20 November 1958, stated that it 'claim[ed] certain African territories at present under Spanish control as an integral part Moroccan national territory.'" *Ibid.*

⁵⁵⁷ On 23 September 1974, several months before the General Assembly's submission of its request for the advisory opinion, Morocco proposed to Spain the joint submission to the I.C.J. of a dispute expressed in the following terms: "You, the Spanish Government, claim that the Sahara was *res nullius*. You claim that it was a territory or property left uninherited, you claim that no power and no administration had been established over the Sahara: Morocco claims the contrary. Let us request the arbitration of the International Court of Justice at The Hague... It will state the law on the basis of the titles submitted". *Ibid.*, p. 22, para. 26.

constitute, according to this view, a compelling reason for declining to answer the request.⁵⁵⁸

5.28 The Court rejected Spain's argument. *First*, observing that the General Assembly's request contained "a proviso concerning the application of General Assembly Resolution 1514 (XV)", the Court concluded that "the legal questions of which the Court ha[d] been seized [were] located in a broader frame of reference than the settlement of a particular dispute and embrace[d] other elements."⁵⁵⁹ *Second*, the Court pointed out that the object of the request for the Advisory Opinion was "to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory."⁵⁶⁰ The Court concluded that "[t]he legitimate interest of the General Assembly in obtaining an opinion from the Court in respect of its own future action cannot be affected or prejudiced by the fact that Morocco made a proposal, not accepted by Spain, to submit for adjudication by the Court a dispute raising issues related to those contained in the request."⁵⁶¹

5.29 The Court's exercise of its advisory jurisdiction in the *Wall* and *Western Sahara* cases demonstrates, therefore, that the principle of consent to judicial settlement is not circumvented if: (i) the advisory opinion is requested on questions located in a broader frame of reference than a bilateral dispute; and (ii) the object of the request is to obtain from the Court an opinion which the General Assembly deems of assistance for the proper exercise of its functions.⁵⁶² Both elements are

⁵⁵⁸ *Ibid.*, pp. 22-23, para. 27.

⁵⁵⁹ *Ibid.*, p. 26, para. 38.

⁵⁶⁰ *Ibid.*, p. 27, para. 39.

⁵⁶¹ *Ibid.*, para. 41.

⁵⁶² *See ibid.*, pp. 26-27, paras. 38-39; *Construction of a Wall (Advisory Opinion)*, p. 159, para. 50.

fully present in the instant case.

5.30 The *first* element is established, because the legal questions put to the Court are located in a frame of reference that is far broader than a mere bilateral dispute, namely the General Assembly's commitment to the full and immediate implementation of Resolution 1514 (XV) and the completion of the decolonisation process wherever it remains incomplete. As in *Western Sahara*, the terms of the General Assembly's request for an Advisory Opinion in respect of the decolonisation of Mauritius contain a proviso concerning the full and immediate implementation of Resolution 1514 (XV). Indeed, in the present case the Court is specifically asked to render an Advisory Opinion on whether the process of decolonisation of Mauritius was lawfully completed having regard to international law, including the obligations reflected in Resolution 1514 (XV) and other related resolutions of the General Assembly. This places the legal questions of which the Court has been seized "in a much broader frame of reference than a bilateral dispute."⁵⁶³

5.31 Further, since the obligations relating to decolonisation – including the principle of self-determination – are obligations *erga omnes*,⁵⁶⁴ they cannot be regarded as simply a bilateral matter. As the Court stated in the *Wall* case:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying

⁵⁶³ *Construction of a Wall (Advisory Opinion)*, p. 159, para. 50. See also *Western Sahara (Advisory Opinion)*, p. 26, para. 38.

⁵⁶⁴ *Construction of a Wall (Advisory Opinion)*, p. 199, para. 156 (reaffirming that "the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character") (emphasis added).

out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.⁵⁶⁵

5.32 The *second* element for the exercise of the Court’s advisory jurisdiction is also satisfied, since, as in the case of *Western Sahara*, the object of the present request for an Advisory Opinion is “to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory.”⁵⁶⁶ The General Assembly has a direct institutional interest in this matter. It has played a historic and central role in addressing decolonisation, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations. Under its Resolution 1514 (XV), the General Assembly declared that the integrity of the national territory of dependent peoples shall be respected, and that any attempt at the disruption of the territorial integrity of a colonial country is incompatible with the purposes and principles of the Charter.

5.33 In 2010, on the fiftieth anniversary of the adoption of Resolution 1514 (XV), the General Assembly noted with deep concern that “fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated.” It further declared that “the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law”, and considered it “*incumbent*

⁵⁶⁵ *Ibid.*, p. 199, para. 156. *See also ibid.*, para. 155 (“The Court would observe that the obligations violated by Israel include certain obligations *erga omnes*. As the Court indicated in the *Barcelona Traction* case, such obligations are by their very nature ‘*the concern of all States*’ and, ‘In view of the importance of the rights involved, all States can be held to have a legal interest in their protection’. ... The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law.”)

⁵⁶⁶ *Western Sahara (Advisory Opinion)*, p. 27, para. 39. *See also Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19 (“The object of this request for an Opinion is to guide the United Nations in respect of its own action.”)

*upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization”.*⁵⁶⁷

5.34 In carrying out its prominent role in the process of decolonisation, the General Assembly has undertaken, *inter alia*, a continuing responsibility to ensure that the decolonisation of Mauritius is completed. To fulfill that function, the General Assembly has determined that it would benefit from the Court’s Advisory Opinion. The Court’s response to the first question would assist the General Assembly in establishing whether under international law the process of decolonisation of Mauritius was lawfully completed when Mauritius was granted independence in 1968, or whether the detachment of the Chagos Archipelago from Mauritius by the administering power, and the continued exercise of colonial authority over the Chagos Archipelago, have prevented the lawful decolonisation of Mauritius from being completed.

5.35 The Court’s response to the second question is necessary for the General Assembly to determine what legal consequences under international law flow from the continued administration of the Chagos Archipelago by the administering power, including the inability of Mauritius to implement a program for the resettlement of its nationals of Chagossian origin in the Chagos Archipelago.

⁵⁶⁷ U.N. General Assembly, 65th Session, *Fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/RES/65/118 (10 Dec. 2010) (hereinafter “*Fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (10 Dec. 2010)”), pp. 2-3, paras. 2 and 9 (emphasis added).

5.36 The Court's response to these questions would inevitably "furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization" of Mauritius.⁵⁶⁸

5.37 As the Court stated in *Western Sahara*, no State could "validly object... to the General Assembly's exercise of its powers to deal with the decolonization... and to seek an opinion on questions relevant to the exercise of those powers."⁵⁶⁹ The same logic applies to the present case. As noted by Rosenne, "[o]wing to the organic relation now existing between the Court and the United Nations, the Court regards itself as being under the duty of participating, within its competence, in the activities of the Organization, and no State can stop that participation."⁵⁷⁰ The Court's task is "to ensure respect for international law, of which it is the organ".⁵⁷¹ That task applies to advisory proceedings as much as to contentious proceedings.

5.38 In conclusion, the Court has jurisdiction to give the Advisory Opinion requested by the General Assembly in Resolution 71/292 of 22 June 2017: the General Assembly is an organ duly authorised to seek an advisory opinion from the Court, and the request raises questions of a legal character. The Court's exercise of

⁵⁶⁸ *Western Sahara (Advisory Opinion)*, p. 37, para. 72. It would then be for the Assembly "to decide for itself on the usefulness of an opinion in the light of its own needs." *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 16. See also *Construction of a Wall (Advisory Opinion)*, p. 163, para. 61. Because "the purpose of the advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions of the Court which will assist them in the future exercise of their functions", the "Court cannot determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps." *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 421, para. 44.

⁵⁶⁹ *Western Sahara (Advisory Opinion)*, p. 223, para. 30.

⁵⁷⁰ Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II, Jurisdiction (1997), p. 1021 (**Annex 176**).

⁵⁷¹ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 35.

its advisory jurisdiction will not circumvent the principle of consent to judicial settlement: the questions put to the Court are located in a broader frame of reference, and the object of the request is to obtain from the Court an Opinion that the General Assembly deems of assistance for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. There is no “compelling reason” for the Court to decline to exercise the advisory jurisdiction which the Charter and the Statute have conferred upon it, and, on this basis and in keeping with past precedent, it should exercise that jurisdiction and render the Advisory Opinion that the General Assembly has requested.

CHAPTER 6

THE DECOLONISATION OF MAURITIUS WAS NOT LAWFULLY COMPLETED WHEN MAURITIUS WAS GRANTED INDEPENDENCE IN 1968

I. Introduction

6.1 The first question before the Court asks:

Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?

6.2 In Mauritius' view, the question calls upon the Court to identify and consider the rules of international law pertaining to decolonisation, and to provide an advisory opinion on whether, under those rules, the decolonisation of Mauritius has been lawfully completed.

6.3 In this Chapter, Mauritius reviews and analyses the law of decolonisation, from its origins through its subsequent development, and then applies the law to the specific situation of its own decolonisation. In summary:

- (1) The main legal obligation in respect of decolonisation is that it must accord fully with the right of self-determination under international law.
- (2) The right of self-determination had already been firmly established by the time of Mauritius' independence in 1968 (and indeed by the time of the excision of the Chagos Archipelago in 1965), including

in the work of the United Nations in supervising the process of decolonisation.

- (3) Self-determination required the free and genuine consent of the population concerned – as expressed, for example, through referenda, elections and plebiscites – so as to determine the future of the territory. This was particularly so in cases in which straightforward independence of the Non-Self-Governing Territory as a single unit was not envisaged.
- (4) A corollary to this was that self-determination should not be impeded by the arbitrary division of territory before independence. The division of territory was legitimate only in cases in which it ensued as a consequence of the freely expressed consent of the people concerned.
- (5) The right of self-determination applied to the entire territory of Mauritius, which included the Chagos Archipelago. Nevertheless, the Chagos Archipelago was excised from the territory of Mauritius by the administering power in the service of its own interests rather than those of the Mauritian people, who were never given an opportunity to express their wishes as to the proposed division and dismemberment of the territory.
- (6) The pressure placed upon Mauritian representatives at the Constitutional Conference in 1965, in which it was made clear by the administering power that independence was only available with the excision of the Chagos Archipelago, vitiated any purported consent on the part of the Mauritian people or their representatives.

(7) As a consequence, Mauritius came to independence in 1968 with its territory having been dismembered three years earlier. Dismembering Mauritius' territory prior to independence, without the freely-expressed consent of the people, prevented Mauritius from the effective exercise of its right of self-determination and violated its associated right of territorial integrity, with effect from 1968 and at all times thereafter.

(8) The inescapable conclusion is that the decolonisation of Mauritius was not lawfully completed in 1968. At the point when Mauritius came to independence with its territory having been dismembered, an internationally wrongful situation crystallised. That wrongful situation has continued to this day.

II. The legal principles governing decolonisation

A. THE MANDATE SYSTEM AND THE LEAGUE OF NATIONS

6.4 The legal regime governing decolonisation had its origins not merely in the law and practice of the United Nations as it was to evolve in the period after 1945, but further back in the mandate system, as embodied in Article 22 of the Covenant of the League of Nations. Following the end of the First World War, Article 22 had placed a number of territories detached from the defeated powers under the “tutelage” of Mandatory States (on behalf of the League), which would hold such territories as part of a “sacred trust of civilisation” until such time as those colonies and territories might stand by themselves.

6.5 As the language of the trust suggests, Mandatory States did not enjoy plenary rights of sovereignty over the territories concerned⁵⁷² (and were, as the I.C.J. subsequently affirmed in the *Status of South West Africa*⁵⁷³ and *Namibia* cases,⁵⁷⁴ precluded from annexing the territory). They were also explicitly committed to promoting the “well-being and development” of such peoples. The territories concerned, for their part, enjoyed a status distinct from the Mandatory powers. Although Article 22 made no direct mention of the principle of self-determination, the Mandate system promoted, in nascent form, the idea that the inhabitants of such colonies and territories should ultimately enjoy the privileges of self-government and independence. This, indeed, was made explicit in the case of category A Mandates, as Article 22(4) of the Covenant provided. Those communities formerly belonging to the Turkish empire:

have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such a time as they are able to stand alone. The wishes of those communities must be a principal consideration...⁵⁷⁵

⁵⁷² Crawford, *Creation of States* (2006), p. 573 (“The notion of ‘sovereignty’... was inapplicable to the system of Mandates and Trusteeships”) (**Annex 150**). This was a view informed, on one side by the conclusions of the Court in the *South West Africa (Status) case*, I.C.J. Reports 1950, pp. 128 and 132, in which it was held that the establishment of the Mandate did not constitute the “cession” of that territory to the Mandatory, and by the fact that in most cases the inhabitants did not lose their previous nationality, nor automatically gain that of the Mandatory. *Ibid.*, p. 571. Lord McNair famously described sovereignty over a Mandated territory to be “in abeyance” (*International Status of South West Africa, Advisory Opinion, Separate Opinion by Sir Arnold McNair, I.C.J. Reports 1950*, p. 150) – a view which would work equally effectively in case of Trusteeships.

⁵⁷³ *International Status of South West Africa, Advisory Opinion, I.C.J Reports 1950*, pp. 131-132. The Court noted, there, that “two principles were considered to be of paramount importance: the principle of *non-annexation* and the principle that the well-being and development of such peoples form a ‘*sacred trust of civilisation*’.” *Ibid.*, p. 131 (emphasis added).

⁵⁷⁴ *South West Africa (Advisory Opinion)*, pp. 28, 30 and 43.

⁵⁷⁵ The Covenant of the League of Nations (1919), Art. 22(4).

6.6 In accordance with this provision, the mandate for Iraq was terminated in 1932 on its admission to the League, and that of Syria, Lebanon, and Transjordan in 1946, even without the consent of the League Council. The explanation for the latter practice was that no authorisation was necessary in order to bring an end to the Mandate when its ultimate purpose (independence and self-government) was fulfilled.⁵⁷⁶

6.7 Self-determination, in other words, was a principle already implicit in the practice of the Mandate system. This was significant for its later evolution in the practice of the United Nations.

B. THE CHARTER OF THE UNITED NATIONS

6.8 If the Mandate system envisaged self-determination (*qua* self-government and independence) as the implicit outcome of the sacred trust, it was an idea that would become even more explicit in the Trusteeship system that was established under the U.N. Charter to replace it. Article 76 of Chapter XII of the Charter spells out the “basic objectives” of the Trusteeship system as being, *inter alia*:

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence ... and the freely expressed wishes of the peoples concerned.

6.9 Moreover, those objectives were specified as being expressive of the Purposes of the U.N. “as laid down in Article 1” of the Charter. Those Purposes

⁵⁷⁶ Crawford, *Creation of States* (2006), p. 579 (Annex 150).

included, in turn, the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.⁵⁷⁷

6.10 The inclusion of the principle of self-determination of peoples within the Trusteeship system was clearly premised upon the idea that, as in the case of the Mandate system, the territories in question (which included, according to Article 77, former Mandate territories, territories detached from enemy States, and territories voluntarily placed under the system) enjoyed a status distinct from that of the administering powers; that those territories should be governed in the interests of the inhabitants; and that the ultimate objective of the trust was to facilitate political independence and self-government.

6.11 The inclusion of the phrase, in Article 76(b), that this should be pursuant to the “freely expressed wishes of the peoples concerned”, also makes clear that self-determination was a legal principle that would inform the modalities by which independence was ultimately to be gained. No political destiny could be imposed upon a people against its wishes.

6.12 The recognition given to the principle of self-determination, as one of the purposes of the U.N. Charter, was further reinforced in the text of Articles 55 and 56 in Chapter IX of the Charter. Article 55 specified that the United Nations should work towards “the creation of conditions of stability and well-being... based on respect for the principle of equal rights and self-determination”, and in Article 56 Member States pledged themselves “to take joint and separate action in co-operation with the Organization for the achievement” of those purposes. Even if, as Cassese remarks, these provisions did not, in themselves, “impose direct and

⁵⁷⁷ U.N. Charter (1945), Art. 1(2) (emphasis added).

immediate legal obligations on Member states” they nevertheless marked “an important turning point”, signalling the maturation of the principle of self-determination and foreshadowing its evolution, through practice, into a precept “directly binding on states.”⁵⁷⁸

6.13 Of special significance here was the inclusion within Chapter XI of the U.N. Charter of the “Declaration Regarding Non-Self-Governing Territories”. Articles 73 and 74 provide *inter alia* that:

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost... the well-being of the inhabitants of those territories, and, to this end:

- (a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- (b) 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... ;
- (c) to further international peace and security;
- (d) to promote constructive measures of development... ;
and

⁵⁷⁸ Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (1995) (hereinafter “Cassese, *Self-determination of peoples* (1995)”), p. 43 (**Annex 138**).

- (e) to transmit regularly to the Secretary-General for information purposes... statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness... .

6.14 While Chapter XI did not immediately provide for the application of a right of self-determination to Non-Self-Governing Territories (speaking rather of an obligation to develop self-government), it was evident that the more general terms of Articles 55 and 56 were not merely limited to Trust territories, and were also relevant to the category of Non-Self-Governing Territories.

6.15 Indeed, Articles 73 and 74 represented an attempt, as Professor Crawford has noted, to apply “similar ideas to those embodied in Article 22 of the Covenant”.⁵⁷⁹ Insofar as the principle of self-determination clearly applied to Trust territories under the terms of the Charter, and insofar as Non-Self-Governing Territories were similarly governed by the same “sacred trust”, it was only a small step of logic to the conclusion that Non-Self-Governing Territories also enjoyed such a right on a par with Trust territories.⁵⁸⁰ The only material differences were

⁵⁷⁹ Crawford, *Creation of States* (2006), p. 603 (**Annex 150**).

⁵⁸⁰ Mensah, in his discussion of the drafting of the Charter, notes that “[a]lthough at a later date different interpretations were to be put on these general proclamations, the impression was not at this time challenged that, in Chapters XI to XIII, the Charter of the United Nations was guaranteeing, in some form, the right of the colonial and dependent peoples to exercise self-determination – even if that exercise was to be in the distant future.” Thomas Mensah, *Self-Determination Under United Nations’ Auspices: The role of the United Nations in the application of the principle of self-determination for nations and peoples* (1968), pp. 21-22 (**Annex 94**).

the reporting requirements and correlative responsibilities assumed by the organs of the United Nations (and specifically the Security Council, the General Assembly and the Trusteeship Council). As the Court later made clear in the *Western Sahara* Advisory Opinion:

54. The Charter of the United Nations, in Article 1, paragraph 2, indicates, as one of the purposes of the United Nations: ‘To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...’ This purpose is further developed in Articles 55 and 56 of the Charter. Those provisions have direct and particular relevance for non-self-governing territories, which are dealt with in Chapter XI of the Charter.⁵⁸¹

As discussed further below, this interpretive position has been further developed and reinforced through the practice of the U.N. and its Member States.

6.16 It is notable that, while Chapter XI distinguished categorically between metropolitan territories and territories “whose peoples have not yet attained a full measure of self-government”, it did not define the category of Non-Self-Governing Territories. Rather, Chapter XI left the matter to be determined on one part by the administering States – which, pursuant to General Assembly Resolution 9(1) (1946), were invited to submit information relating to such territories to the Secretary General⁵⁸² – and, on the other part, by the United Nations General Assembly which, in the exercise of its general powers under Article 10, asserted its

⁵⁸¹ *Western Sahara (Advisory Opinion)*, p. 31, para. 54. It followed, in that respect, the view adopted in the earlier *Namibia* Advisory Opinion, in which it had remarked 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.” *South West Africa (Advisory Opinion)*, p. 31, para. 52.

⁵⁸² An initial list of which was compiled in Resolution 66(1) (1946). See U.N. General Assembly, 1st Session, *Transmission of Information under Article 73(e) of the Charter*, U.N. Doc. A/RES/66(I) (14 Dec. 1946) (**Dossier No. 8**).

competence to determine independently whether or not a territory had attained entitlement to self-government.⁵⁸³

6.17 Following the adoption of Resolution 1514 (XV) in 1960 (see below para. 6.20), the General Assembly established a Special Committee, later to become the Committee of Twenty-Four,⁵⁸⁴ to oversee its implementation. In practice, this involved the addition or removal of territories from the list of Non-Self-Governing Territories. In the exercise of its powers to determine which territories had yet to be afforded the opportunity to exercise the right of self-determination (originating in Article 10 of the Charter), the General Assembly spelled out in more detail the modalities through which self-determination was to be exercised.⁵⁸⁵

⁵⁸³ U.N. General Assembly, 4th Session, *Territories to which Chapter XI of the Charter applies*, U.N. Doc. A/RES/334(IV) (2 Dec. 1949) (**Dossier No. 13**); U.N. General Assembly, 8th Session *Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government*, U.N. Doc. A/RES/742(VIII) (27 Nov. 1953) (**Dossier No. 42**); U.N. General Assembly, 14th Session, *General questions relating to the transmission and examination of information*, U.N. Doc. A/RES/1467(XIV) (12 Dec. 1959) (establishing a Special Committee of Six on the Transmission of Information under Article 73e of the Charter); U.N. General Assembly, 15th Session, *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*, U.N. Doc. A/RES/1541(XV) (15 Dec. 1960) (**Dossier No. 78**); U.N. General Assembly, 15th Session, *Transmission of information under Article 73(e) of the Charter*, U.N. Doc. A/RES/1542(XV) (15 Dec. 1960). See further Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963) (hereinafter “Higgins, *The Development of International Law* (1963)”, pp. 112-113 (**Annex 19**); Crawford, *Creation of States* (2006), pp. 608-609 (**Annex 150**). The General Assembly asserted, on a number of occasions, its competence to list territories as Non-Self-Governing Territories as against the administering State’s assertion otherwise. See, e.g., U.N. General Assembly, 15th Session, *Transmission of information under Article 73(e) of the Charter*, U.N. Doc. A/RES/1542(XV) (15 Dec. 1960); U.N. General Assembly, 16th Session, *The question of Southern Rhodesia*, U.N. Doc. A/RES/1747(XVI) (28 June 1962); U.N. General Assembly, 23rd Session, *Information from Non-Self-Governing Territories transmitted under Article 73(e) of the Charter of the United Nations*, U.N. Doc. A/RES/2422(XXIII) (18 Dec. 1968).

⁵⁸⁴ *Implementation of the Colonial Declaration* (27 Nov. 1961) (**Dossier No. 101**).

⁵⁸⁵ In the removal of territories from the list of Non-Self-Governing Territories, the General Assembly frequently referred to the right to self-determination. See, e.g., in relation to Puerto Rico, U.N. General Assembly, 8th Session, *Cessation of the transmission of information under Article*

6.18 Given the evident “gaps” or “silences” within the Charter as regards the application of the principle of self-determination in respect of Non-Self-Governing Territories, it is clear that, as in the case of Article 22 of the Covenant of the League, much was left to be subsequently determined through the practice of the organs of the United Nations and its Member States. As was noted by the Court in the *Namibia* case, in relation to the Covenant of the League:

the concepts embodied in Article 22 of the Covenant... were not static, but were by definition evolutionary, as also, therefore, was the concept of the ‘sacred trust’. The parties to the Covenant must consequently be deemed to have accepted them as such. That is why, viewing the institutions of 1919, the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law.⁵⁸⁶

6.19 In the Court’s view, similar considerations applied to the terms of Chapter XI of the U.N. Charter:

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. The concept of the sacred trust was confirmed and expanded to all “territories whose peoples have not yet attained a full measure of self-government” (Art. 73). Thus it clearly embraced territories under a colonial régime... .

Central to this development, of course, was the practice of the U.N. organs themselves, and in particular the General Assembly, acting within the competence

73e of the Charter in respect to Puerto Rico, U.N. Doc. A/RES/748(VIII) (27 Nov. 1953); *Alaska and Hawaii*, U.N. General Assembly, 14th Session, *Cessation of the transmission of information under Article 73(e) of the Charter in respect of Alaska and Hawaii*, U.N. Doc. A/RES/1469(XIV) (12 Dec. 1959).

⁵⁸⁶ *South West Africa (Advisory Opinion)*, p. 31, para. 53.

afforded to it under Article 10.⁵⁸⁷

C. THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

6.20 A key development in State practice, as noted by the Court in the *Namibia* case, was the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514 (XV) of 14 December 1960), which embraced all peoples and territories which “have not yet attained independence”.⁵⁸⁸ In that Resolution, the General Assembly proclaimed “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations” and provided, *inter alia*, that:

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained

⁵⁸⁷ Higgins, *The Development of International Law* (1963), pp. 110-113 (**Annex 19**). It is to be noted here, that in the *Namibia* case the Court emphasised the fact that just because the General Assembly was vested with recommendatory powers did not mean it “is debarred from adopting, in specific cases with the framework of its competence, resolutions which make determinations or have operative design.” *South West Africa (Advisory Opinion)*, p. 50, para. 105.

⁵⁸⁸ Such people enjoyed, in the view of the General Assembly, “an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory”. *Colonial Declaration* (14 Dec. 1960), Preamble (**Dossier No. 55**).

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... .

6.21 Noting that Resolution 1514 (XV) “provided the basis for the process of decolonisation which has resulted since 1960 in the creation of many States which are today Members of the United Nations”⁵⁸⁹, the Court in the *Namibia* case concluded:

In the domain to which the present proceedings relate, the last fifty years, as indicated above, 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, and this the Court, if it is faithfully to discharge its functions, may not ignore.⁵⁹⁰

6.22 A first notable feature of Resolution 1514 (XV) was the fact that it spoke, not merely of the principle of self-determination, but of the right to self-determination. In the view of some writers, the existence of a right to self-determination can be dated back to the coming into force of the Charter.⁵⁹¹ Indeed,

⁵⁸⁹ *South West Africa (Advisory Opinion)*, p. 19, para. 52. Crawford notes, in that regard, that the Colonial Declaration “has achieved in practice a quasi-constitutional status.” Crawford, *Creation of States* (2006), p. 604 (**Annex 150**).

⁵⁹⁰ *South West Africa (Advisory Opinion)*, pp. 31-32, para. 53.

⁵⁹¹ Mensah affirms that “[t]he right of self-determination: the right of ‘every people to determine how and by whom they will be governed’ has been one of the corner stones of the United Nations’ activities since 1945.” Thomas Mensah, *Self-Determination Under United Nations’ Auspices: The role of the United Nations in the application of the principle of self-determination for nations and peoples* (1963), p. 23 (**Annex 94**). Oeter, in the same vein, states in reference to Article 1(2) of the U.N. Charter, that “[w]ith the new formula, it was put beyond doubt that in principle colonial peoples had a right to self-determination, but it was left to the discretion of the governing powers to

the French text of Article 1(2) – “*principe de l’égalité des droits des peuples et de leur droit à disposer d’eux-mêmes*”, with its clear reference to the *right* to self-determination – is as authoritative as the English – “principle of equal rights and self-determination of peoples”.

6.23 Whether or not it was clear as from the adoption of the Charter that there was a legal right to self-determination, in the practice of States the Charter was soon interpreted in this way. As long ago as 1950, the U.N. General Assembly referred to the “right of peoples and nations to self-determination” when it mandated the study of means to ensure the fulfilment of the right.⁵⁹² In 1952, the Assembly decided to include in the Covenants on Human Rights the following provisions:

Whereas the General Assembly at its fifth session recognized the right of peoples and nations to self-determination as a fundamental human right (resolution 421 D (V) of 4 December 1950),

...

1. *Decides* to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations. This article shall be drafted in the

decide when these peoples would be ready for full self-government.” Stefan Oeter, “Self-Determination” in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* (Bruno Simma et al. eds., 2012), p. 319 (**Annex 160**). *See also ibid.*, pp. 315-316 (“Subsequent development in the UN, in particular the practice of decolonisation, transformed the old (political) principle of self-determination into a collective right – a trend which became more or less irrebuttable with the codification of the right of self-determination in the two UN Human Rights Covenants of 1966. ... Although Art.1(2)... cannot define in detail the content and scope of a right to self-determination, it sets forth beyond dispute that it forms part of the law of the Charter and is binding upon all members of the UN.”)

⁵⁹² U.N. General Assembly, 5th Session, *Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights*, U.N. Doc. A/RES/421(V) (4 Dec. 1950), Section D, para. 6 (The General Assembly: “6. *Calls upon* the Economic and Social Council to request the Commission on Human Rights to study ways and means which would ensure the right of peoples and nations to self-determination, and to prepare recommendations for consideration by the General Assembly at its sixth session”).

following terms: “All peoples shall have the right of self-determination”, and shall stipulate that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the Purposes and Principles of the United Nations, and that States having responsibility for the administration of Non-Self-Governing Territories should promote the realization of that right in relation to the peoples of such Territories...⁵⁹³

6.24 The negotiation of the Covenants led to discussions about the nature of the concept of self-determination. The divisions of opinion⁵⁹⁴ between those who saw it as a political principle and those who maintained that it was a legal right were resolved early in the negotiations in favour of the latter. And at the same time as the Covenants were being negotiated, the General Assembly was adopting resolutions which referred to the right of self-determination, and various aspects of that right, such as the right freely to determine political status and the right to territorial integrity. Thus, in Resolution 637 (VII) of 16 December 1952 the General Assembly recommended that:

States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of

⁵⁹³ U.N. General Assembly, 6th Session, *Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination*, U.N. Doc. A/RES/545(VI) (2 Feb. 1952) (adopted by 42-7-5 (non-recorded)) (underlining added). This was re-affirmed in U.N. General Assembly, 7th Session, *The right of peoples and nations to self-determination*, U.N. Doc. A/RES/637(VII) (16 Dec. 1952); U.N. General Assembly, 8th Session, *The right of peoples and nations to self-determination*, U.N. Doc. A/RES/738(VIII) (28 Nov. 1953); U.N. General Assembly, 9th Session, *Recommendations concerning international respect for the right of peoples and nations to self-determination*, U.N. Doc. A/RES/837(IX) (14 Dec. 1954).

⁵⁹⁴ In a document prepared by the U.N. Secretariat on the negotiations on the Covenants, the divisions of opinion are described thus: “3. One school of thought maintained that self-determination was a political principle of the highest importance, but not a right in the strict legal sense, not a human right or an individual right. ... 4. Another school of thought maintained that self-determination was a ‘right’ as well as a ‘principle’ and that it was indeed the most fundamental of all human rights. ... The General Assembly, the highest organ in the international community, had already recognised the right of peoples and nationals to self-determination; the next step was to formulate an appropriate article by which States would undertake a solemn obligation to promote and respect that right.” U.N. Secretary-General, *Annotation on the text of the draft International Covenants on Human Rights*, U.N. Doc. A/2929 (1 July 1955), Chapter IV, pp. 13-14.

Non-Self-Governing and Trust Territories who are under their administration and shall facilitate the exercise of this right by the peoples of such Territories according to the principles and spirit of the Charter of the United Nations in regard to each Territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means, preferably under the auspices of the United Nations.⁵⁹⁵

6.25 Subsequent resolutions of the General Assembly continued to affirm the existence of a right to self-determination, and as time went on, opposition fell away. Thus in 1952 the General Assembly adopted by 36 votes to 15 (with 7 abstentions) Resolution 648 (VII) of 10 December 1952, which, in approving a list of factors to serve as a guide in deciding whether a Territory had attained a full measure of self-government, noted that each case should be “considered and decided in the light of the particular circumstances of that case and taking into account the right of self-determination of peoples”.⁵⁹⁶

6.26 In 1957, the General Assembly adopted Resolution 1188 (XII) of 11 December 1957, in which it reaffirmed the importance of Member States giving “due respect to the right of self-determination” in their relations with one another.⁵⁹⁷

⁵⁹⁵ U.N. General Assembly, 7th Session, *The right of peoples and nations to self-determination*, U.N. Doc. A/RES/637(VII) (16 Dec. 1952) (adopted by 40-14-6).

⁵⁹⁶ U.N. General Assembly, 7th Session, *Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government*, U.N. Doc. A/RES/648(VII) (10 Dec. 1952) (adopted by 36-15 with 7 abstentions) (**Dossier No. 30**).

⁵⁹⁷ U.N. General Assembly, 12th Session, *Recommendations concerning international respect for the right of peoples and nations to self-determination*, U.N. Doc. A/RES/1188(XII) (11 Dec. 1957).

This was adopted by a non-recorded vote of 60 votes to none (with 13 abstentions).⁵⁹⁸

6.27 Resolution 1514 (XV) itself was adopted by 89 votes to none (with only 9 abstentions),⁵⁹⁹ and in the following year Resolution 1654 (XVI) of 27 November 1961 was adopted by a vote of 97 votes to none (with a mere 4 abstentions).⁶⁰⁰

6.28 In the latter Resolution, the General Assembly reiterated the need for “immediate steps” to be taken in all Trust and Non-Self-Governing territories to transfer powers to the peoples of those territories, and expressed its deep concern that “contrary to the provisions of paragraph 6 of the Declaration, acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonization”.⁶⁰¹

6.29 By the time Resolution 1514 (XV) was adopted in 1960, with its statement “[a]ll peoples have the right to self-determination”, it was legitimate to reach the view adopted by Dame Rosalyn Higgins that the Declaration “taken together with seventeen years of evolving practice by United Nations organs, provides ample evidence that there now exists a legal right of self-determination.”⁶⁰² Raic, in his

⁵⁹⁸ U.N. General Assembly, 12th Session, 727th Plenary Meeting, *Agenda Item 32: Recommendations concerning international respect for the right of peoples and nations to self-determination*, U.N. Doc. A/PV.727 (11 Dec. 1957), para. 87.

⁵⁹⁹ U.N. General Assembly, 15th Session, 947th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.947 (14 Dec. 1960), para. 34 (**Dossier No. 74**).

⁶⁰⁰ U.N. General Assembly, 16th Session, 1066th Plenary Meeting, *The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.1066 (27 Nov. 1961), para. 149 (**Dossier No. 117**).

⁶⁰¹ *Implementation of the Colonial Declaration* (27 Nov. 1961), Preamble (**Dossier No. 101**).

⁶⁰² Higgins, *The Development of International Law* (1963), p. 104 (**Annex 19**). See also her review of the practice of the General Assembly and other U.N. organs on self-determination, in which she concludes that: “[i]t therefore seems inescapable that self-determination has developed into an

more recent study of the practice in the 1950s, comes to a similar conclusion, observing that it “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.”⁶⁰³

6.30 Whether the recognition of the right to self-determination emerged, as per Raic, as an independent right in customary international law, or rather as a stabilised interpretation of Articles 55 and 56 of the U.N. Charter, the effect is the same. As Shaw notes:

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.⁶⁰⁴

6.31 Both depend upon the same corpus of State practice. As Crawford notes:

State practice is just as much State practice when it occurs in the context of the General Assembly as in bilateral forms. The practice of States in assenting to and acting upon law-declaring resolutions may be of probative importance, in particular where that practice achieves reasonable consistency over a period of time. In Judge Petren’s words, where a resolution is passed by ‘a large majority of States with the intention of creating a new binding rule of law’ and is acted upon as such by States generally, their action will have

international legal right, and is not an essentially domestic matter. The extent and scope of the right is still open to some debate.” *Ibid.*, p. 103.

⁶⁰³ David Raic, *Statehood and the Law of Self-Determination* (2002) (hereinafter “Raic, *Statehood* (2002)”), p. 217 (**Annex 145**).

⁶⁰⁴ Malcolm Shaw, *Title to Territory in Africa: International Legal Issues* (13 Mar. 1986) (hereinafter “Shaw, *Title to Territory in Africa* (13 Mar. 1986)”), p. 84 (**Annex 135**).

quasi-legislative effect. The problem is one of evidence and assessment.⁶⁰⁵

6.32 The evidence is incontrovertible that the existence of a right to self-determination in the case of Non-Self-Governing Territories was already widely recognised by the late 1950s, and that its application to such territories was already then treated as peremptory.

6.33 Against this background, the adoption of Resolution 1514 (XV) in 1960 was a watershed for the formal recognition of a legal right to self-determination on the part of Non-Self-Governing Territories. From that time onwards, the “Colonial Declaration”, as it was commonly known, was the repeated point of reference in nearly every discussion of the situation of Non-Self-Governing Territories,⁶⁰⁶ and the right to self-determination was regularly invoked in the consideration of

⁶⁰⁵ Crawford, *Creation of States* (2006), p. 114 (**Annex 150**). See also advice by the U.N. Office of Legal Affairs: “there is probably no difference between a ‘recommendation’ or a ‘declaration’ in UN practice as far as strict legal principle is concerned. A ‘declaration’ or a ‘recommendation’ is adopted by resolution of a UN organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a ‘declaration’ rather than a ‘recommendation’. However, in view of the greater solemnity and significance of a ‘declaration’, it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by State practice, a declaration may become recognised as laying down rules binding upon States.” U.N. Economic and Social Council, Commission on Human Rights, 18th Session, *Use of the Terms “Declaration” and “Recommendation”*, U.N. Doc. E/CN.4/L.610 (2 Apr. 1962).

⁶⁰⁶ See Shaw, *Title to Territory in Africa* (13 Mar. 1986), p. 80 (**Annex 135**).

individual territories including, for example, Aden,⁶⁰⁷ Angola,⁶⁰⁸ Algeria,⁶⁰⁹ Basutoland, Bechuanaland and Swaziland,⁶¹⁰ British Guiana,⁶¹¹ Cook Islands,⁶¹² Equatorial Guinea,⁶¹³ East Timor,⁶¹⁴ Fiji,⁶¹⁵ French Somaliland,⁶¹⁶ Ifni and Spanish

⁶⁰⁷ U.N. General Assembly, 18th Session, *Question of Aden*, U.N. Doc. A/RES/1949(XVIII) (11 Dec. 1963); U.N. General Assembly, 20th Session *Question of Aden*, U.N. Doc. A/RES/2023(XX) (5 Nov. 1965).

⁶⁰⁸ U.N. General Assembly, 17th Session, *The situation in Angola*, U.N. Doc. A/RES/1819(XVII) (18 Dec. 1962); U.N. General Assembly, 16th Session, *The situation in Angola*, U.N. Doc. A/RES/1742(XVI) (30 Jan. 1962) (**Dossier No. 42**).

⁶⁰⁹ U.N. General Assembly, 15th Session, *Question of Algeria*, U.N. Doc. A/RES/1573(XV) (19 Dec. 1960) (hereinafter “*Question of Algeria* (19 Dec. 1960)”); U.N. General Assembly, 16th Session, *Question of Algeria*, U.N. Doc. A/RES/1724(XVI) (20 Dec. 1961).

⁶¹⁰ U.N. General Assembly, 17th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/1817(XVII) (18 Dec. 1962); U.N. General Assembly, 18th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/1954(XVIII) (11 Dec. 1963); U.N. General Assembly, 20th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/2063(XX) (16 Dec. 1965).

⁶¹¹ U.N. General Assembly, 18th Session, *Question of British Guiana*, U.N. Doc. A/RES/1955(XVIII) (11 Dec. 1963); U.N. General Assembly, 20th Session, *Question of British Guiana*, U.N. Doc. A/RES/2071(XX) (16 Dec. 1965).

⁶¹² U.N. General Assembly, 20th Session, *Question of the Cook Islands*, U.N. Doc. A/RES/2064(XX) (16 Dec. 1965).

⁶¹³ U.N. General Assembly, 20th Session, *Question of Equatorial Guinea (Fernando Póo and Río Muni)*, U.N. Doc. A/RES/2067(XX) (16 Dec. 1965).

⁶¹⁴ U.N. General Assembly, 30th Session, *Question of Timor*, U.N. Doc. A/RES/3485(XXX) (12 Dec. 1975).

⁶¹⁵ U.N. General Assembly, 18th Session, *Question of Fiji*, U.N. Doc. A/RES/1951(XVIII) (11 Dec. 1963); U.N. General Assembly, 20th Session, *Question of Fiji*, U.N. Doc. A/RES/2068(XX) (16 Dec. 1965); U.N. General Assembly, 22nd Session, *Question of Fiji*, U.N. Doc. A/RES/2350(XXII) (19 Dec. 1967).

⁶¹⁶ U.N. General Assembly, 22nd Session, *Question of French Somaliland*, U.N. Doc. A/RES/2356(XXII) (19 Dec. 1967).

Sahara,⁶¹⁷ Kenya,⁶¹⁸ Malta,⁶¹⁹ Malvinas,⁶²⁰ Mauritius,⁶²¹ New Guinea and Papua,⁶²² Northern Rhodesia,⁶²³ Nauru,⁶²⁴ Nyasaland,⁶²⁵ Oman,⁶²⁶ Seychelles,⁶²⁷ South West Africa,⁶²⁸ and Southern Rhodesia.⁶²⁹ In a still wider range of resolutions, the language used was that of the “inalienable” right to freedom, independence or to

⁶¹⁷ U.N. General Assembly, 20th Session, *Question of Ifni and Spanish Sahara*, U.N. Doc. A/RES/2072(XX) (16 Dec. 1965).

⁶¹⁸ U.N. General Assembly, 17th Session, *Question of Kenya*, U.N. Doc. A/RES/1812(XVII) (17 Dec. 1962).

⁶¹⁹ U.N. General Assembly, 18th Session *Question of Malta*, U.N. Doc. A/RES/1950(XVIII) (11 Dec. 1963).

⁶²⁰ U.N. General Assembly, 20th Session, *Question of the Falkland Islands (Malvinas)*, U.N. Doc. A/RES/2065(XX) (16 Dec. 1965).

⁶²¹ *Question of Mauritius* (16 Dec. 1965) (**Dossier No. 146**).

⁶²² U.N. General Assembly, 20th Session, *Question of the Trust Territory of New Guinea and the Territory of Papua*, U.N. Doc. A/RES/2112(XX) (21 Dec. 1965).

⁶²³ U.N. General Assembly, 18th Session, *Question of Northern Rhodesia*, U.N. Doc. A/RES/1952(XVIII) (11 Dec. 1963).

⁶²⁴ U.N. General Assembly, 20th Session, *Question of the Trust Territory of Nauru*, U.N. Doc. A/RES/2111(XX) (21 Dec. 1965).

⁶²⁵ U.N. General Assembly, 17th Session, *Question of Nyasaland*, U.N. Doc. A/RES/1818(XVII) (18 Dec. 1962).

⁶²⁶ U.N. General Assembly, 18th Session, *Territories under Portuguese administration*, U.N. Doc. A/RES/1973(XVIII) (16 Dec. 1963); U.N. General Assembly, 20th Session, *Question of Oman*, U.N. Doc. A/RES/2073(XX) (17 Dec. 1965) (hereinafter “*Question of Oman* (17 Dec. 1965)”); U.N. General Assembly, 22nd Session, *Question of Oman*, U.N. Doc. A/RES/2302(XXII) (12 Dec. 1967).

⁶²⁷ U.N. General Assembly, 26th Session, *Question of the Seychelles*, U.N. Doc. A/RES/2866(XXVI) (20 Dec. 1971).

⁶²⁸ U.N. General Assembly, 16th Session, *Question of South West Africa*, U.N. Doc. A/RES/1702(XVI) (19 Dec. 1961); U.N. General Assembly, 18th Session, *Question of South West Africa*, U.N. Doc. A/RES/1899(XVIII) (13 Nov. 1963); U.N. General Assembly, 20th Session, *Question of South West Africa*, U.N. Doc. A/RES/2074(XX) (17 Dec. 1965).

⁶²⁹ U.N. General Assembly, 17th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/1760(XVII) (31 Oct. 1962); U.N. General Assembly, 18th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/1889(XVIII) (6th Nov. 1963); U.N. General Assembly, 18th Session, *Question of Northern Rhodesia*, U.N. Doc. A/RES/1952(XVIII) (11 Dec. 1963); U.N. General Assembly, 20th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/2012(XX) (12 Oct. 1965).

self-government.⁶³⁰ As the Court was later to affirm, Resolution 1514 (XV) was not merely an “important stage” in the development of international law regarding Non-Self-Governing Territories,⁶³¹ but became “the basis for the process of decolonisation”.⁶³²

D. THE PRACTICE OF THE SECURITY COUNCIL

6.34 The position adopted by the General Assembly in relation to Resolution 1514 (XV) was also reflected in the practice of the Security Council. In a series of resolutions relating to territories under Portuguese administration, the Security Council specifically endorsed the position adopted by the General Assembly. First, in Resolution 180 (1963)⁶³³ the Security Council affirmed the terms of General Assembly Resolution 1514 (XV), finding the Portuguese practice of treating overseas territories as integral parts of metropolitan Portugal to be “contrary to the principles of the Charter”, and called upon Portugal to recognise the rights of those peoples to “self-determination and independence”. In a subsequent resolution⁶³⁴ adopted later in the same year by 10 votes to none (with 1 abstention), the Security Council criticised Portugal’s failure to comply with its earlier resolution and reaffirmed “the interpretation of self-determination laid down in General Assembly resolution 1514 (XV)” as follows:

⁶³⁰ U.N. General Assembly, 18th Session, *Question of British Guiana*, U.N. Doc. A/RES/1955(XVIII) (11 Dec. 1963).

⁶³¹ *South West Africa (Advisory Opinion)*, p. 31, para. 52.

⁶³² *Western Sahara (Advisory Opinion)*, p. 32, para. 57.

⁶³³ U.N. Security Council, *Question relating to Territories under Portuguese administration*, U.N. Doc. S/RES/180 (31 July 1963) (adopted by 8-0 with 3 abstentions).

⁶³⁴ U.N. Security Council, *Question relating to Territories under Portuguese administration*, U.N. Doc. S/RES/183 (11 Dec. 1963).

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... .

6.35 The Security Council later roundly condemned Portugal for its failure to implement General Assembly Resolution 1514 (XV) in relation to the peoples of Angola, Mozambique and Guinea (Bissau).⁶³⁵

6.36 In a similar manner, the Security Council repeatedly endorsed General Assembly Resolution 1514 (XV) when dealing with the case of Southern Rhodesia. In Resolution 217 (1965)⁶³⁶ it “reaffirmed” Resolution 1514 (XV) and called upon the United Kingdom “to take immediate measures in order to allow the people of Southern Rhodesia to determine their own future consistent with the objectives” of that Resolution. The following year, Resolution 232 (1966) stated that the Security Council:⁶³⁷

[r]eaffirms the inalienable rights of the people of Southern Rhodesia to freedom and independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960... .

6.37 This was followed by Resolution 253 (1968),⁶³⁸ further reaffirming the terms of General Assembly Resolution 1514 (XV), and by Resolution 277

⁶³⁵ U.N. Security Council, *Territories under Portuguese administration*, U.N. Doc. S/RES/312 (4 Feb. 1972).

⁶³⁶ U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/217 (20 Nov. 1965) (adopted by 10-0 with 1 abstention (France)).

⁶³⁷ U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/232 (12 Dec. 1966) (adopted by 11-0 with 4 abstentions (Bulgaria, France, Mali and U.S.S.R.)).

⁶³⁸ U.N. Security Council, *Question concerning the situation in Southern Rhodesia*, U.N. Doc. S/RES/253 (29 May 1968) (adopted unanimously).

(1970),⁶³⁹ in which the Security Council declared the introduction of new measures aimed at repressing the African people to be “in violation of General Assembly resolution 1514 (XV)”.⁶⁴⁰

6.38 Accordingly, from the time of Resolution 1514 (XV) onwards the right to self-determination was regularly invoked in the work of U.N. organs in the exercise of their powers “to deal with the decolonisation” of Non-Self-Governing Territories⁶⁴¹ and, through the same medium, in the practice of Member States. The Resolution itself became, in the process, a measure by which the legality of the actions of Member States might be determined and, to that extent, was indicative

⁶³⁹ U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/277 (18 Mar. 1970) (adopted 14-0 with one abstention (Spain)).

⁶⁴⁰ Other Security Council Resolutions (up until 1980) that refer affirmatively to General Assembly Resolution 1514(XV) include: U.N. Security Council, *West Africa*, U.N. Doc. S/RES/246 (14 Mar. 1968); U.N. Security Council, *The Situation in Namibia*, U.N. Doc. S/RES/264 (20 Mar. 1969); U.N. Security Council, *The Situation in Namibia*, U.N. Doc. S/RES/276 (30 Jan. 1970); U.N. Security Council, *Namibia*, U.N. Doc. S/RES/283 (29 July 1970); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/288 (17 Nov. 1970); U.N. Security Council, *Namibia*, U.N. Doc. S/RES/301 (20 Oct. 1971); U.N. Security Council, *The Situation in Namibia*, U.N. Doc. S/RES/310 (4 Feb. 1972); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/318 (28 July 1972); U.N. Security Council, *Provocation of Southern Rhodesia*, U.N. Doc. S/RES/326 (2 Feb. 1973); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/328 (10 Mar. 1973); U.N. Security Council, *Western Sahara*, U.N. Doc. S/RES/377 (22 Oct. 1975); U.N. Security Council, *Western Sahara*, U.N. Doc. S/RES/379 (2 Nov. 1975); U.N. Security Council, *Eastern Timor*, U.N. Doc. S/RES/384 (22 Dec. 1975); U.N. Security Council, *Mozambique-Southern Rhodesia*, U.N. Doc. S/RES/386 (17 Mar. 1976); U.N. Security Council, *East Timor*, U.N. Doc. S/RES/389 (22 Apr. 1976); U.N. Security Council, *Botswana-Southern Rhodesia*, U.N. Doc. S/RES/403 (14 Jan. 1977); U.N. Security Council, *Mozambique-Southern Rhodesia*, U.N. Doc. S/RES/411 (30 June 1977); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/423 (14 Mar. 1978); U.N. Security Council, *Complaint by Zambia*, U.N. Doc. S/RES/424 (17 March 1978); U.N. Security Council, *Complaint by Angola Against South Africa*, U.N. Doc. S/RES/428 (6 May 1978); U.N. Security Council, *Question Concerning the Situation in Southern Rhodesia*, U.N. Doc. S/RES/445 (8 Mar. 1979); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/448 (30 Apr. 1979); U.N. Security Council, *Question Concerning the Situation in Southern Rhodesia*, U.N. Doc. S/RES/463 (2 Feb. 1980).

From 1972 onwards the Security Council moved to affirming “the inalienable and imprescriptible right of people” to self-determination. See U.N. Security Council, *Namibia*, U.N. Doc. S/RES/319 (1 Aug. 1972); U.N. Security Council, *Namibia*, U.N. Doc. S/RES/323 (6 Dec. 1972).

⁶⁴¹ *Western Sahara (Advisory Opinion)*, pp. 23-24, para. 30.

of *opinio iuris* for purposes of its status as customary international law.⁶⁴² The adoption by consensus in 1966 of the Covenants on Human Rights, each of which includes in its first Article the confirmation that “[a]ll peoples have the right of self-determination”, was in accordance with this general trend.

6.39 The norm evolved, ultimately, via General Assembly Resolution 2625 (XXV) of 1970, into one of *ius cogens*⁶⁴³, having an *erga omnes* character.⁶⁴⁴ However, the norm was well-established before then. In the *Chagos Marine Protected Area Arbitration*, Judges Kateka and Wolfrum rejected the proposition that the norm crystallised only in 1970: they took the view that “the principle of self-determination developed earlier”, noting that “between 1945 and 1965 already more than 50 States gained independence in the process of decolonisation”.⁶⁴⁵ They accepted the view that, as counsel for Mauritius put it in the arbitration proceedings, “[i]t’s impossible to look back to the 1960s and view what was happening as anything but the achievement of independence on the basis of the exercise of the legal right categorically affirmed by the General Assembly in 1960.”⁶⁴⁶

⁶⁴² See, e.g., *Western Sahara, Advisory Opinion, Separate Opinion of Vice-President Ammoun, I.C.J. Reports 1975*, p. 83; *Western Sahara, Advisory Opinion, Separate Opinion of Judge Dillard, I.C.J. Reports 1975*, p. 121 (“[T]he pronouncements of the Organization 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”). Cassese remarks that the Colonial Declaration “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.” Cassese, *Self-determination of peoples* (1995), p. 70 (**Annex 138**).

⁶⁴³ See, e.g., *Western Sahara, Advisory Opinion, Separate Opinion of Vice-President Ammoun, I.C.J. Reports 1975*, p. 90. That conclusion is also reached by Cassese following a detailed review of State practice. Cassese, *Self-determination of peoples* (1995), pp. 134-140 (**Annex 138**).

⁶⁴⁴ *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995* (hereinafter “*East Timor, Judgment*”), p. 102, para. 29; *Construction of a Wall (Advisory Opinion)*, p. 199, para. 156.

⁶⁴⁵ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 71 (**Dossier No. 409**).

⁶⁴⁶ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014), p.

III. Self-determination as the *modus operandi* of decolonisation

6.40 In large measure, early opposition to the recognition of a right to self-determination related to the inference that it would have entailed a duty, on the part of administering powers, to grant the right on demand.⁶⁴⁷ This did not constitute, however, a rejection of self-determination as the driving force in the practice of decolonisation.⁶⁴⁸

6.41 What was generally accepted – and indeed had already been implicit in practice prior to 1945 – was that self-determination should control the process, or manner, by which decolonisation was to be achieved. There was little, if any, doubt that the full and free consent of the population should inform all future dispositions of territory even if, in the view of a minority of administering States, they should not be compelled to move in that direction within any particular timescale.

238:10-12 (Crawford) (**Annex 170**). And as counsel went on to explain, the legal position at the date of Mauritian independence in 1968 and at the date of excision in 1965 was the same: “There wasn’t a date between 1965 and 1968 in which the law had changed. The law had been developing, in fact, ever since the enactment of the conclusion of the Charter being articulated through the Fifties and coming to effective fruition in 1960.” *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 8) (5 May 2014), p. 965:11-13 (**Annex 171**). So although “[t]he crucial date is the date of independence because that’s the date the excision has definitive effect” (*ibid.*, p. 964:14-15), nothing in fact turns on whether one analyses the legal framework as at 1965 or 1968.

⁶⁴⁷ As specified, for example, in the Commission on Human Rights’ recommendation in U.N. Doc. E/CN.4/664 of 24 April 1952. See U.N. Economic and Social Council, Commission on Human Rights, 8th Session, *Recommendations Concerning International Respect for the Self-Determination of Peoples*, U.N. Doc. E/CN.4/664 (24 Apr. 1952). It may be noted, however, that General Assembly Resolution 1514 (XV) emphasised the necessity of “bringing to a speedy and unconditional end colonialism in all its forms” and that “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence”. *Colonial Declaration* (14 Dec. 1960) (**Dossier No. 55**).

⁶⁴⁸ See in this respect, the remarks by Judge Dillard in his Separate Opinion in the *Western Sahara* case, in which he notes that those more sceptical “deny that the principle has developed into a ‘right’”. *Western Sahara, Advisory Opinion, Separate Opinion of Judge Dillard, I.C.J. Reports 1975*, p. 121.

6.42 Indeed, the very evolution of the legal principle of self-determination into a right after 1945 may be said to have emerged, in part at least, as a response to a concern that certain administering powers were not taking sufficient measures to give effect to the obligation under Article 73 of the Charter to enable self-government on the part of the peoples of Non-Self-Governing Territories, or, worse, were actively preventing decolonisation from taking place.⁶⁴⁹

6.43 During this period, self-determination came to be seen as the prime *modus operandi* through which decolonisation would be effectuated, and it was recognised that, as per paragraph 2 of Resolution 1514 (XV), all peoples subject to colonial rule should be able to “freely determine their political status and freely pursue their economic, social and cultural development.”

6.44 This was reflected in the ongoing practice of the United Nations from at least 1954 onwards, in which plebiscites or elections were organised or supervised in Non-Self-Governing Territories before their accession to independence or association/integration with other States. Plebiscites and elections were held in British Togoland Trust Territory (1956), French Togoland (1958), British Northern Cameroons (1959), British Southern Cameroons (1961), Rwanda-Urundi (1961), Western Samoa (1962), the Cook Islands (1965), Equatorial Guinea (1968), Papua-New Guinea (1972), Niue (1974), the Ellice Islands (1974), the Northern Marianas (1975) and French Comores (1974, 1976).⁶⁵⁰ Self-determination was also

⁶⁴⁹ See, e.g., Resolutions 558 (VI) and 752 (VIII) in which the General Assembly called upon administering states to fix timetables and targets for the attainment of independence. U.N. General Assembly, 6th Session, *Attainment by the Trust Territories of the objective of self-government or independence*, U.N. Doc. A/RES/558(VI) (18 Jan. 1952); U.N. General Assembly, 8th Session, *Attainment by the Trust Territories of the objective of self-government or independence*, U.N. Doc. A/RES/752(VIII) (9 Dec. 1953).

⁶⁵⁰ See Cassese, *Self-determination of peoples* (1995), pp. 76-79 (**Annex 138**); Marcel Merle, “Les plébiscites organisés par les Nations Unies”, *Annuaire français de droit international*, Vol. 7 (1961), pp. 425-444 (**Annex 18**).

emphasised in the subsequent criticism of minority rule in Southern Rhodesia,⁶⁵¹ and of South Africa's Bantusan policies.⁶⁵²

6.45 A corollary to the idea that the “essential feature” of self-determination was the exercise of free choice on the part of the inhabitants⁶⁵³ was that it was concerned with ensuring, not so much a particular outcome, as a legitimate process.⁶⁵⁴ This was made clear when the General Assembly, in Resolution 1541 (XV), specified that the outcome of the process of decolonisation for non-self-governing territories might result in more than one possibility, namely:

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

6.46 In all cases, however, the connection with the right of self-determination is made evident. Thus principle VII of Resolution 1541 (XV) declares that: “[f]ree association should be the result of a free and voluntary choice by the peoples of the

⁶⁵¹ See, e.g., U.N. General Assembly, 20th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/2024(XX) (11 Nov. 1965). Examining the practice of non-recognition, Crawford concludes that “[i]t must be concluded that Southern Rhodesia was not a State because the minority government’s declaration of independence was and remained internationally a nullity, as a violation of the principle of self-determination.” Crawford, *Creation of States* (2006), p. 130 (**Annex 150**).

⁶⁵² See, e.g., U.N. General Assembly, 26th Session, *The policies of apartheid of the Government of South Africa: Establishment of Bantustans*, U.N. Doc. A/RES/2775E(XXVI) (29 Nov. 1971); U.N. General Assembly, 27th Session, *Policies of apartheid of the Government of South Africa: Situation in South Africa Resulting from the Policies of apartheid*, U.N. Doc. A/RES/2923E(XXVII) (15 Nov. 1972).

⁶⁵³ *Western Sahara (Advisory Opinion)*, p. 32, para. 57.

⁶⁵⁴ See Catriona Drew, “The East Timor Story: International Law on Trial”, *Eur. J. Int’l L.*, Vol. 12 (2001), pp. 658-662 (**Annex 143**).

territory concerned expressed through informed and democratic processes.”
Principle IX of Resolution 1541 (XV) declares that:

(b) The 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.

6.47 This is further reiterated in General Assembly Resolution 2625 (XXV), “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, which specifies 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.⁶⁵⁵

6.48 Resolution 2625 (XXV) further provides that:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

...

⁶⁵⁵ U.N. General Assembly, 25th Session, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, U.N. Doc. A/RES/2625(XXV) (24 Oct. 1970) (hereinafter “*Friendly Relations Declaration* (24 Oct. 1970)”) (emphasis added).

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.⁶⁵⁶

6.49 As noted in the *Western Sahara* Advisory Opinion, self-determination, defined as the need to pay regard to the freely expressed will of peoples, has in practice only been dispensed with in circumstances in which the population concerned “did not constitute a ‘people’ entitled to self-determination or on the conviction that a consultation was totally unnecessary”.⁶⁵⁷

IV. The fundamental elements of self-determination in the process of decolonisation

6.50 As counsel for Mauritius put it in the *Chagos Marine Protected Area Arbitration* proceedings, “self-determination provided the legal underpinning for the process of decolonisation”.⁶⁵⁸ In other words, the requirements of self-determination gave shape to the process by which decolonisation was to be carried out. And self-determination carried with it at least four vitally important legal corollaries:

- (1) *The prohibition of the subversion of self-determination*: The first of these was that decolonisation should not be obstructed through measures that would subvert the possibility of self-government or independence by the installation, for example, of a system of

⁶⁵⁶ *Ibid.*

⁶⁵⁷ *Western Sahara (Advisory Opinion)*, p. 33, para. 59. Aréchaga notes that in respect of the latter, the court had in mind the position of colonial enclaves such as Goa and Ifni. See Eduardo Jiménez de Aréchaga, “International Law in the Past Third of a Century”, *Recueil des Cours*, Vol. 159 (1978), p. 107 (**Annex 114**).

⁶⁵⁸ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014), p. 234:17-18 (Crawford) (**Annex 170**).

minority rule⁶⁵⁹ or “through the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants”⁶⁶⁰ or by way of “forcible action” against the people.⁶⁶¹ Thus, for example, the General Assembly and Security Council repeatedly requested the United Kingdom “not to transfer under any circumstances to its colony of Southern Rhodesia, as at present governed, any of the powers or attributes of sovereignty, but to promote the country’s attainment of independence by a democratic system of government in accordance with the aspirations of the majority of the population”.⁶⁶²

- (2) *The prohibition on annexation*: The second, associated, corollary was that Non-Self-Governing territories should not be liable to annexation or incorporation within the territory of the administering

⁶⁵⁹ See, e.g., U.N. General Assembly, 20th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/2012(XX) (12 Oct. 1965), para. 2 (“*Declares* that the perpetuation of such minority rule would be incompatible with the principle of equal rights and self-determination of peoples proclaimed in the Charter of the United Nations and in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly Resolution 1514 (XV)”).

⁶⁶⁰ U.N. General Assembly, 20th Session, *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/RES/2105(XX) (20 Dec. 1965), para. 5 (**Dossier No. 155**).

⁶⁶¹ *Friendly Relations Declaration* (24 Oct. 1970). See also U.N. Security Council, *Territories under Portuguese administration*, U.N. Doc. S/RES/322 (22 Nov. 1972); Crawford, *Creation of States* (2006), p. 147 (noting that “[t]he use of force against a self-determination unit by a metropolitan State is a use of force against one of the purposes of the United Nations, and a violation of Article 2 paragraph 4 of the Charter. Such a violation cannot effect the extinction of the right.”) (**Annex 150**).

⁶⁶² U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S/RES/202 (6 May 1965), para. 5. (adopted by 7-0 with 4 absentions). See also U.N. Security Council, *Question concerning the situation in Southern Rhodesia*, U.N. Doc. S/RES/253 (29 May 1968) (adopted by 11-0 with no abstentions); U.N. General Assembly, 18th Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/1883(XVIII) (14 Oct. 1963) (adopted by 90-2 with 3 abstentions); U.N. General Assembly, 21st Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/2138(XXI) (22 Oct. 1966) (adopted by 86-2 with 18 abstentions); U.N. General Assembly, 21st Session, *Question of Southern Rhodesia*, U.N. Doc. A/RES/2151(XXI) (17 Nov. 1966) (adopted by 89-2 with 17 abstentions).

State without the free consent of the population. This was a proposition developed very early on in U.N. practice, when the General Assembly rejected, in Resolution 65(1), South Africa's proposals to incorporate South West Africa into the territory of the Union of South Africa. The proposition was endorsed by the Court in the *Status of South West Africa* case.⁶⁶³ It was also a principle incorporated in a number of General Assembly resolutions relating to Basutoland, Bechuanaland and Swaziland, including Resolutions 1817 (XVII) of 18 December 1962, 1954 (XVIII) of 11 December 1963,⁶⁶⁴ and Resolution 2649 (XXV) of 30 November 1970. In the latter Resolution, it was declared that "the acquisition and retention of territory in contravention of the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter".⁶⁶⁵

(3) *The right to territorial integrity, and the obligation to maintain it:*

The third legal corollary was that self-determination should be exercised on the part of the entirety of the population within the existing limits of the territory concerned, and that, as a consequence, any attempt at the "partial or total disruption of the national unity

⁶⁶³ U.N. General Assembly, 1st Session, *Future Status of South West Africa*, U.N. Doc. A/RES/65(1) (14 Dec. 1946). (adopted by 37-0 with 9 abstentions). See further *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*, pp. 142-143. The Court adopted a similar stance in relation to East Timor. See *East Timor, Judgment*, p. 103, para. 31.

⁶⁶⁴ In the latter, the General Assembly "solemnly warns the Government of the Republic of South Africa that any attempt to annex or encroach upon the territorial integrity of these three Territories shall be considered an act of aggression". U.N. General Assembly, 18th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/1954(XVIII) (11 Dec. 1963), para. 4.

⁶⁶⁵ U.N. General Assembly, 1st Session, *The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, U.N. Doc. A/RES/2649(XXV) (30 Nov. 1970), para. 4.

and territorial integrity” was inadmissible. This view of the law emerged well before the dismemberment of Mauritius: in 1958, for example, while debating the U.K.’s proposal for the partition of Cyprus, the vast majority of States in the First Committee to the General Assembly strongly opposed partition as violating the right to self-determination. A number of States, including Greece, India, Ethiopia, Guatemala, Iran, Ireland, the Federation of Malaya, Liberia, Morocco, Nepal, Panama, Poland, Spain, Tunisia, the U.S.S.R., Saudi Arabia and Yugoslavia gave statements opposing partition as contrary to the right to self-determination.⁶⁶⁶ Then in 1960, as noted above, paragraph 6 of General Assembly Resolution 1514 (XV) provided 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.” This was re-iterated later in General Assembly Resolution 2625 (XXV) of 1970, which stated that “[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.”⁶⁶⁷

⁶⁶⁶ U.N. General Assembly, First Committee, 13th Session, 996th-1001st Meetings, *Agenda Item 68: Question of Cyprus*, U.N. Docs. A/C.1/SR.996-A/C.1/SR.1010 (Nov.-Dec. 1958).

⁶⁶⁷ As counsel for Mauritius expressed it in the UNCLOS proceedings, “the territorial integrity of non-self-governing territories is an essential aspect of the right to self-determination, which can only be waived by the freely expressed wishes of the people concerned. The colonial power did not have the right or the authority arbitrarily to dismember a non-self-governing territory before the people had any chance to exercise the right to decide on its own political future. Affirming otherwise would deprive the right to self-determination of its meaning; it would also negate the obligations that a colonial power has to enable the exercise of the right.” *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014), p. 243:6-12. (Crawford) (**Annex 170**). Counsel went on to state that “while international law does not, generally speaking, govern the relations between constituent units within a State, the law of self-determination by the early 1960s directly governed the relations between metropolitan States and their colonies and included a guarantee of territorial

(4) *Permanent sovereignty over natural resources*: A final corollary was that the principle of self-determination also required recognition of the rights of peoples to “permanent sovereignty over their natural wealth and resources”. As was affirmed in General Assembly Resolution 1803 (XVII), the “[v]iolation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations”.⁶⁶⁸

6.51 The principle that the territorial integrity of non-self-governing territories should be respected was to become, as Crawford notes, “an established part of United Nations practice”.⁶⁶⁹ In the context of French proposals to divide the territory of Algeria, for example, the U.N. General Assembly repeatedly emphasised the need to respect Algeria’s unity and territorial integrity. General Assembly Resolution 1573 (XV) on Algeria states:⁶⁷⁰

Taking note of the fact that the two parties concerned have accepted the right of self-determination as the basis for the solution of the Algerian problem,...

integrity for the colonial territory. If metropolitan States could lawfully dismember the territory of the colonies for the administration of which they are responsible, the right of self-determination would be an empty shell. Metropolitan States could keep the bits they wanted and discard the rest. Territorial integrity may not protect States against internal attempts at separation, but it surely protects a colony against decisions of the colonial power that affect the territory with respect to which the right of self-determination is to be exercised.” *Ibid.*, p. 246:6-14.

⁶⁶⁸ U.N. General Assembly, 17th Session, *Permanent Sovereignty over Natural Resources*, U.N. Doc. A/RES/1803(XVII) (14 Dec. 1962) (adopted by 87-2 with 12 abstentions).

⁶⁶⁹ Crawford, *Creation of States* (2006), p. 336 (**Annex 150**).

⁶⁷⁰ *Question of Algeria* (19 Dec. 1960), Preamble (adopted by 63-8 with 27 abstentions). Although Algeria was part of French North Africa, only Morocco and Tunisia were listed in General Assembly Resolution 66(I). U.N. General Assembly, 1st Session, *Transmission of Information under Article 73(e) of the Charter (extract)*, U.N. Doc. A/RES/66(I) (14 Dec. 1946).

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,...

2. *Recognises* the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the right of self-determination on the basis of respect for the unity and territorial integrity of Algeria;... .

6.52 This was re-affirmed in General Assembly Resolution 1654 (XVI)⁶⁷¹ on the implementation of General Assembly Resolution 1514 (XV):

Deeply concerned that, contrary to the provisions of paragraph 6 of the Declaration, acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonisation... .

6.53 And again in General Assembly Resolution 1724 (XVI)⁶⁷² on Algeria:

Recalling further its resolution 1573 (XV) of 19 December 1960 by which it recognized the right of the Algerian people to self-determination and independence, the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the right to self-determination on the basis of respect for the unity and territorial integrity of Algeria, and the fact that the United Nations has a responsibility to contribute towards the successful and just implementation of that right,...

Calls upon the two parties to resume negotiations with a view to implementing the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria.

⁶⁷¹ *Implementation of the Colonial Declaration* (27 Nov. 1961) (adopted by 97-0 with 4 abstentions) (**Dossier No. 101**).

⁶⁷² U.N. General Assembly, 16th Session, *Question of Algeria*, U.N. Doc. A/RES/1724(XVI) (20 Dec. 1961) (adopted by 62-0 with 38 abstentions).

6.54 These resolutions confirm the principle embodied in paragraph 6 of Resolution 1514 (XV) which, as counsel for Morocco made clear in the *Western Sahara* case, ruled out the dismemberment of Non-Self-Governing territories:

Ainsi, le sens de la résolution 1514 (XV) est, à notre avis, clairement posé: la décolonisation partielle est condamnée. La libre détermination ne peut se réaliser que dans le respect de l'unité nationale du peuple concerné.⁶⁷³

6.55 Similar resolutions were subsequently adopted by both the General Assembly and Security Council in relation to:

- (1) South West Africa (Trust Territory)⁶⁷⁴ (General Assembly Resolutions 1899 (XVIII),⁶⁷⁵ 2074 (XX),⁶⁷⁶ 2248 (S-V)⁶⁷⁷ and 2372 (XXII)⁶⁷⁸ and Security Council Resolutions 264 (1969)⁶⁷⁹ and 269

⁶⁷³ *Western Sahara (Advisory Opinion)*, Vol. IV (Exposé Oral M. Bennouna), p. 182 (“Thus, the meaning of resolution 1514 (XV) is, in our view, clearly stated: partial decolonization is forbidden. Self-determination can only be achieved with respect for the national unity of the people concerned.”)

⁶⁷⁴ See Shaw, *Title to Territory in Africa* (13 Mar. 1986), pp. 105-110 (**Annex 135**).

⁶⁷⁵ U.N. General Assembly, 18th Session, *Question of South West Africa*, U.N. Doc. A/RES/1899(XVIII) (13 Nov. 1963) (adopted by 84-6 with 17 abstentions). (“Considering that any attempt by the Government of South Africa to annex a part or the whole of the Territory of South West Africa would be contrary to the advisory opinion of the International Court of Justice of 11 July 1950 and would constitute a violation of the Government’s obligations under the Mandate and of its other international obligations, ... 4. *Considers* that any attempt to annex a part or the whole of the Territory of South West Africa constitutes an act of aggression”). (underlining added).

⁶⁷⁶ U.N. General Assembly, 20th Session, *Question of South West Africa*, U.N. Doc. A/RES/2074(XX) (17 Dec. 1965) (“5. Considers that any attempt to partition the Territory or to take any unilateral action, directly or indirectly, preparatory thereto constitutes a violation of the Mandate and of resolution 1514 (XV). ... 6. *Considers further* that any attempt to annex a part or the whole of the Territory of South West Africa constitutes an act of aggression”). (underlining added).

⁶⁷⁷ U.N. General Assembly, 5th Special Session, *Question of South West Africa*, U.N. Doc. A/RES/2248(S-V) (19 May 1967).

⁶⁷⁸ U.N. General Assembly, 22nd Session, *Question of South West Africa*, U.N. Doc. A/RES/2372(XXII) (12 June 1968), para. 7 (“Condemns the action of the Government of South Africa designed to consolidate its illegal control over Namibia and to destroy the unity of the people and the territorial integrity of Namibia”). (underlining added) (adopted by 96-2 with 18 abstentions).

⁶⁷⁹ U.N. Security Council, *The Situation in Namibia*, U.N. Doc. S/RES/264 (20 Mar. 1969), para. 4 (“*Declares* that the actions of the Government of South Africa designed to destroy the national unity

(1969)⁶⁸⁰);

(2) Basutoland, Bechuanaland and Swaziland (General Assembly Resolutions 1817 (XVII),⁶⁸¹ 2063 (XX)⁶⁸²);

(3) Oman (General Assembly Resolutions 2302 (XXII),⁶⁸³ 2073

and territorial integrity of Namibia through the establishment of Bantustans are contrary to the provisions of the Charter of the United Nations”.) (adopted by 13-0 with 2 abstentions).

⁶⁸⁰ U.N. Security Council, *The Situation in Namibia*, U.N. Doc. S/RES/269 (12 Aug. 1969), para. 3 (“*Decides* that the continued occupation of the Territory of Namibia by the South African authorities constitutes 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”). (adopted by 11-0 with 4 abstentions).

⁶⁸¹ U.N. General Assembly, 17th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/1817(XVII) (18 Dec. 1962) (“6. *Declares solemnly* that any attempt to annex Basutoland, Bechuanaland or Swaziland, or to encroach upon their territorial integrity in any way, will be regarded by the United Nations as an act of aggression violating the Charter of the United Nations.”)

⁶⁸² U.N. General Assembly, 20th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/2063(XX) (16 Dec. 1965) (“Noting the resolutions adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first regular session in July 1964, and the Declaration adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries in October 1964 to the effect that the United Nations should guarantee the territorial integrity of Basutoland, Bechuanaland and Swaziland and should take measures for their speedy accession to independence and for the safeguarding of their sovereignty, ... *Having regard* to the grave threat to the territorial integrity and economic stability of these Territories constituted by the policies of the present régime in the Republic of South Africa, ... 5. Requests the Special Committee to consider, in co-operation with the Secretary-General, what measures are necessary for securing the territorial integrity and sovereignty of Basutoland, Bechuanaland and Swaziland, and to report to the General Assembly at its twenty-first session”). (underlining added).

⁶⁸³ U.N. General Assembly, 22nd Session, *Question of Oman*, U.N. Doc. A/RES/2302(XXII) (12 Dec. 1967) (“2. *Reaffirms* the inalienable right of the people of the Territory as a whole to self-determination and independence”).

(XX),⁶⁸⁴ and 2238 (XXI)⁶⁸⁵;

(4) Aden (General Assembly Resolution 2183 (XXI)⁶⁸⁶);

(5) Nauru (Trust Territory) (General Assembly Resolution 2347 (XXII)⁶⁸⁷);

(6) Equatorial Guinea (General Assembly Resolutions 2230 (XXI)⁶⁸⁸, 2355 (XXII)⁶⁸⁹);

⁶⁸⁴ See *Question of Oman* (17 Dec. 1965) (“3. *Recognizes* the inalienable right of the people of the Territory as a whole to self-determination and independence in accordance with their freely expressed wishes”).

The reference to “[t]erritory as a whole” (regarded as a reference to the Sultanate of Muscat and Oman) is notable because there was some suggestion that Oman was a separate state. See Crawford, *Creation of States* (2006), p. 326 (**Annex 150**). See also United Nations, Office of Public Information, “Questions Concerning the Middle East”, in *YEARBOOK OF THE UNITED NATIONS 1964* (1966), pp. 186-188.

⁶⁸⁵ U.N. General Assembly, 21st Session, *Question of Oman*, U.N. Doc. A/RES/2238(XXI) (20 Dec. 1966) (“2. *Reaffirms* the inalienable right of the people of the Territory as a whole to self-determination and independence”).

⁶⁸⁶ U.N. General Assembly, 21st Session, *Question of Aden*, U.N. Doc. A/RES/2183(XXI) (12 Dec. 1966) (“*Having* taken note of the assurances given by the representative of the administering Power, on 10 November 1966, concerning the territorial integrity and unity of South Arabia as a whole”).

The assurances were noted in the resolution as there was concern regarding the sincerity of the U.K. when it said that all the states of South Arabia, including Aden, would be included in the new independent state of South Arabia. See *Repertory of Practice of United Nations Organs*, “Article 73”, Supplement No. 4, Vol. 2 (1966-1969), paras. 285-289.

⁶⁸⁷ U.N. General Assembly, 22nd Session, *Question of the Trust Territory of Nauru*, U.N. Doc. A/RES/2347(XXII) (19 Dec. 1967), para. 4 (“*Calls upon* all States to respect the independence and territorial integrity of the independent State of Nauru”). Nauru was not yet independent when the resolution was adopted.

⁶⁸⁸ See, e.g., U.N. General Assembly, 21st Session, *Question of Equatorial Guinea*, U.N. Doc. A/RES/2230(XXI) (20 Dec. 1966) (“*Reaffirms* the inalienable right of the people of Equatorial Guinea to self-determination and independence in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV). ... 5. *Requests* the administering Power to ensure that the Territory accedes to independence as a single political and territorial unit and that no step is taken which would jeopardize the territorial integrity of Equatorial Guinea”).

⁶⁸⁹ U.N. General Assembly, 22nd Session *Question of Equatorial Guinea*, U.N. Doc. A/RES/2355(XXII) (19 Dec. 1967) (“4. *Reiterates* its request to the administering Power to ensure that the Territory accedes to independence as a single political and territorial entity not later than July 1968”).

- (7) Gibraltar (General Assembly Resolution 2353 (XXII)⁶⁹⁰);
- (8) Comoro Archipelago (General Assembly Resolutions 3161 (XXVIII)⁶⁹¹, 3291 (XXIX)⁶⁹²);
- (9) French Somaliland (Djibouti), (General Assembly Resolution 3480 (XXX)⁶⁹³)
- (10) 26 Non-Self-Governing Territories, including Mauritius⁶⁹⁴
(General Assembly Resolutions 2232 (XXI)⁶⁹⁵ and 2357

⁶⁹⁰ U.N. General Assembly, 22nd Session, *Question of Gibraltar*, U.N. Doc. A/RES/2353(XXII) (19 Dec. 1967) (“*Considering* that any colonial situation which partially or completely destroys the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations, and specifically with paragraph 6 of General Assembly resolution 1514 (XV)”).

⁶⁹¹ U.N. General Assembly, 28th Session, *Question of Comoro Archipelago*, U.N. Doc. A/RES/3161(XXVIII) (14 Dec. 1973), paras. 4 and 5 (“4. *Affirms* the unity and territorial integrity of the Comoro Archipelago; 5. *Requests* the Government of France, as the administering Power, to ensure that the unity and territorial integrity of the Comoro Archipelago are preserved”).

⁶⁹² U.N. General Assembly, 29th Session, *Question of Comoro Archipelago*, U.N. Doc. A/RES/3291(XXIX) (13 Dec. 1974), para. 3 (“Reaffirms the unity and territorial integrity of the Comoro Archipelago”).

⁶⁹³ U.N. General Assembly, 30th Session *Question of French Somaliland*, U.N. Doc. A/RES/3480(XXX) (11 Dec. 1975), paras. 5 and 6. (“5. *Calls upon* all States, particularly the administering Power and the neighbouring States, to refrain from any action, unilateral or otherwise, which might alter the independence and the territorial integrity of so-called French Somaliland (Djibouti); 6. *Calls upon* all States to renounce forthwith any and all claims to the Territory and to declare null and void any and all acts asserting such claims”).

⁶⁹⁴ The territories concerned included: American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St Helena, St Kitts-Nevis-Anguilla, St Lucia, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands.

⁶⁹⁵ U.N. General Assembly, 21st Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2232(XXI) (20 Dec. 1966) (“Deeply concerned at the information contained in the report of the Special Committee on the continuation of policies which aim, among other things, at the disruption of the territorial integrity of some of these Territories and at the creation by the administering powers of military bases and installations in contravention of the relevant resolutions of the General Assembly, ... 4. *Reiterates* its declaration that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of

(XXII)⁶⁹⁶).

6.56 This practice, as Shaw notes, was indicative of the fact that:

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...⁶⁹⁷

6.57 Raic offers a similar conclusion:

In sum, the right of self-determination, which in this context has been referred to as “a right to decolonisation” was applied to *all inhabitants* of a *colonial territory* and not to minority groups or segments of the population within that territory. ... Therefore, as a general rule, self-determination had to be granted to Trust Territories and Non-Self-Governing Territories as a whole.⁶⁹⁸

the United Nations and of General Assembly resolution 1514 (XV)’.) (underlining added) (**Dossier No. 171**).

⁶⁹⁶ U.N. General Assembly, 22nd Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2357(XXII) (19 Dec. 1967) (“Deeply concerned at the information contained in the report of the Special Committee on the continuation of policies which aim, among other things, at the disruption of the territorial integrity of some of these Territories and at the creation by the administering powers of military bases and installations in contravention of the relevant General Assembly resolutions, ... 4. *Reiterates* its declaration that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)’.) (underlining added) (**Dossier No. 198**).

⁶⁹⁷ Shaw, *Title to Territory in Africa* (13 Mar. 1986), pp. 131-132 (**Annex 135**).

⁶⁹⁸ Raic, *Statehood* (2002), p. 209 (underlining added; italics in the original) (**Annex 145**). See also Stefan Oeter, “Self-Determination” in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* (Bruno Simma et al. eds., 2012), p. 325 (“‘people’ in the sense of self-determination [in the case of non-self-governing territories] is the autochthonous population of the non-self-governing territory

6.58 As this suggests, a fundamental element of decolonisation is that the new State is formed from the totality of the previous Non-Self-Governing Territory.⁶⁹⁹ The only exceptions to this principle have been in circumstances in which maintaining the integrity of the unit proved impossible as a consequence of internal disturbances,⁷⁰⁰ or pursuant to an expression of free consent on the part of the people through the medium of a plebiscite. As Franck noted, “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 favour of a union or secession, it had become virtually mandatory for the UN to be present during the elections or plebiscite in which that issue was to be determined.”⁷⁰¹

6.59 By 1968, for example, U.N.-supervised plebiscites had been routinely used to ascertain the wishes of a people in case of both the merger or division of the territory of former colonies. In case of the former, such plebiscites were held prior to the merger of British Togoland with Ghana in 1956, the merger of Northern

that has been grouped together to a polity by carving out a certain territory in colonial times in order to form a distinct political entity.”) (**Annex 160**).

⁶⁹⁹ There is a certain connection here to the principle of *uti possidetis* which, as a chamber of the Court noted in the *Burkina Faso and Mali Frontier Dispute* is “logically connected with the phenomenon of the obtaining of independence”. *Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali, Judgment, I.C.J. Reports 1986*, p. 565, para. 20. “The essence of the principle”, the Court noted, “lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved.” *Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali, Judgment, I.C.J. Reports 1986*, p. 566, para. 23. As seems clear from this, however, it is a principle concerned with preserving the status quo after independence, and has a role distinct from that of the principle of territorial integrity, insofar as the latter was applied to self-determination units prior to independence.

⁷⁰⁰ See, e.g., in relation to Ruanda-Urundi. See U.N. General Assembly, 16th Session, *The future of Ruanda-Urundi*, U.N. Doc. A/RES/1746(XVI) (27 June 1962). This, however, was only agreed on the grounds that “efforts to maintain the unity of Ruanda-Urundi did not succeed”. It is to be noted that all prior General Assembly resolutions had emphasised that Ruanda-Urundi should accede to independence “as a single, united and composite State”. See, e.g., U.N. General Assembly, 15th Session, *The Future of Ruanda-Urundi*, U.N. Doc. A/RES/1605(XV) (21 Apr. 1961).

⁷⁰¹ T. Franck & P. Hoffman, “The Right to Self-Determination in Very Small Places”, *N.Y.U. J. Int’l L. & Pol.*, Vol. 8 (1976), p. 336 (**Annex 109**).

Cameroons with Nigeria in 1959 and 1961, the merger of Southern Cameroons with Cameroons in 1961, and the free association between Western Samoa and New Zealand in 1962.

6.60 In case of the division of territory plebiscites were held in: the Netherlands Indies (Dutch NSGT), British Cameroons (a Trust Territory administered by the U.K.)⁷⁰² and St. Kitts-Nevis-Anguilla (originally part of the U.K. Non-Self-Governing Territory of the Leeward Islands). After that date, plebiscites were also used in relation to Gilbert and Ellice Islands Colony, and the Trust Territory of the Pacific Islands.

6.61 In sum, it was uniformly accepted in practice that decolonisation should take place in accordance with the right of self-determination. That required the full and free consent of the population of a Non-Self-Governing territory in the determination of its political future and, as a necessary corollary, prohibited all measures that would subvert that process including the excision or detachment of territory prior to independence.

V. The decolonisation of Mauritius was not lawfully completed in 1968

A. THE UNIT OF SELF-DETERMINATION WAS THE ENTIRE TERRITORY OF MAURITIUS

6.62 As shown above, the entity which enjoyed the right to decolonisation in international law and U.N. practice – the unit of self-determination – was the whole

⁷⁰² See U.N. General Assembly, 13th Session, *The future of the Trust Territory of the Cameroons under United Kingdom administration*, U.N. Doc. A/RES/1350(XIII) (13 Mar. 1959); U.N. General Assembly, 14th Session, *The future of the Trust Territory of the Cameroons under United Kingdom administration: organization of a further plebiscite in the northern part of the Territory*, U.N. Doc. A/RES/1473(XIV) (12 Dec. 1959).

of the territorial unit concerned. The “self” of self-determination was understood in largely territorial terms, so that the right inhered in a colonial people within the framework of the existing territorial unit. The principle of territorial integrity for the non-self-governing territory was (and continues to be) paramount. As General Assembly Resolution 1514 (XV) affirms in paragraph 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.

6.63 Thus, in the case of Mauritius, the unit of self-determination – in relation to which the administering power owed the duty to accord the right to self-determination – was the totality of the territory of Mauritius before independence. That territory included the Chagos Archipelago.

6.64 It is plain from the law and facts set out above Chapters 2-4 that the Chagos Archipelago was an integral part of the territory of Mauritius. As there described, the legal position of the former colony, and the cultural, social and economic links between the mainland and the Archipelago, provide clear evidence of the fact that the Archipelago was – and was always treated by the administering power as – an integral part of the territory of Mauritius.

6.65 This was recognised by the two international judges who expressed a view on the issue in the UNCLOS proceedings:

The United Kingdom emphasized that the Chagos Archipelago was a dependency of Mauritius, only attached to the latter for administrative purposes. The intensive discussion of this point – the fine points of colonial constitutional law – shows that the notion of dependency was used to describe situations which differed significantly. In this case it seems to be of relevance that the extension of the European Convention on Human Rights was

interpreted to cover the Chagos Archipelago although the notification only referred to Mauritius. Also the Mauritius (Constitution) Order of 1964 by definition included the dependencies of Mauritius (section 90). This indicates that the Chagos Archipelago was more closely linked to Mauritius than is conceded by the United Kingdom.

For that reason, it is not appropriate to consider the Archipelago as an entity, somewhat on its own, which the United Kingdom could decide on without taking into account the views and interests of Mauritius. The way the detachment was executed in reality proves this view to be correct. In particular, the instructions given to the Governor of Mauritius on 6 October 1965 are a clear indication that the United Kingdom considered consent by the cabinet of Mauritius to be essential.⁷⁰³

6.66 As demonstrated below, this fact was also recognised by the United Nations, both at the time and subsequently.

B. THE UNITED NATIONS RECOGNISED THE ENTIRE TERRITORY OF MAURITIUS AS THE UNIT OF SELF-DETERMINATION

6.67 As summarised in Part II above, it was through the policy of the General Assembly and its Committee of 24 that the right of self-determination was developed and implemented. The General Assembly acquired a recognised competence to decide the status of a territory with regard to the right, and to decide how the right should be exercised.⁷⁰⁴ In the *Western Sahara* case, the Court

⁷⁰³ *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Dissenting and Concurring Opinion of Judge James Kateka and Judge Rüdiger Wolfrum, UNCLOS Annex VII Tribunal (18 Mar. 2015), paras. 68-69 (emphasis added) (**Dossier Number 409**).

⁷⁰⁴ See Andrés Rigo Sureda, *The Evolution of the right of self-determination: a study of United Nations Practice* (1973), pp. 65-82 and *passim*) (**Annex 99**). See also Oscar Schachter, "The Relation of Law, Politics and Action in the United Nations", *Recueil des Cours*, Vol. 109 (1963), p.187. ("... the right of the United Nations General Assembly to determine which territories fall within the scope of Article 73 has received such continuing support that it may now be regarded as fairly well settled. ... [W]hen the practice of states in the United Nations has served by general agreement to vest in the organs the competence to deal definitively with certain questions, then the decisions of the organs in regard to those questions acquire an authoritative juridical status even

recognised and accepted the role of the General Assembly in overseeing the exercise of the right to self-determination and in taking decisions regarding the way in which the right is implemented.⁷⁰⁵ The Court affirmed that “the right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which the right is to be realised.”⁷⁰⁶

6.68 In respect of Mauritius, the General Assembly recognised the undivided territory of Mauritius as the unit of self-determination in its Resolution 2066 (XX) on the Question of Mauritius. In that resolution, the Assembly noted:

with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of [Resolution 1514 (XV)], and in particular paragraph 6 thereof.

6.69 In fact, by 16 December 1965, the date on which Resolution 2066 (XX) on the Question of Mauritius was finally adopted by the General Assembly, the Chagos Archipelago had already been excised from the territory of Mauritius. The administering power had, in effect, acted to present the United Nations with a *fait accompli*, and internal documents reveal that this was its intention.⁷⁰⁷ General Assembly Resolution 2066 (XX) nevertheless invited the U.K. to “take effective measures with a view to the immediate and full implementation of resolution 1514

though these decisions had not been taken by unanimous decision or ‘general approval’.”) (**Annex 20**).

⁷⁰⁵ *Western Sahara (Advisory Opinion)*, pp. 35-37.

⁷⁰⁶ *Ibid.*, p. 36, para. 71.

⁷⁰⁷ *See* paras. 3.18-3.20; 3.91 and 4.27.

(XV)” and “to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”.⁷⁰⁸

6.70 The General Assembly repeated the requirement to maintain the territorial integrity of non-self-governing territories in its Resolutions 2232 (XXI) and 2357 (XXII); Mauritius was expressly included in the list of the territories to which both of the resolutions applied. Each resolution expressed deep concern at:

the continuation of policies which aim, among other things, at the disruption of the territorial integrity of some of these Territories and at the creation by the administering Powers of military bases and installations in contravention of the relevant resolutions of the General Assembly.⁷⁰⁹

6.71 It is clear from the language of those resolutions – and from the serious concerns expressed by Member States in the Committee of 24 at the time of detachment⁷¹⁰ – that the firm view of the United Nations was that the Chagos Archipelago was an integral part of Mauritius for the purposes of self-determination, and that no part of the territory of Mauritius could be detached at will.

6.72 The General Assembly resolutions cited above – in the general terms of paragraph 6 of Resolution 1514 (XV), and in the specific application of the right of self-determination to Mauritius in later resolutions – must be regarded as confirming the right of Mauritius to come to independence with its territory intact:

⁷⁰⁸ U.N. General Assembly, 20th Session, *Question of Mauritius*, U.N. Doc. A/RES/2066(XX) (16 Dec. 1965) (hereinafter “*Question of Mauritius* (16 Dec. 1965)”), paras. 2-4 (**Dossier No. 146**).

⁷⁰⁹ See paras. 4.34-4.35 and 4.39.

⁷¹⁰ See paras. 2.42; 4.32; 4.38 and 4.40.

that is, with the whole of its territory, including the Chagos Archipelago, and the whole of its population, including all the residents of the Archipelago.

C. THE DECISION OF THE ADMINISTERING POWER TO DISMEMBER MAURITIUS PRIOR TO INDEPENDENCE HAD NO EFFECT ON THE SELF-DETERMINATION UNIT

6.73 As described in Chapter 3 above, however, three years before Mauritius became independent the Chagos Archipelago was detached from the territory of Mauritius. That detachment has been maintained until the present day, meaning that Mauritius came to independence with part of its territory excised, and has never in its history as an independent nation been permitted to exercise effective control over that territory.

6.74 This excision of part of Mauritius' territory three years before it gained independence raises a temporal question: under the law of self-determination, could changes by the administering power in contemplation of independence have any effect on the self-determination unit?

6.75 It is clear from paragraph 6 of Resolution 1514 (XV) that they could not: actions of the administering power before independence were not permitted to override the territorial integrity of the entity concerned. Professor Shaw has commented on the temporal issue in relation to the Chagos Archipelago: "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".⁷¹¹

⁷¹¹ Shaw, *Title to Territory in Africa* (13 Mar. 1986), p. 134 (Annex 135).

The administering power itself interpreted paragraph 6 in this way. In 1964 it described that paragraph as:

clearly aimed at protecting colonial territories or countries which have recently become independent against attempts to divide them or to encroach on their territorial integrity, at a time when they are least able to defend themselves, with all the stresses and strains of approaching or newly achieved independence.⁷¹²

6.76 The history of the mandated territory of South-West Africa presents an analogous situation. The General Assembly, from the establishment of the United Nations, had the objective of maintaining the territorial integrity of South-West Africa and preventing South Africa from annexing or dividing it. General Assembly resolutions over the decades showed the concern of the United Nations that the unit of self-determination was the whole territory and that, prior to the independence of Namibia, territorial integrity was to be maintained, against all attempts by South Africa to dismember it.⁷¹³

6.77 The excision of a part of a territory before independence is impermissible because it violates the right to self-determination of the people of that territory. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court found that the route taken by the Wall in the occupied Palestinian territory contributed to the departure of some of the population and presented a risk to the demographic composition of the area. In view of that, the Court found that the construction of the Wall, with other measures taken, “severely impedes the exercise by the Palestinian people of its right to self-

⁷¹² U.N. General Assembly, Special Committee on Decolonization, *284th Meeting*, U.N. Doc. A/AC.109/PV.284 (30 Sept. 1964), p. 22 (remarks of the representative of the United Kingdom) (underlining added).

⁷¹³ A brief account is given in Shaw, *Title to Territory in Africa* (13 Mar. 1986), pp. 105-110 (**Annex 135**).

determination, and is therefore a breach of Israel's obligation to respect that right.”⁷¹⁴

6.78 Accordingly, the decision to excise the Chagos Archipelago from the territory of Mauritius three years before independence can have no effect on the self-determination unit, which remained at all times the entire territory of Mauritius.

D. THE RIGHT OF SELF-DETERMINATION HAD TO BE EXERCISED ACCORDING TO THE FREELY-EXPRESSED WILL OF THE PEOPLE OF THE TERRITORY CONCERNED

6.79 The need for the right of self-determination to be exercised by the freely-expressed will of the people is underlined in General Assembly Resolution 1514 (XV), which provides in paragraph 5 that:

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... .

6.80 The Court explained in the *Western Sahara* Advisory Opinion that this paragraph confirms “that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.”⁷¹⁵ The same principle is evident in General Assembly Resolution 2625 (XXV) (the “Friendly Relations Declaration”), which provides in part that:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples in accordance with the provisions of the

⁷¹⁴ *Construction of a Wall (Advisory Opinion)*, p. 184, para. 122.

⁷¹⁵ *Western Sahara (Advisory Opinion)*, p. 32, para. 55.

Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

...

(b) To bring a speedy end to colonialism, having due regard to *the freely expressed will* of the peoples concerned.⁷¹⁶

6.81 The Court has gone so far as to say that the principle of self-determination is “*defined* as the need to pay regard to the freely expressed will of peoples”.⁷¹⁷

6.82 Accordingly, the requirements of self-determination could only be met in Mauritius’ case by ensuring that if the territorial integrity of the former colony was not to be preserved, that would be only with the freely expressed consent of the people of Mauritius as a whole – including the inhabitants of the Chagos Archipelago. As Raic says, the

United Nations insistence on the preservation of the territorial integrity of a dependent or colonial territory did not form a bar to partition ... only if that was the clear wish of the majority of all inhabitants of the territory in question.⁷¹⁸

6.83 It follows from the need to ascertain the wishes of the people concerned that, if an administering power had in mind a particular proposal as to the structure of the territory, that proposal had to be clearly put to the people, in circumstances which allow them to make an informed and meaningful choice about the future of the territory. The administering power had an obligation positively to enable the people of Mauritius to exercise their right of self-determination through the

⁷¹⁶ *Friendly Relations Declaration* (24 Oct. 1970) (emphasis added).

⁷¹⁷ *Western Sahara (Advisory Opinion)*, p. 33, para. 59 (emphasis added).

⁷¹⁸ Raic, *Statehood* (2002), p. 209 (**Annex 145**). Some exceptions are admitted.

mechanism of a free expression of their views on the future of their territory, and then to respect the views expressed.

6.84 It is important to recall in this context that the dismemberment of Mauritius did not simply involve the division of a colony where the newly-divided units both obtained independence – itself a serious matter requiring the consent of the people concerned. Here, the excision of the Chagos Archipelago led to the creation of a new colony, the so-called “British Indian Ocean Territory”, from which the population was expelled, and which has been maintained as a colony to the present day. The two judges who expressed a view on the issue in the UNCLOS proceedings considered it essential in this context to “distinguish between cases where the detached parts of a colony became independent and cases where a new colony was established.”⁷¹⁹

6.85 The decision on which the people of Mauritius would have had to be consulted was not, therefore, the question of whether the colony of Mauritius should be divided so as to gain independence as two separate territorial units. Rather, the question was whether the colony of Mauritius should be divided so that only one part would gain independence, with the other part becoming a new colony of the existing administering power. It would also have been essential to consult the people of Mauritius – including the inhabitants of the Chagos Archipelago – on the proposal that the new colony would be cleared of its population and that they, or any other Mauritians, would from that point on not be permitted to live in, or even enter, the Archipelago.

⁷¹⁹ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 72 (**Dossier No. 409**).

6.86 However, as discussed below, the people of Mauritius were never given the required opportunity to express their wishes as to the future of their nation.

E. THE DETACHMENT OF THE CHAGOS ARCHIPELAGO WAS CARRIED OUT IN SECRET WITHOUT ANY ATTEMPT TO ASCERTAIN THE VIEWS OF THE PEOPLE OF MAURITIUS

6.87 Contrary to the clear and settled legal framework summarised above, Mauritius was dismembered in 1965 by legal instruments promulgated by the administering power, to give effect to a clandestine agreement which had already been reached between the administering power and one of its military allies.

6.88 The development of this plan, and the manner in which the detachment was carried out, have been considered in detail in Chapter 3 above. The contemporaneous records reviewed in that chapter make it clear that the detachment had been decided in advance between the administering power and its ally. The intention was that Mauritian Ministers would only “at a suitable time be informed in general terms about proposed detachment of islands.”⁷²⁰

6.89 As shown in Chapter 3, the detachment was going to be carried out by the administering power in any event. There was never any intention to consult the people of Mauritius: quite the reverse, as the plan was expressly to be kept from them. The records demonstrate that, in so far as there were any discussions of “consultation” with the “Mauritius Government”, the concern was merely presentational, motivated by the desire to minimise damage to relations with Mauritius when it achieved independence, and to avoid criticism both domestically

⁷²⁰ “*British Indian Ocean Territory 1964-1968: Chronological Summary*” (1964-1968), item no. 11 (Annex 23).

and at the United Nations. A note prepared by the Foreign Office in 1982 records 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.⁷²¹

6.90 At no time was the population of Mauritius as a whole consulted on the proposal that the Chagos Archipelago be detached from the territory of Mauritius and turned into a new colony, with its population removed. Such discussions as took place with the “representatives” of Mauritius at the 1965 Constitutional Conference were held only after a firm decision had been taken to dismember Mauritius. The detachment was going to be carried out regardless of any views expressed by those “representatives” (let alone the Mauritian people as a whole). Indeed, the “representatives” were told by the administering power that the detachment would occur with or without their “consent” and that the only question which remained open was whether they would “return to Mauritius either with Independence or without it”.⁷²² As Judges Kateka and Wolfrum put it in the UNCLOS case, “[t]he detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not.”⁷²³

⁷²¹ Note from M. Walawalkar of the African Section 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), para. 9 (**Annex 124**). See also *U.S. Defence Interests in the Indian Ocean* (23 Apr. 1964) (**Annex 26**); *Telegram* from U.K. Secretary of State for the Colonies to J. Rennie, Governor of Mauritius, No. PAC 93/892/01 (10 Aug. 1965), para. 4 (**Annex 44**).

⁷²² U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (**Annex 60**). See also para. 3.72 above.

⁷²³ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 76 (**Dossier No. 409**).

6.91 There was no attempt to secure information on the wishes of the people of Mauritius as a whole. This must have been considered by the administering power, however, not least since it had to respond to a query from Canada about the matter. The Canadian Department of External Affairs had asked whether the U.K. envisaged a referendum on the issue of detachment:

The Department of External Affairs would be grateful for more information about how consultation with Mauritius and the Seychelles would be conducted. Would the Legislative Assembly of Mauritius and the Legislative Council of the Seychelles be consulted and if so were the inhabitants of the islands ear-marked for detachment directly represented in those bodies? Did we contemplate some method of direct consultation with the inhabitants of the islands in question? Satisfactory answers to these questions might well make it easier for Canada to help us at the United Nations... .⁷²⁴

6.92 In its reply to the British High Commission on 2 August 1965, the Commonwealth Relations Office mentioned that as yet the Governor of Mauritius and the Acting Governor of Seychelles had been instructed to consult only the Council of Ministers and the Executive Council respectively, and that those consultations were on a strictly confidential basis.⁷²⁵ As the records show, the administering power took this approach because it expected that the excision would attract the criticism of the United Nations:

We count on United States support in the United Nations and elsewhere to defend this project against criticism with which we may be faced once it becomes public. We hope to keep it confidential for the moment, at least until the agreement of the

⁷²⁴ *Letter* from E. J. Emery of the British High Commission in Canada to J. S. Champion of the U.K. Ministry of Defence, Commonwealth Relations Office (22 July 1965), para. 3 (**Annex 39**).

⁷²⁵ *Letter* from J. S. Champion of the U.K. Ministry of Defence, Commonwealth Relations Office, to E.J. Emery of the British High Commission in Canada (2 Aug. 1965) (**Annex 43**).

Seychelles and Mauritius Governments has been formally confirmed.⁷²⁶

6.93 In the case of Mauritius, although the administering power went on to claim that there was a “final general election in which all the people were able freely to express their views before independence was achieved”,⁷²⁷ in that election the people were, self-evidently, not able to express a view on the issue of detachment, which had already occurred.

6.94 The contemporary records make it clear, not only that there was no attempt to ascertain the views of the people of Mauritius, but that this was a deliberate decision, so as to present the United Nations and its members with a *fait accompli*. The people of Mauritius were not consulted precisely because they were not supposed to know about the detachment until it was too late. As noted above, the detachment had been decided on well before it took place, foreclosing any opportunity for those affected to express their views on the matter. A thorough review of the relevant materials led Judges Kateka and Wolfrum to conclude in the UNCLOS proceedings that:

The 1965 excision of the Chagos Archipelago from Mauritius shows a complete disregard for the territorial integrity of Mauritius by the

⁷²⁶ U.K. Foreign Office, *Secretary of State's Visit to Washington 10-11 October 1965: Defence Facilities in the Indian Ocean* (7 Oct. 1965), para. 3 (**Annex 66**). See also U.K. Foreign Office and U.K. Ministry of Defence, *Brief for the Secretary of State at the D.O.P. Meeting on Tuesday, 31 August: Defence Facilities in the Indian Ocean*, No. FO 371/184527 (31 Aug. 1965), para. 3 (“Even if Mauritius does not opt for full independence at this conference – and it seems unlikely that she will do so – it is unlikely that we shall be able to keep consultations with Mauritius confidential for much longer. Widespread public discussion of the proposal before agreement had been reached would make the achievement of a successful conclusion much more difficult.”) (**Annex 50**).

⁷²⁷ U.N. General Assembly, 22nd Session, *1643rd Plenary Meeting*, U.N. Doc. A/PV.1643 (24 Apr. 1968), para. 87 (**Dossier No. 264**).

United Kingdom which was the colonial power. British and American defence interests were put above Mauritius' rights.⁷²⁸

F. THE "AGREEMENT" OF THE COUNCIL OF MINISTERS OF MAURITIUS WAS NOT CAPABLE OF MEETING THE REQUIREMENTS OF SELF-DETERMINATION

6.95 Before detaching the Chagos Archipelago from Mauritius, the administering power sought to obtain the approval of the "Mauritian Government", during and following the Constitutional Conference which took place in London in 1965. The "agreement" of some of the Mauritian delegates at the final Constitutional Conference was given "in principle" on 23 September 1965, subject to consultation with the Council of Ministers.⁷²⁹ On 5 November 1965, Governor Rennie informed the Colonial Secretary that the Mauritius "Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago" on the conditions set out at paragraph 22 of the Record of the Meeting of 23 September 1965.⁷³⁰

6.96 The administering power sought to argue, at the time and subsequently, that the representatives of Mauritius gave their "consent" to the detachment, and that this satisfied the requirements of self-determination. As summarised above and in Chapter 3, such "consultation" as took place was purely presentational: the decision to detach the Archipelago had already been taken and was not open to discussion.

⁷²⁸ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), para. 91 (**Dossier No. 409**).

⁷²⁹ It should be noted that, as set out in Chapters 2 and 3 above, at that time the colonial authorities continued to exercise far-reaching control over Mauritian internal affairs, including through the fact that the colonial Governor presided over the Council of Ministers and retained far-reaching powers. Accordingly, the "Council of Ministers" which "agreed" to the detachment at its meeting on 5 November 1965 was part of a political structure which remained fundamentally controlled by the administering power.

⁷³⁰ *Telegram* from the Governor of Mauritius to the Secretary of State for the Colonies, No. 247, FO 371/184529 (5 Nov. 1965), para. 1 (**Annex 71**). For a summary of the Record of the Meeting of 23 September 1965, see para. 3.90 above.

As the records make clear, the reason why such “consultation” took place was precisely in order to allow the administering power to advance the spurious claim – to the United Nations, Member States and the domestic public – that Mauritius had consented to its own dismemberment. That claim is fundamentally flawed for a number of reasons:

- (1) As discussed in the previous section, the right of self-determination could only be exercised in accordance with the freely-expressed will of the entire people of the territory. In this case, that meant that the people of Mauritius as a whole, including the inhabitants of the Chagos Archipelago, would have had to be given a free opportunity to express their views on the future of the territory, including – if it was to be pursued by the administering power – the proposal that the territory be dismembered in order to turn the Chagos Archipelago into a new colony from which the inhabitants would be removed.
- (2) The forced “acquiescence” of the Council of Ministers did not fulfil the requirements of self-determination. There was no genuine consultation: the detachment of the Chagos Archipelago was a predetermined result and the only question open for discussion was whether independence would be granted (if the Ministers acquiesced in the detachment) or withheld (if they opposed it). Thus, the so-called “consent” which was given was extracted in circumstances of duress and on conditions that vitiated any notion that it was freely given. It could by no stretch of the imagination be considered the free expression of the will of the people of Mauritius.

6.97 The first of these points has been examined in the previous Sections above; this Section examines the second.

1. *The 1965 Constitutional Conference*

6.98 The events before and during the Conference are considered in detail in Chapter 3 above. Less than two weeks before the Conference, the U.K. Chief of the Defence Staff recognised that Mr Anthony Greenwood:

had not been able to persuade the Mauritian Ministers to agree to the detachment from Mauritius of Diego Garcia and the other islands of the Chagos Archipelago... in advance of the Mauritius Constitutional Conference.⁷³¹

6.99 During the Conference, Mauritian Ministers continued to oppose the detachment of the Chagos Archipelago.⁷³² A Minute prepared for the British Prime Minister on 22 September 1965 records that when proposals were discussed with Ministers in Mauritius, and more recently in London, their reaction was that “they cannot contemplate detachment”.⁷³³

6.100 The records of the U.K. Government prepared before and after the meetings with the Mauritian Ministers indicate the circumstances in which the much-vaunted “agreement” was finally elicited. A note to the U.K. Prime Minister in preparation for his meeting on 23 September 1965 with the Mauritius Premier states:

Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.⁷³⁴

⁷³¹ *Mauritius Constitutional Conference* (26 Aug. 1965), Annex A, p. 5 (**Annex 47**).

⁷³² See Chapter 3, Part IV. C and Part V.

⁷³³ *Note for the Prime Minister’s Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius* (22 Sept. 1965), p. 3 (**Annex 59**).

⁷³⁴ See para. 3.69 above.

6.101 At the meeting, the U.K. Prime Minister is recorded as saying that the “Premier and his colleagues could return to Mauritius either with Independence or without it.”⁷³⁵ The U.K. Government had thus made clear the link between the achievement of independence and Mauritian consent to the excision of the Chagos Archipelago. It was also made clear that the excision could take place even without consent: the record of the meeting between the U.K. Prime Minister and the Mauritian Premier recorded the former as saying that “Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues.”⁷³⁶

6.102 In the UNCLOS proceedings, Judges Kateka and Wolfrum, having carefully considered the nature and context of the meeting between Prime Minister Wilson and Premier Ramgoolam, came to the following conclusion:

It was further pointed out—correctly—that Mauritius had no choice. The detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not.

A look at the discussion between Prime Minister Harold Wilson and Premier Sir Seewoosagur Ramgoolam suggests that the [sic] Wilson’s threat that Ramgoolam could return home without independence amounts to duress. The Private Secretary of Wilson used the language of “frighten[ing]” the Premier “with hope”. The Colonial Secretary equally resorted to the language of intimidation. Furthermore, Mauritius was a colony of the United Kingdom when the 1965 agreement was reached. The Council of Ministers of Mauritius was presided over by the British Governor who could

⁷³⁵ U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (**Annex 60**). *See also* para. 3.72.

⁷³⁶ *Ibid.* The same message was repeated in a meeting with the U.K. Colonial Secretary on 23 September 1965. *See* para. 3.70 above.

nominate some of the members of the Council. Thus there was a clear situation of inequality between the two sides.⁷³⁷

6.103 The inextricable link between the excision of the Chagos Archipelago and the grant of independence to Mauritius is clear from the contemporaneous records, and was so understood by the Mauritian side.⁷³⁸ The stark question which faced the Ministers was whether they would return to Mauritius with independence (if they acquiesced in the excision) or without it (if they opposed it). It was made brutally clear that the Archipelago was lost to Mauritius, and that if they withheld their “consent” to the excision then independence would be lost as well. There was no option of independence for the full territory.

6.104 In these circumstances, the “choice” which faced the Ministers was in fact not a choice at all. And in placing them in that situation, the administering power acted in disregard of the clear requirements of self-determination (including the prohibition, in paragraph 5 of Resolution 1514 (XV), on imposing “conditions or reservations” on the transfer of power to the non-self-governing territory in accordance with the will of its people). There was no free expression of the will of the people of Mauritius. Nor, as outlined below, did the administering power’s violation of the fundamental elements of the right of self-determination pass muster with the United Nations or the international community.

2. *The reaction of the United Nations*

6.105 The forced acquiescence of the Council of Ministers, obtained as it was under duress and relating to a breach of fundamental principles of law, has never

⁷³⁷ *The Chagos Marine Protected Area Arbitration*, Dissenting and Concurring Opinion (18 Mar. 2015), paras. 76-77 (**Dossier No. 409**).

⁷³⁸ See Chapter 3, Part VI.

been regarded by the General Assembly as validating the unlawful dismemberment of Mauritius.

6.106 While the General Assembly has on occasion approved the division of a territory before independence in accordance with the freely expressed will of its inhabitants,⁷³⁹ in respect of Mauritius the Assembly did not regard the “agreement” of the representatives of Mauritius, obtained in the circumstances outlined above, as sufficient to constitute the freely expressed will of the people as to the form in which their territory would gain its independence. That “agreement” clearly failed to satisfy the United Nations or the international community, at the time or since. The General Assembly resolutions noting with concern the dismemberment of Mauritius were adopted *after* the excision had taken place with the “agreement” of Mauritius.

6.107 Mauritius itself has made repeatedly clear its rejection of any so-called “agreement”. It has long protested its dismemberment by the administering power, right up to the present day. It has never wavered in its attempt to vindicate its rights and correct the international wrong that was perpetrated on it, by diplomatic, political and legal means. It has been supported in these efforts by the General Assembly, through its various resolutions condemning the detachment of the Chagos Archipelago, and by the vast majority of States, as reflected in the

⁷³⁹ For example, in the case of the non-self-governing territory of the Gilbert and Ellice Islands, there was first an administrative division of the colonial territory and then, as a result of the express wishes of the inhabitants of the Ellice Islands, a partition of the colony; an independent State, Tuvalu, emerged. The Assembly had approved both the administrative division and the later partition: it was clear to the Assembly that the inhabitants had freely agreed. There was a U.N. mission to the Ellice Islands – at the request of the administering power – before independence. See U.N. General Assembly, 29th Session, *Question of the Gilbert and Ellice Islands*, U.N. Doc. A/RES/3288(XXIX) (13 Dec. 1974). The conduct of the administering power in inviting the U.N. mission and ensuring that the wishes of the inhabitants of the Ellice Islands were properly ascertained must be contrasted with the conduct of the administering power with regard to Mauritius and the Chagos Archipelago.

resolutions of the Organisation of African Unity/African Union, Non-Aligned Movement, Group of 77 and China, African, Caribbean and Pacific Group of States, and Africa-South America Summit.

6.108 It is that near universal support which ultimately culminated in the decisive vote of the General Assembly to refer the matter to this Court for advice. As the representative of India stated during the debate on Resolution 71/292:

the process of decolonisation that began with our own independence is still unfinished, seven decades later. In fact, in 2011 the Assembly proclaimed the decade 2011-2020 to be the third International Decade for the Eradication of Colonialism. We would like to see that long-drawn-out process completed.⁷⁴⁰

VI. Conclusion

6.109 As this chapter has demonstrated, the right of self-determination was firmly established in international law by the time of Mauritius' independence, including through several decades of consistent practice of the United Nations in its role of supervising the decolonisation process. The requirements of self-determination provide the fundamental legal structure by which the decolonisation process is carried out. Central to the right of self-determination is the requirement that the future of a Non-Self-Governing Territory be determined by the free expression of the will of the entire people of the territory.

6.110 Such an expression of will was lacking in respect of the excision of the Chagos Archipelago from Mauritius. On the contrary, the decision to excise the

⁷⁴⁰ U.N. General Assembly, 71st Session, 88th Plenary Meeting, Agenda item 87, *Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*, U.N. Doc. A/71/PV.88 (22 June 2017), p. 14 (**Dossier No. 6**).

Archipelago was taken without consulting the Mauritian people, including those who were to lose the homes in the Archipelago where they and their families had lived for generations. The forced and reluctant acquiescence, at the Constitutional Conference in 1965, of the Mauritian representatives – who were compelled to accept the excision only when it was starkly presented to them as a foregone conclusion and as the inescapable price of independence – can be no substitute for a free expression of the will of the people.⁷⁴¹

6.111 Accordingly, the process of decolonisation of Mauritius was not lawfully completed when it gained its independence in 1968, given that it reached independence after having been dismembered in 1965. As counsel for Mauritius put it in the UNCLOS proceedings, “[w]hen Mauritius became an independent state, the sovereignty that the UK continued to exercise over territory unlawfully detached became untenable. That breach had a continuing character”. Accordingly, the state of affairs from 1968 to the present day is “an unlawful situation that denies the right of Mauritius to self-determination and to its territorial integrity.”⁷⁴²

6.112 For these reasons, Mauritius respectfully submits that the answer to the first question put to the Court by the General Assembly is clear and does not permit of any ambiguity in the response that should be given by the Court: the process of

⁷⁴¹ Counsel posed the question as follows: “does an agreement given to a measure that was not proposed but imposed, and required in return for independence to which Mauritius was already entitled, constitute a genuine expression of the will of the people? Did the UK comply with its obligations under the law of self-determination when it obtained the agreement in such a way?” *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014), pp. 249:23-250:3 (Crawford) (**Annex 170**).

⁷⁴² *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014), p. 252:7-13 (Crawford) (**Annex 170**).

decolonisation of Mauritius was not lawfully completed when Mauritius was granted its independence in 1968, and it remains incomplete today.

CHAPTER 7

THE CONSEQUENCES UNDER INTERNATIONAL LAW ARISING FROM THE ADMINISTERING POWER'S CONTINUED ADMINISTRATION OF THE CHAGOS ARCHIPELAGO

I. Introduction

7.1 In this Chapter, Mauritius addresses the second question that the General Assembly has referred to the Court for an Advisory Opinion. That question asks:

What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?

7.2 The question seeks the Court's opinion on the legal consequences under international law that follow from the continued colonial administration of the Chagos Archipelago, in light of the administering power's failure to complete the decolonisation of Mauritius. Mauritius understands the question as requesting the Court's opinion on all the legal consequences that arise, including, but not limited to, those that pertain to the resettlement of Mauritian nationals in the Chagos Archipelago.

7.3 As detailed below, Mauritius considers that the legal consequences include the following matters:

- (1) The failure to complete the decolonisation of Mauritius is a continuing wrongful act that persists to this day. This situation must be brought to an end and full legality restored, a result that can only be achieved

by the completion of the process of decolonisation as required by international law. Decolonisation will be complete when the colonial administration has been fully withdrawn from the Chagos Archipelago, Mauritius is able to exercise full rights of sovereignty, and the administering power recognises Mauritius' sovereignty over the Archipelago.

(2) In regard to the timeframe for completing decolonisation, Mauritius notes that: (a) the Court stated in its *Namibia* Advisory Opinion that the colonial administration must be withdrawn “immediately”;⁷⁴³ and (b) decolonisation has often been completed in less than a year, even when the process is more complex than is the case with the Chagos Archipelago, where the exercise of colonial administration is minimal. Because Mauritius recognises the existence of the military base on Diego Garcia and accepts its future operation in accordance with international law, there are no grounds for delaying the immediate completion of decolonisation.

(3) Pending the immediate completion of decolonisation, the administering power shall henceforth act in the best interests of the people of Mauritius, including by consulting and cooperating with Mauritius so as to facilitate its efforts to allow the resettlement in the Chagos Archipelago, as a matter of urgency, of Mauritian nationals of Chagossian origin. In order to effectuate the transfer of administrative responsibilities to Mauritius in an orderly and timely manner, the administering power must also consult and cooperate with Mauritius so that *inter alia*: (a) the Chagos Archipelago is administered in a manner which promotes the economic well-being of the Mauritian

⁷⁴³ *South West Africa (Advisory Opinion)*, p. 58, para. 133.

people; (b) Mauritius is afforded access to its natural resources; (c) the environment of the Chagos Archipelago is fully protected; (d) Mauritius participates in the authorisation, oversight and regulation of scientific research in and around the Archipelago; (e) Mauritius is allowed to make submissions to the U.N. Commission on the Limits of the Continental Shelf in regard to the Archipelago; and (f) Mauritius is able to proceed to a delimitation of the Archipelago's maritime boundaries with the Maldives.

(4) Third States and international organisations, including the United Nations, are under an obligation to assist in the completion of the process of decolonisation, and may not render any aid or assistance that would help maintain the illegal situation presented by the continued colonial administration of the Chagos Archipelago. The duty to assist in completing Mauritius' decolonisation is a positive one.

II. The Administering Power's continued administration of the Chagos Archipelago is a continuing internationally wrongful act that must cease

7.4 Mauritius demonstrated in the preceding Chapter that the continued colonial administration of the Chagos Archipelago is manifestly incompatible with the requirements of international law, including the right of Mauritius to territorial integrity, the right of self-determination of peoples, and the obligation of administering powers to complete the process of decolonisation. These rights and obligations arise under international law, as reflected *inter alia* in General Assembly Resolution 1514 (XV). As such, any administration of the Chagos Archipelago that is not consistent with these requirements is a wrongful act under international law, and one that continues until such time as the process of decolonisation is completed.

7.5 Article 14(2) of the ILC Articles on State Responsibility provides: “The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.” There can be no doubt that this describes the administering power’s continued administration of the Chagos Archipelago: the Commentary to Article 14(2) specifically refers to the “maintenance by force of colonial domination” as a “continuing wrongful act”.⁷⁴⁴

7.6 The legal consequences of this continuing wrongful act extend beyond its mere characterisation as unlawful. As the Court found in *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, “the qualification of a situation as illegal does not by itself put an end to it. It can only be the first, necessary step in an endeavour to bring the illegal situation to an end.”⁷⁴⁵

7.7 Relatedly, Article 30 of the ILC Articles on State Responsibility provides that a State which is responsible for an internationally wrongful act is required to “cease that act, if it is continuing”. The Commentary to Article 30 explains, “[c]essation of conduct in breach of an international obligation is the first requirement in eliminating the consequences of wrongful conduct.” As the Court held in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*:

The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international

⁷⁴⁴ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Commentary to Art. 14, para. 3. Other analogous examples include “unlawful occupation of part of the territory of another State” and “stationing armed forces in another State without its consent.” *Ibid.*

⁷⁴⁵ See *South West Africa (Advisory Opinion)*, p. 52, para. 111.

law, and the Court has on a number of occasions confirmed the existence of that obligation.⁷⁴⁶

7.8 The need for cessation of a wrongful act serves an important function, namely “to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule.”⁷⁴⁷ In so doing, cessation of the wrongful act not only protects the injured State, it protects “the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.”⁷⁴⁸ That function is particularly important in regard to a breach of obligations concerning decolonisation, which have an *erga omnes* character and thus implicate the interests of all States and the United Nations itself.⁷⁴⁹

7.9 In the present case, the continuing wrongful act will cease only when the Chagos Archipelago’s colonial administration has been fully “withdraw[n]”, Mauritius is able to exercise full rights of sovereignty, and the administering power recognises Mauritius’ sovereignty over the Archipelago.⁷⁵⁰

III. The unlawful colonial administration of part of Mauritius’ territory must be brought to an immediate end

A. IMMEDIATE CESSATION IS REQUIRED

7.10 The law of state responsibility is clear that where a State is in continuing breach of an international legal obligation, such as when there is a wrongful

⁷⁴⁶ *Construction of a Wall (Advisory Opinion)*, p. 197, para. 150.

⁷⁴⁷ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Commentary to Art. 30, para. 5.

⁷⁴⁸ *Ibid.*

⁷⁴⁹ See Part V below.

⁷⁵⁰ *South West Africa (Advisory Opinion)*, p. 58, para. 133.

maintenance of a colonial administration, cessation of the unlawful situation must occur immediately.

7.11 In *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court held that South Africa's colonial mandate over Namibia had been "validly terminated and that in consequence South Africa's presence in Namibia [was] illegal".⁷⁵¹ The Court therefore ruled:

the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to *withdraw its administration from Namibia immediately* and thus put an end to its occupation of the Territory.⁷⁵²

7.12 The Court's ruling that South Africa had to withdraw its unlawful colonial administration "immediately" reflects a general principle of state responsibility regarding the cessation of wrongful acts. In the *Wall* case, the Court held that Israel "has the obligation to *cease forthwith* the works of construction of the wall being built by it in the Occupied Palestinian Territory".⁷⁵³ In *Diplomatic and Consular Staff*, Iran was required to "*immediately* terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran".⁷⁵⁴ In *Military and Paramilitary Activities*, the United States was found to be "under a duty *immediately* to cease and to refrain from all such acts as may constitute breaches" of its legal obligations.⁷⁵⁵

⁷⁵¹ *Ibid.*, para. 132.

⁷⁵² *Ibid.*, para. 133 (emphasis added). See also *ibid.*, p. 54, para. 118.

⁷⁵³ *Construction of a Wall (Advisory Opinion)*, p. 197, para. 151 (emphasis added).

⁷⁵⁴ *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 44, para. 95 (emphasis added).

⁷⁵⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Merits, Judgment, I.C.J. Reports 1986*, p. 149, para. 292 (emphasis added).

7.13 In *Belgium v. Senegal*, where Senegal was found to have breached its obligations under the Convention Against Torture to prosecute or extradite, the Court framed Senegal’s obligation to cease its unlawful act as follows:

The Court emphasizes that, in failing to comply with its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, Senegal has engaged its international responsibility. Consequently, Senegal is required to cease this continuing wrongful act, in accordance with general international law on the responsibility of States for internationally wrongful acts. *Senegal must therefore take without further delay the necessary measures to submit the case to its competent authorities for the purpose of prosecution*, if it does not extradite Mr. Habré.⁷⁵⁶

7.14 The same legal consequence applies in the present case. The administering power must, “without further delay”, take the “necessary measures” to complete the decolonisation of Mauritius. As noted above, this will be achieved only when the colonial administration has been fully withdrawn from the Chagos Archipelago, Mauritius is able to exercise full rights of sovereignty, and the administering power recognises Mauritius’ sovereignty over the Archipelago.⁷⁵⁷

7.15 In the present case, the time period in which this must be accomplished is reinforced by the general principle that decolonisation must be completed speedily. General Assembly Resolution 1514 (XV) “provide[s] the basis for the process of decolonization”,⁷⁵⁸ and it has “achieved... a quasi-constitutional status.”⁷⁵⁹ This

⁷⁵⁶ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, *I.C.J. Reports 2012*, p. 461, para. 121 (emphasis added).

⁷⁵⁷ See Part II above.

⁷⁵⁸ *Western Sahara (Advisory Opinion)*, p. 32, para. 57; *Sovereignty Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Application for Permission to Intervene, Separate Opinion of Judge Franck, *I.C.J. Reports 2001*, p. 656, para. 12 (referring to the Colonial Declaration as “fundamental to the process of decolonization”).

⁷⁵⁹ Crawford, *Creation of States* (2006), p. 604 (Annex 150). See also *Repertory of Practice of United Nations Organs*, “Article 73”, Supplement No. 5, Vol. 4 (1970-1978), para. 1 (“references to the

includes, among other things, the Declaration's "[s]olemn[] proclam[ation]" of the "necessity of bringing to a *speedy and unconditional end* colonialism in all its forms and manifestations".⁷⁶⁰ To achieve that objective, the Declaration requires that "[i]mmediate steps shall be taken" in all "territories which have not yet attained independence, to transfer all powers to the peoples of those territories".⁷⁶¹

7.16 The obligation to bring colonial arrangements to a speedy end is repeated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. It provides that "[e]very State has the duty... to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle" in order "*to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned*".⁷⁶² There is ample support for the proposition that this formulation reflects an international legal obligation. As the Court held in *Military and Paramilitary Activities*, the unanimous consent of States to the Friendly Relations Declaration "may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves."⁷⁶³

Declaration on decolonization in the *Repertory* have come to take on a quasi-constitutional character, particularly with regard to the studies under Article 73. In other words, for the purposes of the *Repertory*, issues relating to the implementation of Article 73 of the Charter of the United Nations are inseparable from issues relating to the implementation of the Declaration on decolonization.")

⁷⁶⁰ *Colonial Declaration* (14 Dec. 1960), Preamble (emphasis added) (**Dossier No. 55**).

⁷⁶¹ *Ibid.*, Art. 5 (emphasis added).

⁷⁶² *Friendly Relations Declaration* (24 Oct. 1970), para. 1 (emphasis added).

⁷⁶³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Merits, Judgment, I.C.J. Reports 1986*, p. 100, para. 188. See, e.g., Samuel A. Bleicher, "The Legal Significance of Re-Citation of General Assembly Resolutions", *American Journal of International Law*, Vol. 63 (1969), p. 474 ("The language and the circumstances of the passage of Resolution 1514(XV), set out briefly above, indicate that the resolution was intended to set out a binding interpretation of the Charter, and the continual re-citation and other actions of the General Assembly

B. FULL DECOLONISATION OF MAURITIUS CAN AND SHOULD BE ACHIEVED IMMEDIATELY

1. *Administrative Responsibilities Can Be Easily Transferred to Mauritius*

7.17 It is beyond doubt that in relation to the Chagos Archipelago there is no impediment to the immediate completion of decolonisation. Nearly all activities in the Archipelago take place in or around the military base on Diego Garcia, which is addressed in Part III. B. 2, below. Under the existing Order in Council, “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.”⁷⁶⁴ The only “temporary inhabitants” in the Chagos Archipelago “are the armed forces at the United States defence facility on Diego Garcia, civilian employees of contractors to the United States military, and a small Royal Navy contingent.”⁷⁶⁵ There are accordingly “no commercial, industrial or agricultural activities in the Territory.”⁷⁶⁶ Nor is there any privately owned land, since “the Crown purchased the freehold title to all land in the islands that was not already Crown land.”⁷⁶⁷

7.18 With regard to environmental protection, Mauritius is not aware of any regulations that implement the purported “Marine Protected Area” which was declared – in a manner found by the UNCLOS Arbitration to be unlawful – in 2010.

in support of the resolution display the seriousness of the belief.”); *ibid.*, p. 475 (“No state could honestly claim that it was unaware of this expectation or that the resolution was merely a ‘recommendation’ with no normative force as an authoritative interpretation of the United Nations Charter, and few colonial Powers have attempted to permanently obstruct decolonization. In short, Resolution 1514(XV) is as much a part of our international law as any of the familiar traditional doctrines.”) (**Annex 97**).

⁷⁶⁴ United Kingdom, “*British Indian Ocean Territory (Constitution) Order 2004*” (10 June 2004), Art. 9 (**Annex 146**).

⁷⁶⁵ I. Hendry & S. Dickson, *British Overseas Territory Law* (2011) p. 302 (**Annex 157**).

⁷⁶⁶ *Ibid.*, p. 305.

⁷⁶⁷ *Ibid.*, p. 303.

Mauritius understands that the “MPA” is given effect solely by the administering power’s decision not to issue new fishing licenses, or to renew existing ones. With respect to environmental protection on the Archipelago’s island features, as far as Mauritius is aware, the administering power’s regulatory actions consist only of declaring part of Diego Garcia a Ramsar site and of placing certain other areas of the Archipelago off-limits to human activity.⁷⁶⁸

7.19 Accordingly, there is almost no administration that requires transfer from the administering power to Mauritius. Indeed, most of the usual indicators of governmental regulation are absent in this case: the administering power maintains only a minimal local presence in the Chagos Archipelago, which it administers remotely from London. Mauritius is unaware of any significant budget expenditures by the administering power, or of any staff (in significant numbers) allocated to governance or administration. The colonial administration appears to be comprised of little more than “a Commissioner appointed by the Queen”, assisted by a Deputy Commissioner and Administrator.⁷⁶⁹ None of these officials is resident in the Chagos Archipelago.⁷⁷⁰ In the Archipelago itself, the representative of the putative “civilian Administration” is not, in fact, a civilian. The Royal Navy Commander who commands a small detachment of British Forces in Diego Garcia is “appointed as the Commissioner’s Representative”.⁷⁷¹ There is no Senior Magistrate in the Chagos Archipelago; the Royal Navy Commander serves as the “local magistrate” as well.⁷⁷²

⁷⁶⁸ United Kingdom, “*British Indian Ocean Territory: Terrestrial Protected Areas*”, available at <https://biot.gov.io/environment/terrestrial-protected-areas/> (last accessed 3 Jan. 2018) (**Annex 197**).

⁷⁶⁹ See United Kingdom, “*British Indian Ocean Territory: Governance*”, available at <https://biot.gov.io/governance/> (last accessed 3 Jan. 2018) (**Annex 198**).

⁷⁷⁰ *Ibid.*

⁷⁷¹ *Ibid.*

⁷⁷² I. Hendry & S. Dickson, *British Overseas Territory Law* (2011), p. 304 (**Annex 157**).

7.20 Reflecting the lack of administration, for the fiscal year beginning on 1 April 2016 – the last fiscal year for which information is available – the administering power’s total budgetary appropriation for the “BIOT” was only £4,225,000. Most of the appropriation (£3,405,000) is earmarked for “Marine”, which Mauritius believes is for marine surveillance-related activities. Only £446,000 is for “Administration”.⁷⁷³ By comparison, the 2016/17 gross expenditure of West Somerset, the smallest local authority in the United Kingdom by population, which has approximately 35,300 residents and covers 280 square miles, was £22,698,000.⁷⁷⁴

7.21 The administering power, moreover, is able quickly to make any legal changes that might be needed to facilitate decolonisation. The Commissioner serves as both the territory’s executive and legislature, and has plenary authority to enact, amend, and enforce its laws and regulations. Further, the Constitution of the “BIOT” is contained in an Order in Council that was made under the Royal prerogative; accordingly, any change to the existing constitutional framework can also be swiftly made under the prerogative.

⁷⁷³ Of the remainder, £150,000 is for “Legal”, £11,000 is for “Commercial”, £90,000 is for “Science”, £3,000 is for “Finance”, and £120,000 is for “Diego Garcia”. See United Kingdom, “*British Indian Ocean Territory Ordinance No. 1 of 2016: An ordinance to make provision for the expenditure of public funds between 1 April 2016 and 31 March 2017*” (30 June 2016) (**Annex 180**).

⁷⁷⁴ See West Somerset Council, “Statistics and Census Information”, available at <https://www.westsomersetonline.gov.uk/Council---Democracy/About-Your-Council/Statistics---Census-Information> (last accessed 18 Feb. 2018); and West Somerset Council, “West Somerset District Council Audited Statement of Accounts 2016/17”, available at <https://www.westsomersetonline.gov.uk/getattachment/Council---Democracy/Budgets---Spending/Statement-of-Accounts/West-Somerset-Council-Statement-of-Accounts-2016-17.pdf.aspx> (last accessed 18 Feb. 2018).

2. *The Existence of a Military Base on Diego Garcia Does Not Impede the Immediate Completion of Decolonisation*

7.22 Mauritius has repeatedly made clear to the United States and the United Kingdom, over the course of many years, that it recognises the existence of the military base on Diego Garcia, and accepts its future operation in accordance with international law. In these circumstances, the existence of the base provides no basis for delaying the immediate completion of decolonisation.

7.23 For example, on 21 December 2000, the Minister of Foreign Affairs of Mauritius informed the United Kingdom Secretary of State for Foreign and Commonwealth Affairs: “As you are aware, Mauritius has officially announced that we have no objection to the continued presence of the U.S. 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.”⁷⁷⁵

7.24 On 22 July 2004, the Prime Minister of Mauritius informed the Prime Minister of the United Kingdom that “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.”⁷⁷⁶

7.25 On 22 October 2004, the Minister of Foreign Affairs of Mauritius informed the United Kingdom Secretary of State for Foreign and Commonwealth Affairs: “I

⁷⁷⁵ 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) (**Annex 141**).

⁷⁷⁶ Letter from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (**Annex 147**).

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.”⁷⁷⁷

7.26 On 12 June 2012, the Prime Minister of Mauritius told the Mauritian Parliament:

I informed the British Prime Minister that I intend, during a proposed visit to Washington, to put across our proposal that all three States sit together and come to an agreement on the sovereignty issue without causing any prejudice to the continued use of Diego Garcia as a military base to meet prevailing security needs. The British Prime Minister took note of this initiative vis-à-vis the US.⁷⁷⁸

7.27 On 11 July 2017, shortly after the U.N. General Assembly referred the present request for an Advisory Opinion to the Court, the Prime Minister of Mauritius informed the President of the United States: “In line with its aspirations for a safer world, Mauritius would like to reaffirm that it has no objection to the continued operation of the military base in Diego Garcia after the completion of its decolonisation process under an agreed framework.”⁷⁷⁹

7.28 Mauritius’ commitment in regard to the military facility on Diego Garcia has been confirmed by Governments led by both major political parties in Mauritius. On 28 March 2014, when the party which is now in opposition led the Mauritian

⁷⁷⁷ Letter from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (**Annex 148**).

⁷⁷⁸ National Assembly of Mauritius, *Reply to Private Notice Question* (12 June 2012) (**Annex 161**).

⁷⁷⁹ Letter from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (**Annex 193**).

Government, Mauritius, in advance of the oral hearings in the *Chagos Marine Protected Area Arbitration*, informed the United States:

As the Government of the United States of America is aware, the Republic of Mauritius is currently involved in proceedings against the United Kingdom in an arbitration under Annex VII to the United Nations Convention on the Law of the Sea, in connection with the United Kingdom's decision in 2010 to declare a 'marine protected area' around the Chagos Archipelago. That case is due to be heard in April and May 2014.

In light of the imminent hearing of the Republic of Mauritius' claim, the Government of the Republic of Mauritius would like to take this opportunity to assure the Government of the United States of America that, as the Republic of Mauritius has previously made clear, it has no objection to the United States of America retaining the military base on Diego Garcia to meet prevailing security needs.

In the event that the Republic of Mauritius prevails in its claim against the United Kingdom, it does not foresee any impact on its relations with the United States of America, or on the ability of the United States of America to retain the military base on Diego Garcia.

The Government of the Republic of Mauritius wishes to confirm that it will be keen to work with the Government of the United States of America to ensure the continued use of the Diego Garcia military base, and that this situation will not be affected by the award of the Arbitral Tribunal.⁷⁸⁰

7.29 Mauritius reaffirms those assurances here. For the avoidance of doubt, Mauritius places on the record before this Court its recognition of the existence of the base, and its acceptance of the future operation of the base in accordance with international law.

⁷⁸⁰ *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (**Annex 168**).

7.30 Mauritius undertakes this commitment in the context of the close, cooperative relationship it has enjoyed, since its independence, with the United States. The United States Africa Command (“U.S. AFRICOM”) is the component of the United States military that is “responsible for all U.S. Department of Defense operations, exercises, and security cooperation on the African continent, its island nations, and surrounding waters.”⁷⁸¹ With regard to relations with Mauritius, U.S. AFRICOM has stated:

The United States established diplomatic relations with Mauritius in 1968, following its independence from the United Kingdom. In the years following independence, Mauritius became one of Africa’s most stable and developed economies, as a result of its multi-party democracy and free market orientation. Relations between the United States and Mauritius are cordial, and we collaborate closely on bilateral, regional, and multilateral issues. Mauritius is a leading beneficiary of the African Growth and Opportunity Act and a U.S. partner in combating maritime piracy in the Indian Ocean.⁷⁸²

7.31 In short, under these conditions the existence of a military base on Diego Garcia provides no grounds for any delay in completing the immediate decolonisation of Mauritius.

3. *Decolonisation Has Been Rapidly Completed in More Complex Circumstances*

7.32 In light of the foregoing, it is apparent that there are no practical or principled objections or hurdles which might limit the prompt completion of Mauritius’ decolonisation. Indeed, the United Kingdom deemed a period of just six months adequate for the granting of independence to Mauritius itself. After the September 1965 Constitutional Conference, the British authorities informed the United Nations

⁷⁸¹ United States Africa Command, *About the Command*, available at <http://www.africom.mil/about-the-command> (last accessed 5 Jan. 2018) (**Annex 199**).

⁷⁸² United States Africa Command, *Republic of Mauritius*, available at <http://www.africom.mil/area-of-responsibility/southern-africa/mauritius> (last accessed 5 Jan. 2018) (**Annex 200**).

that, if the newly elected Mauritian legislature favoured independence, “the United Kingdom Government would accept that request and independence would be achieved after a six-month period of full internal self-government following the new elections.”⁷⁸³

7.33 Similarly modest lengths of time were needed for terminating colonial arrangements in other places, even though there were significant political and legal hurdles to be overcome. For example, on 19 December 1967, the General Assembly requested that Spain ensure that Equatorial Guinea gain independence “as a single political and territorial entity not later than July 1968”.⁷⁸⁴ During the intervening seven months, Spain was expected, among other things, to:

- “reconvene [a] constitutional conference... in order to work out the modalities of the transfer of power, including the drawing up of an electoral law and of an independence constitution”;
- “institute an electoral system based on universal adult suffrage”;
- “hold, before independence, a general election for the whole Territory on the basis of a unified electoral role”; and

⁷⁸³ U.N. General Assembly, 21st Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/6300/Rev.1 (1966), para. 164 (**Dossier No. 253**). See also *ibid.*, para. 17 (“[T]he United Kingdom would be prepared to fix a date and take the necessary steps to declare Mauritius independent, after a period of six months’ full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly.”) The United Kingdom stated that elections would likely be held in early 1967, and if the party seeking independence prevailed, “independence could thus come about by the middle of 1967.” *Ibid.*, para. 164.

⁷⁸⁴ U.N. General Assembly, 22nd Session *Question of Equatorial Guinea*, U.N. Doc. A/RES/2355(XXII) (19 Dec. 1967), para. 4.

- “transfer effective power to the government resulting from this election”.⁷⁸⁵

7.34 On 5 December 1959, the General Assembly took note of Italy’s agreement to terminate its trusteeship over Somalia, whereby it would become independent no more than six months later.⁷⁸⁶ During that time, Italy had to expand the “composition of the Political Committee and the Constituent Assembly”; confirm through a referendum a constitution that was still “under preparation”; and carry out a “modification of the existing electoral law”.⁷⁸⁷

7.35 In November 1967, the Administering Authority of Nauru informed the Trusteeship Council that Nauru would become independent less than three months later.⁷⁸⁸ Over that period, Nauru was to elect representatives to attend the constitutional convention and adopt a constitution.⁷⁸⁹

7.36 On 3 November 1976, France informed the General Assembly that it anticipated that “the Territory [of the Afars and the Issas] would accede to independence during the summer of 1977”,⁷⁹⁰ that is, less than a year later. During

⁷⁸⁵ *Ibid.*, paras. 5-6.

⁷⁸⁶ U.N. General Assembly, 14th Session, *Date of the Independence of the Trust Territory of Somaliland Under Italian Administration*, U.N. Doc. A/RES/1418(XIV) (5 Dec. 1959), para. 5 (resolving, “in agreement with the Administering Authority, that on 1 July 1960, when Somalia shall become independent, the Trusteeship Agreement approved by the General Assembly on 2 December 1950 shall cease to be in force, the basic objectives of trusteeship having been attained”).

⁷⁸⁷ *Ibid.*, para. 4.

⁷⁸⁸ U.N. Trusteeship Council, 13th Special Session, *1323rd Meeting* (22 Nov. 1967), para. 7 (“Mr. SHAW (Australia) informed the Council that, following the resumed talks between representatives of Nauru and representatives of the Governments of the United Kingdom, New Zealand and Australia, it had been agreed that Nauru should accede to independence on 31 January 1968.”)

⁷⁸⁹ *Ibid.*, paras. 13 and 19.

⁷⁹⁰ U.N. General Assembly, Special Political and Decolonization Committee (Fourth Committee), *Summary Record of the 14th Meeting*, U.N. Doc. A/C.4/31/SR.14 (3 Nov. 1976), para. 16. *See also*

the interval, a referendum would be held and, in the event of a vote favoring independence, a Constituent Assembly would be established.⁷⁹¹

7.37 With respect to Malta, on 11 December 1963, the General Assembly invited the United Kingdom to “take the necessary measures for the transfer of powers, not later than 31 May 1964, to the people of Malta, in accordance with their will and desire”.⁷⁹² A referendum was then held on the proposed constitution, and Malta became independent nine months later, in September 1964.⁷⁹³

7.38 On 8 December 1975, the General Assembly noted the desire of the coalition Government of the Seychelles “that the Territory should attain independence not later than June 1976 and the continued readiness of the administering Power to grant independence to the people of the Seychelles in accordance with their wishes”.⁷⁹⁴ It also noted “that an electoral review commission ha[d] been established with a view to agreeing on the system of elections and the size and composition of the legislature and that a renewed conference [was] envisaged in early 1976 to work out the

General Assembly, 31st Session, *Question of French Somaliland*, U.N. Doc. A/RES/31/59 (1 Dec. 1976), para. 3 (calling upon France “to implement scrupulously and equitably, under democratic conditions, the programme for the independence of so-called French Somaliland (Djibouti), as outlined by the representative of France in his statement before the Fourth Committee of the General Assembly, within the indicated time frame, namely, the summer of 1977”).

⁷⁹¹ U.N. General Assembly, Special Political and Decolonization Committee (Fourth Committee), *Summary Record of the 14th Meeting*, U.N. Doc. A/C.4/31/SR.14 (3 Nov. 1976), para. 14.

⁷⁹² U.N. General Assembly, 18th Session *Question of Malta*, U.N. Doc. A/RES/1950(XVIII) (11 Dec. 1963), para. 3.

⁷⁹³ See U.N. International Covenant on Civil and Political Rights, Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant*, U.N. Doc. CCPR/C/MLT/2 (7 Dec. 2012).

⁷⁹⁴ U.N. General Assembly, 30th Session *Question of the Seychelles*, U.N. Doc. A/RES/3430(XXX) (8 Dec. 1975), Preamble.

provisions of an independence constitution”.⁷⁹⁵ Independence was achieved six months later, in June 1976.⁷⁹⁶

7.39 For the Northern Cameroons, the General Assembly “decide[d]” to terminate the United Kingdom’s trusteeship agreement less than four months after a plebiscite supported joining Nigeria.⁷⁹⁷ This was “completed and the decisions” embodied in the relevant General Assembly resolution were “duly implemented”.⁷⁹⁸

7.40 The time period within which the administering power can be expected to complete Mauritius’ decolonisation is also reflected in the dispatch with which administrative responsibilities have been transferred following a Judgment of the Court. In *Libya/Chad*, two months after the Court’s Judgment establishing the boundary, the parties concluded an agreement “concerning the practical modalities” for its implementation, which provided that “operations for the withdrawal of the Libyan administration” would commence within two weeks, and withdrawal would be completed a month-and-a-half later.⁷⁹⁹ The parties subsequently signed a joint

⁷⁹⁵ *Ibid.*

⁷⁹⁶ See U.N. General Assembly, Human Rights Council, 18th Session, *Report of the Working Group on the Universal Periodic Review, Seychelles*, U.N. Doc. A/HRC/18/7 (11 July 2011).

⁷⁹⁷ *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 23 (citing U.N. General Assembly, 15th Session, *The future of the Trust Territory of the Cameroons under United Kingdom administration*, U.N. Doc. A/RES/1608(XV) (21 Apr. 1961), para. 4).

⁷⁹⁸ *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, Separate Opinion of Judge Wellington Koo, I.C.J. Reports 1963*, p. 51, para. 29.

⁷⁹⁹ See Repertoire of the Practice of the Security Council, *Agreement signed on 4 April 1994 between the Governments of Chad and the Libyan Arab Jamahiriya concerning the practical modalities for the implementation of the Judgment delivered by the International Court of Justice on 3 Feb. 1994*, Supplement No. 12, Chapter 8, Item 10 (1993-1995), p. 508.

declaration confirming that the “withdrawal of the [Libyan] administration” had been “effected as of that date to the satisfaction of the parties.”⁸⁰⁰

7.41 These precedents – each of which involved the termination of colonial (or quasi-colonial) arrangements or the transfer of administrative responsibilities in circumstances more complex than is the case here – demonstrate that there is no reason why the decolonisation of Mauritius could not be completed in a similar timeframe. In all these cases less than a year was needed to complete the process of decolonisation.

IV. The legal consequences while decolonisation is being completed

7.42 Mauritius recognises that there may be a short period between the issuance of the Court’s Advisory Opinion and the immediate completion of the process of decolonisation. In that limited period, the administering power is required to engage in good faith consultations and cooperation with Mauritius to protect and promote the interests of Mauritius, and to endeavour to transfer to Mauritius administrative responsibilities at the earliest practicable date.

7.43 These legal consequences follow from Article 73 of the U.N. Charter, which requires the administering power to give effect to “the principle that the interests of” the “inhabitants [of Mauritius] are... paramount”, and to “accept as a sacred trust the obligation to promote to the utmost” their “well-being”.⁸⁰¹ Among other things, under Article 73, the administering power is required to “ensure” the “political, economic, social, and educational advancement” of the Mauritian people, as well as “their just treatment, and their protection against abuses”, having due regard for the culture of

⁸⁰⁰ See *ibid.*, p. 510.

⁸⁰¹ U.N. Charter (24 Oct. 1945), Art. 73.

the peoples concerned.⁸⁰² The administering power is also required to “promote constructive measures” for their “development”.⁸⁰³ The United Kingdom has “taken a consistently firm position insisting upon a most literal and strict adherence to the language” of Article 73.⁸⁰⁴

7.44 The same legal consequences follow from the unanimous Award in the *Chagos Marine Protected Area Arbitration*, which held that the administering power’s “undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago.”⁸⁰⁵ The Award emphasised that “Mauritius’ interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned.”⁸⁰⁶

7.45 Accordingly, in order to assist with bringing decolonisation to an immediate end in an orderly fashion, the administering power must consult and cooperate with Mauritius with regard to all matters of administration and exercise of sovereign rights, including, *inter alia*, the following.

7.46 *First*, and most significantly in terms of the desires of the relevant population, the administering power must cooperate with Mauritius to advance efforts by Mauritius to resettle – as a matter of urgency – those Mauritians of Chagossian origin that were unlawfully displaced by the administering power, and to ensure the access

⁸⁰² *Ibid.*, Art. 73(a).

⁸⁰³ *Ibid.*, Art. 73(d).

⁸⁰⁴ “Draft of Position Paper from Background Book for Colonial Policy Discussions” in FOREIGN RELATIONS, VOL. II (21 June 1950), p. 455 (**Annex 14**).

⁸⁰⁵ *The Chagos Marine Protected Area Arbitration*, Award (18 Mar. 2015), para. 298 (**Dossier No. 409**).

⁸⁰⁶ *Ibid.*

of other Mauritian citizens to the Chagos Archipelago in accordance with Mauritian law.

7.47 To date, the administering power's treatment of Mauritians of Chagossian origin has manifestly failed to meet its obligations under Article 73 of the U.N. Charter, even though the General Assembly has repeatedly condemned the deportation, transfer and displacement of colonial populations. Resolution 2105 (XX), for example, calls upon the "colonial Powers to discontinue their policy of violating the rights of colonial peoples", including through "the dislocation, deportation and transfer of the indigenous inhabitants".⁸⁰⁷

7.48 It is plain that the administering power's expulsion of those Mauritians who resided in the Chagos Archipelago – together with the continued refusal to allow them to exercise a right of return – violated its "sacred trust" to promote their "well-being" to the "utmost".⁸⁰⁸

7.49 The administering power's expressions of regret described in Chapters 1 and 4 are insufficient.⁸⁰⁹ Having unlawfully expelled the Chagos Archipelago's population, the administering power must now, while decolonisation is being completed, cooperate with Mauritius to facilitate their return to the Archipelago.

7.50 The General Assembly has underscored the importance of such efforts. In calling upon States to cease "all acts of repression, discrimination, exploitation and

⁸⁰⁷ U.N. General Assembly, 20th Session, *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/RES/2105(XX) (20 Dec. 1965), para. 5 (**Dossier No. 155**).

⁸⁰⁸ U.N. Charter (1945), Art. 73.

⁸⁰⁹ See paras. 1.4 and 4.53.

maltreatment” in colonial territories, it has emphasised the “right” of refugees and persons displaced by such acts “to return to their homes voluntarily in safety and honour”.⁸¹⁰ This right extends to peoples who have been unlawfully “exiled” or “forbidden to reside” in territories, which, like the Chagos Archipelago, are under colonial administration.⁸¹¹

7.51 Facilitation of the return of Mauritians of Chagossian origin gives effect to Article 13 of the Universal Declaration of Human Rights, which provides that “[e]veryone has the right to... return to his country”, as well as the “right to freedom of movement and residence within the borders of each State.”⁸¹²

⁸¹⁰ See U.N. General Assembly, 56th Session, *Universal Realization of the Right of Peoples to Self-determination*, U.N. Doc. A/RES/56/141 (19 Dec. 2001), paras. 3-4. See also U.N. General Assembly, 62nd Session, *Universal Realization of the Right of Peoples to Self-determination*, U.N. Doc. A/RES/62/144 (18 Dec. 2007), paras. 3-4; U.N. General Assembly, 63rd Session, *Universal Realization of the Right to Peoples to Self-determination*, U.N. Doc. A/RES/63/163 (18 Dec. 2008), paras. 3-4; U.N. General Assembly, 64th Session, *Universal Realization of the Right to Peoples to Self-determination*, U.N. Doc. A/RES/64/149 (18 Dec. 2009), paras. 3-4; U.N. General Assembly, 31st Session, *Question of French Somaliland*, U.N. Doc. A/RES/31/59 (1 Dec. 1976), para. 8. (calling on France “to allow and facilitate the return to [French Somaliland] of all refugees who are *bona fide* citizens of the Territory”); 17th Summit of Heads of State and Government of the Non-Aligned Movement, *Chagos Archipelago*, No. NAM 2016/CoB/DOC.1. Corr.1 (17-18 Sept. 2016), para. 337 (expressing “grave concern that despite the strong opposition expressed by the Republic of Mauritius, the United Kingdom purported to establish a ‘marine protected area’ (‘MPA’) around the Chagos Archipelago, further infringing the territorial integrity of the Republic of Mauritius and impeding the exercise of its sovereignty over the Chagos Archipelago *as well as the exercise of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom.*”) (emphasis added) (**Annex 182**).

⁸¹¹ U.N. General Assembly, 18th Session, *Question of Aden*, U.N. Doc. A/RES/1949(XVIII) (11 Dec. 1963), para. 7 (calling upon the United Kingdom to “allow the return of those people who have been exiled or forbidden to reside in [Aden] because of political activities”). See also, e.g., U.N. General Assembly, 20th Session *Question of Aden*, U.N. Doc. A/RES/2023(XX) (5 Nov. 1965), para. 8(d); *Question of Oman* (17 Dec. 1965), para. 5(c); U.N. General Assembly, 34th Session, *Palestine refugees in the Gaza Strip*, U.N. Doc. A/RES/34/52F (23 Nov. 1979), Preamble (“measures to resettle Palestinian refugees... away from the homes and property from which they were displaced constitute a violation of their inalienable right of return”).

⁸¹² U.N. General Assembly, 3rd Session, *Universal Declaration of Human Rights*, U.N. Doc. A/RES/3/217A (10 Dec. 1948), Art. 13.

7.52 As the Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities explains:

the right to return [is] a positive right. It is considered a part of conventional international law as well as one of the “general principles of law recognized by civilized nations”. It has also been affirmed that this right based upon usual State practice, is uncontroversial and it is not the subject of diplomatic and juridical contention.⁸¹³

7.53 Indeed, Lord Mance, in the 2008 *Bancoult* decision of the Appellate Committee of the House of Lords, referred to “the freedom to return to one’s homeland, however poor and barren the conditions of life”, as “one of the most fundamental liberties known to human beings”.⁸¹⁴

7.54 The administering power’s obligation to cooperate with Mauritius in the resettlement of the Chagos Archipelago is also founded in the International Covenant on Civil and Political Rights (“ICCPR”). Article 12 provides that “[n]o one shall be arbitrarily deprived of the right to enter his own country”,⁸¹⁵ and that “[e]veryone

⁸¹³ U.N. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 40th Session, *Analysis of the current trends and developments regarding the right to leave any country including one’s own, and to return to one’s own country, and some other rights or considerations arising therefrom: Final report prepared by Mr. C.L.C. Mubanga-Chipoya*, U.N. Doc. E/CN.4/Sub.2/1988/35 (20 June 1988), para. 88. *See also* U.N. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Resolution 1997/31: The Right to Return”, Preamble, in *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Ninth Session*, U.N. Doc. E/CN.4/1998/2 (5 Nov. 1997), p. 72 (recognising “the fundamental significance of the observance and promotion of the right to return voluntarily to one’s country or place of origin”).

⁸¹⁴ *R (on the application of Bancoult) v. Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 172 (quoting *R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*, [2007] EWCA Civ 498 (23 May 2007), para. 71).

⁸¹⁵ International Covenant on Civil and Political Rights, 999 U.N.T.S. 172 (19 Dec. 1966), entered into force 23 Mar. 1976 (hereinafter “ICCPR (19 Dec. 1966)”), Art. 12(4).

lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”⁸¹⁶

7.55 There can be no doubt that these principles apply to the Mauritian nationals who were forcibly removed from the Chagos Archipelago by the administering power. The United Nations Human Rights Committee has stated that the administering power “should ensure that the Chagos islanders can exercise their right to return to their territory”.⁸¹⁷ The Committee rejected the administering power’s objection that the ICCPR did not apply to the Chagos Archipelago “owing to an absence of population”.⁸¹⁸

7.56 *Second*, the administering power is required to consult and cooperate with Mauritius so that the Chagos Archipelago is administered in a manner that promotes the economic well-being of the Mauritian people. The General Assembly has urged that activities carried out in “Territories under colonial domination do not run counter to the present or future interests of the indigenous inhabitants of those Territories”.⁸¹⁹

⁸¹⁶ *Ibid.*, Art. 12(1). Article 17 further provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, [or] home”, and that “[e]veryone has the right to the protection of the law against such interference or attacks.” In its *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court ruled that the I.C.C.P.R. is “applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.” *Construction of a Wall (Advisory Opinion)*, p. 180, para. 111. It also found that Israel’s “construction of the wall and its associated régime impede[d] the liberty of movement of the inhabitants of the Occupied Palestinian Territory... as guaranteed under Article 12, paragraph 1” of the I.C.C.P.R. *Construction of a Wall (Advisory Opinion)*, pp. 191-192, para. 134.

⁸¹⁷ *Concluding observations of the Human Rights Committee: United Kingdom and Northern Ireland* (30 July 2008), para. 22 (**Dossier No. 397**).

⁸¹⁸ *Ibid.*

⁸¹⁹ U.N. General Assembly, 22nd Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under Colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/2288(XXII) (7 Dec. 1967), para. 6 (calling upon “all States concerned to fulfil their fundamental obligation to ensure that the concessions granted, the investments authorized and the enterprises permitted to their

The administering power must therefore work with Mauritius to promote the “economic and financial viability” of the Chagos Archipelago,⁸²⁰ and ensure that “economic activities in the [Archipelago are] aimed at improving” the standards of living and the self-sufficiency of the Mauritian people.⁸²¹ In addition, the administering power is required to cooperate with Mauritius to “ensure that economic and other activities in the [Chagos Archipelago] do not adversely affect” Mauritian “interests”.⁸²²

7.57 *Third*, the administering power is required to cooperate with Mauritius in order to give the Mauritian people access to the living and non-living natural resources of the Chagos Archipelago, so that they can be explored and exploited in a sustainable and environmentally sensitive manner.⁸²³ The Colonial Declaration

nationals in the Territories under colonial domination do not run counter to the present or future interests of the indigenous inhabitants of those Territories”). *See also Fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (10 Dec. 2010), para. 4.

⁸²⁰ *See, e.g.*, U.N. General Assembly, 40th Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/40/52 (2 Dec. 1985), para. 7 (requesting “the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to monitor closely the situation in the remaining colonial Territories so as to ensure that all economic activities in those Territories are aimed at strengthening and diversifying their economies in the interests of the indigenous peoples, at promoting the economic and financial viability of those Territories and at speeding their accession to independence”).

⁸²¹ *See, e.g.*, *Repertory of Practice of United Nations Organs*, “Article 73”, Supplement No. 6, Vol. 5 (1970-1978), para. 14.

⁸²² U.N. General Assembly, 71st Session, *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/RES/71/122 (6 Dec. 2016), para. 13. *See also, e.g.*, U.N. General Assembly, 40th Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/40/52 (2 Dec. 1985), para. 10; *Fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (10 Dec. 2010), para. 4.

⁸²³ ICCPR (19 Dec. 1966), Art. 1(2) (“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic

“[a]ffirm[s] 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 co-operation, based upon the principle of mutual benefit, and international law”.⁸²⁴ While decolonisation is being completed, the administration of the Chagos

co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”); *ibid.*, Art. 47 (“Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”); U.N. Human Rights Committee, 21st Session, *I.C.C.P.R. General Comment No. 12: Article 1, The Right to Self-determination of Peoples* (13 Mar. 1984), para. 5 (“Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to ‘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. In no case may a people be deprived of its own means of subsistence’. This right entails corresponding duties for all States and the international community.”); *Repertory of Practice of United Nations Organs*, “Article 73”, Supplement No. 6, Vol. 5 (1970-1978), para. 14 (“[T]he General Assembly continued to adopt resolutions that were applicable to all colonial Territories. Those resolutions were based on the principle that peoples of dependent Territories had the right to dispose of their natural and economic resources in their best interests”).

⁸²⁴ U.N. General Assembly, 15th Session, *Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/RES/1514(XV) (14 Dec. 1960), Preamble (**Dossier No. 55**). See also, e.g., *Repertory of Practice of United Nations Organs*, “Article 73”, Supplement No. 5, Vol. 4 (1970-1978), para. 16 (“The Assembly also continued to pay particular attention to the rights of colonial peoples to freely dispose of their natural wealth and resources.”); General Assembly, 41st Session, *Declaration on the Right to Development*, U.N. Doc. A/RES/41/128 (4 Dec. 1986) (“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”); General Assembly, 34th Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia and Namibia and in all other territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/34/41 (21 Nov. 1979) (“Reaffirms the inalienable right of the peoples of dependent Territories to self-determination and independence and to the enjoyment of the natural resources of their Territories, as well as their right to dispose of those resources in their best interests.”); General Assembly, 34th Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia and Namibia and in all other territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/34/41 (21 Nov. 1979) (“Reiterates that any administering or occupying Power which deprives the colonial peoples of the exercise of their legitimate rights over their natural resources or subordinates the rights and interests of those peoples to foreign economic and financial interests violates the solemn obligations it has assumed under the Charter of the United Nations.”); U.N. General Assembly, 22nd Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under Colonial domination and efforts to eliminate*

Archipelago must therefore take care not to obstruct “the access of the [the Mauritian people] to their natural resources”.⁸²⁵

7.58 *Fourth*, the administering power is required to cooperate with Mauritius to ensure that the environment of the Chagos Archipelago is fully protected. This requires, *inter alia*, cooperation in regard to the environmental protection obligations that pertain to the marine environment which are codified in Part XII of UNCLOS, as well as all other environmental obligations, whether based in treaty or customary international law. In practical terms this means that the administering power should formally bring to an end its purported “MPA”, the declaration of which was unanimously ruled to have been unlawful by the tribunal in the *Chagos Marine Protected Area Arbitration*, and allow Mauritius to take the steps to which it has committed itself in order to protect the environment of the Chagos Archipelago. Mauritius places a very high value on protection of the environment. It is conscious

colonialism, apartheid and racial discrimination in southern Africa, U.N. Doc. A/RES/2288(XXII) (7 Dec. 1967) (“Reaffirms the inalienable right of the peoples of the colonial Territories to self-determination and independence and to the natural resources of their Territories, as well as their right to dispose of these resources in their best interests”.); U.N. General Assembly, 22nd Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under Colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/2288(XXII) (7 Dec. 1967) (“Further calls upon the colonial Powers to prohibit the following practices, which run counter to the principles of the Charter, violate the economic and social rights of the peoples of the Territories under colonial domination and impede the rapid implementation of resolution 1415 (XV): ... The obstruction of the access of the indigenous inhabitants to their natural resources”).

⁸²⁵ U.N. General Assembly, 22nd Session, *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under Colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa*, U.N. Doc. A/RES/2288(XXII) (7 Dec. 1967), para. 7(b).

of the extraordinary diversity of the waters of the Chagos Archipelago, and the need to safeguard the region against the environmental challenges it faces today.

7.59 *Fifth*, the administering power is required to cooperate with Mauritius in connection with the authorisation, oversight and regulation of scientific research that occurs in and around the Chagos Archipelago, including, *inter alia*, in discharge of the rights and obligations set out in Part XIII of UNCLOS with respect to marine scientific research.

7.60 *Sixth*, the outer limits of the continental shelf of the Chagos Archipelago beyond 200 nautical miles have not been delineated. The administering power is therefore required to cooperate with Mauritius to allow Mauritius to submit forthwith the information called for by Article 76(8) of UNCLOS to the U.N. Commission on the Limits of the Continental Shelf. For the purposes of facilitating such a submission, the administering power must share with Mauritius all data in its possession that pertain to whether there exists a continental shelf beyond 200 nautical miles.

7.61 *Seventh*, the maritime boundary between Mauritius and the Republic of the Maldives remains to be delimited. The administering power is required to allow Mauritius to take all reasonable steps to proceed to the delimitation of those boundaries by agreement with the Maldives in accordance with Articles 74(1) and 83(1) of UNCLOS, and to refrain from seeking to negotiate such an agreement itself. The administering power is also required to allow Mauritius to seek to agree upon provisional arrangements of a practical nature, as provided for in Articles 74(3) and 83(3) of the Convention. The administering power must provide Mauritius with all information in its possession that could bear upon maritime delimitation with the Maldives and/or the negotiation of provisional arrangements of a practical nature pending a final delimitation.

V. The legal consequences that apply to third States and international organisations

7.62 The administering power's failure to complete the decolonisation of Mauritius also entails legal consequences for third States and for international organisations, including in particular the United Nations. This follows from the fact that self-determination is an *erga omnes* norm⁸²⁶ that “gives rise to an obligation to the international community as a whole to permit ... its exercise.”⁸²⁷

7.63 In the *Wall* case, the Court observed that Israel had violated “certain obligations *erga omnes*”, including “the right of the Palestinian people to self-determination”. The Court emphasised that such obligations “are by their very nature ‘the concern of all States’” and that “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection’.”⁸²⁸

⁸²⁶ *East Timor, Judgment*, p. 102, para. 29 (“In the Court’s view, Portugal’s assertion 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. The principle of self-determination of peoples has been recognised by the United Nations Charter and in the jurisprudence of the Court”.); *South West Africa (Advisory Opinion)*, p. 56, para. 126; *East Timor (Portugal v. Australia), Judgment, Dissenting Opinion of Judge Skubiszewski, I.C.J. Reports 1995*, p. 266, para. 135.

⁸²⁷ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Commentary to Art. 40, para. 5. See also *Western Sahara (Advisory Opinion)*, p. 31, para. 54 (“The Charter of the United Nations, in Article 1, paragraph 2, indicates, as one of the purposes of the United Nations: ‘To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...’. This purpose is further developed in Articles 55 and 56 of the Charter. Those provisions have direct and particular relevance for non-self-governing territories, which are dealt with in Chapter XI of the Charter.”); *Construction of a Wall (Advisory Opinion)*, p. 200, paras. 159-160 (“the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.”); *Question of Algeria* (19 Dec. 1960) (“Recognizes further that the United Nations has a responsibility to contribute towards the successful and just implementation of this right [to self-determination].”)

⁸²⁸ *Construction of a Wall (Advisory Opinion)*, p. 199, para. 155 (quoting *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970*, para. 33).

7.64 Third States and international organisations are therefore required not to aid or assist in maintaining a situation that denies the right of self-determination. The Court's *Wall* Advisory Opinion stated:

Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.⁸²⁹

7.65 Such obligations necessarily apply to third States and international organisations in the context of decolonisation. In *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court explained:

States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration...⁸³⁰

⁸²⁹ *Construction of a Wall (Advisory Opinion)*, p. 200, para. 159. See also *South West Africa (Advisory Opinion)*, p. 56, para. 126 (“the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law”.); *East Timor (Portugal v. Australia)*, Judgment, Dissenting Opinion of Judge Skubiszewski, *I.C.J. Reports 1995*, pp. 266-267, para. 138; *East Timor (Portugal v. Australia)*, Judgment, Dissenting Opinion of Judge Weeramantry, *I.C.J. Reports 1995*, p. 209 (“if the people of East Timor have a right *erga omnes* to self-determination, there is a duty lying upon all Member States to recognize that right. To argue otherwise is to empty the right of its essential content and, thereby, to contradict the existence of the right itself.”); *ibid.*, pp. 190, 205 and 221.

⁸³⁰ *South West Africa (Advisory Opinion)*, para. 133. See also *ibid.*, p. 54, para. 119 (noting that States were “under obligation to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia”).

7.66 The obligations of third States and international organisations in relation to the decolonisation of Mauritius are not limited to refraining from recognising or assisting the administering power in maintaining an unlawful situation. They also have a *positive* obligation to advance the decolonisation process. The Declaration on Friendly Relations makes clear that *every State* has an *affirmative duty* to help the United Nations bring about a “speedy end to colonialism”.⁸³¹

7.67 As the Court held in the *Wall* case: “every State has the duty to promote, through joint and separate action, realization of the principle of... self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle”.⁸³² Consequently, “[i]t is... for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.”⁸³³

7.68 In conclusion therefore, the failure to complete the decolonisation of Mauritius carries the legal consequence that the continuing wrongful act must be

⁸³¹ *Friendly Relations Declaration* (24 Oct. 1970), Annex I, para. 1. See also U.N. General Assembly, 29th Session, *Charter of Economic Rights and Duties of States*, U.N. Doc. A/RES/3281(XXIX) (12 Dec. 1974), Art. 16(1) (“It is the right and duty of all States, individually and collectively, to eliminate colonialism”); *East Timor (Portugal v. Australia)*, *Judgment, Dissenting Opinion of Judge Weeramantry*, *I.C.J. Reports 1995*, p. 205 (“Corresponding to the rights so generated, which are enjoyed by the people of East Timor, there are corresponding duties lying upon the members of the community of nations. Just as the rights associated with the concept of self-determination can be supported from every one of the sources of international law, so also can the duties, for a right without a corresponding duty is no right at all.”)

⁸³² *Construction of a Wall (Advisory Opinion)*, p. 199, para. 156 (quoting *Friendly Relations Declaration* (24 Oct. 1970), para. 1).

⁸³³ *Construction of a Wall (Advisory Opinion)*, p. 200, para. 159.

brought to an end and Mauritius' decolonisation must be completed immediately. This will be achieved when the administering power has fully withdrawn its administration from the Chagos Archipelago, Mauritius is able to exercise full rights of sovereignty, and the administering power recognises Mauritius' sovereignty over the Archipelago. The time period within which this must come to completion must take account of the principle that colonial arrangements must be brought to a speedy end, a process that has often taken less than a year in circumstances more complex than those present here.

7.69 The failure to complete Mauritius' decolonisation carries the further legal consequence that the administering power must consult and cooperate with Mauritius to facilitate Mauritius' efforts to resettle its nationals, in particular those of Chagossian origin in the Archipelago. The administering power must also consult and cooperate with Mauritius so as to *inter alia*: (a) advance the economic well-being of the Mauritian people; (b) give Mauritius access to the Chagos Archipelago's natural resources; (c) ensure that its environment is fully protected; (d) allow Mauritius to participate in the authorisation, oversight and regulation of scientific research in and around the Archipelago; (e) permit Mauritius to make submissions to the U.N. Commission on the Limits of the Continental Shelf in regard to the Archipelago; and (f) allow Mauritius to proceed to a delimitation of its maritime boundaries with the Maldives.

7.70 Finally, third States and international organisations are required not to recognise the existing unlawful situation, or assist the administering power in maintaining it. Rather, they are affirmatively required to aid in bringing Mauritius' decolonisation to full and final completion.

Conclusions

For the reasons set out in this Written Statement, Mauritius submits as follows:

- (1) The Court has jurisdiction to give the Advisory Opinion requested, and there are no grounds for declining to exercise such jurisdiction;
- (2) The process of decolonisation of Mauritius was not lawfully completed in accordance with international law when Mauritius was granted independence in 1968, and has not been lawfully completed to this day, as a result of the separation of the Chagos Archipelago from Mauritius; and
- (3) As regards the consequences, international law requires that:
 - (a) The process of decolonisation of Mauritius be completed immediately, including by the termination of the administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, so that Mauritius is able to exercise sovereignty over the totality of its territory;
 - (b) Mauritius be able to implement with immediate effect a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin;
 - (c) No State may render aid or assistance that will prevent the process of decolonisation from being completed; and
 - (d) The United Nations, and especially the General Assembly, shall take all actions necessary to enable the process of decolonisation to be completed without further delay.
- (4) In addition, the Court is invited to offer an Opinion on such other relief or measures as may be required by the totality of the circumstances.

1 March 2018



Dheerendra Kumar Dabee G.O.S.K., S.C.

Solicitor-General of Mauritius

Certification

I certify that the copies of documents annexed to this Written Statement are true copies of the original documents referred to.

1 March 2018

A handwritten signature in cursive script, appearing to read 'Dheerendra Kumar Dabee', is written over a horizontal line. The signature is written in black ink.

Dheerendra Kumar Dabee G.O.S.K., S.C.

Solicitor-General of Mauritius

LIST OF ANNEXES

VOLUME II

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